New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Selected Financial Management Practices

Hudson River Park Trust

Report 2013-S-56 December 2014

Executive Summary

Purpose

To determine if the Hudson River Park Trust has established adequate controls over the following financial management functions: revenue and collection; procurement and contracting; time and attendance; budgeting and expenditure control; cash investments; and equipment and asset management. The audit covered the period April 1, 2010 through March 26, 2014.

Background

The Hudson River Park Trust (Trust) is a public benefit corporation authorized under the Hudson River Park Act (Act) in 1998. The Act also created Hudson River Park (Park), which includes the area along the Hudson River waterfront, generally from the northern boundary of Battery Place to the northern boundary of 59th Street in Manhattan. The Trust has authority over the planning, construction, operation, and maintenance of the Park. Under the Act, the State and New York City granted the Trust a possessory interest in the real property that composes the Park for a term not to exceed 99 years. The Trust has a 13-member Board with members appointed by the Mayor, Governor, and the Manhattan Borough President. The Trust also has approximately 59 full-time employees and 11 part-time and seasonal workers. The Trust is designed as a financially self-sustaining entity, meaning that all revenues generated within the Park are used to fund the costs of maintenance and operations. The primary sources of revenues in fiscal year 2013 were leases, occupancy permit fees, revenue from the parking garage, and certain user fees.

Key Findings

- Opportunities exist for the Trust to improve its practices related to revenue collection, procurement, investments, time and attendance, budgeting, and equipment inventories.
- The Trust needs to improve its monitoring of payments from tenants. For three contracts, the Trust did not collect $297,925 in revenues because tenants: reduced their payments to the Trust by the amounts of maintenance costs, which were not documented; did not pay rent for a year; or paid the wrong amount of rent.
- Two vendor contracts were awarded and modified by $16.9 million, but the documentation in support of the vendor selection and contract modification was incomplete.

Key Recommendations

- Strengthen controls over the award of revenue contracts and the monitoring of revenues from such contracts.
- Ensure the Trust follows its prescribed guidelines for the competitive procurement of goods and services consistently.
- Improve budget procedures to ensure they comply with regulatory requirements for updates, quarterly reports, explanations of variances, and assessments of their propriety.

State of New York
Office of the State Comptroller

Division of State Accountability

December 26, 2014

Ms. Diana L. Taylor
Chair
Hudson River Park Trust
353 West Street
New York, NY 10014

Dear Ms. Taylor:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Hudson River Park Trust entitled *Selected Financial Management Practices*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The Hudson River Park Trust (Trust) is a public benefit corporation authorized under the Hudson River Park Act (Act). The Act also created the Hudson River Park (Park), which includes the area along the Hudson River waterfront, generally from the northern boundary of Battery Place to the northern boundary of 59th Street in Manhattan. The Trust has authority over the planning, construction, operation, and maintenance of the Park. Under the Act, the Trust was granted a possessory interest in State and New York City owned property within the boundaries of the Park for a term not to exceed 99 years. The Trust has a 13-member Board. The Governor and Mayor each appoint five members and the Manhattan Borough President appoints three members.

As of November 26, 2013, the Trust had 59 full-time and 11 part-time and seasonal employees. The Act states that "the costs of the operation and maintenance of the park be paid by revenues generated within the Hudson river park and that those revenues be used only for park purposes." Additional funding by the State and the City may be allocated as necessary to meet the costs of operating and maintaining the Park. The Trust had operating revenues of about $34.2 million and operating expenses of about $26.2 million for the fiscal year ended March 31, 2013. The primary sources of operating revenue include property lease payments, occupancy permit fees, parking revenue, and certain user fees. The revenue includes contributions from Friends of Hudson River Park, a not-for-profit organization related to the Trust. The operating amounts do not reflect the Trust's capital expenses of $27.4 million.

The New York City Economic Development Corporation (EDC) collects rents on behalf of the City for Piers 79 and 94 under leases with third parties, and EDC remits the monies to the Trust semi-annually. EDC also collects rents on the New York City Passenger Ship Terminal (Piers 88, 90, and 92) and is required to forward a percentage of any revenues to the Trust.

Audit Findings and Recommendations

The Trust needs to improve its practices related to revenue collection, procurement, investments, payroll, budgeting, and equipment inventories. Among the weaknesses identified, the Trust did not: maximize the amount of revenues from certain tenants; adequately ensure that EDC reported revenues correctly; and document the contractor selection process. Our report makes 19 recommendations to improve the Trust's financial management practices.

Revenue Contracts

The Trust has revenue contracts that were assigned to it when it was created and others that were negotiated after its inception. Among these is a contract for the operation of a parking garage. In addition, effective September 8, 1998, the Act states that New York City (through its agent, EDC) shall pay the Trust 15 percent of any revenues it receives from any lease, concession agreement, license, or other agreement related to Piers 79 and 94 for a period of five years. For the period thereafter, the City shall pay the Trust 20 percent of any such revenues.

Contracts with EDC

Regarding the EDC agreement for Piers 79 and 94, the Trust received only partial rent payments and late fees for 2013, and the amounts paid for base rent for Pier 79 were incorrect. The Trust was remiss in not monitoring its receivables to ensure timely payment. As of April 18, 2014, the Trust received a payment totaling $119,175 for rent and late fees EDC collected from the vendors for Pier 79 for all of 2013 and seven months' rent for Pier 94. The rent payments are made semiannually. A half year of Pier 79's rent was paid late, and the Trust is still owed five months' rent totaling $40,000 for Pier 94. Also, EDC did not include an increase due to changes in the Consumer Price Index. This resulted in the Trust not receiving $1,255 for the period November 2010 to December 2012.

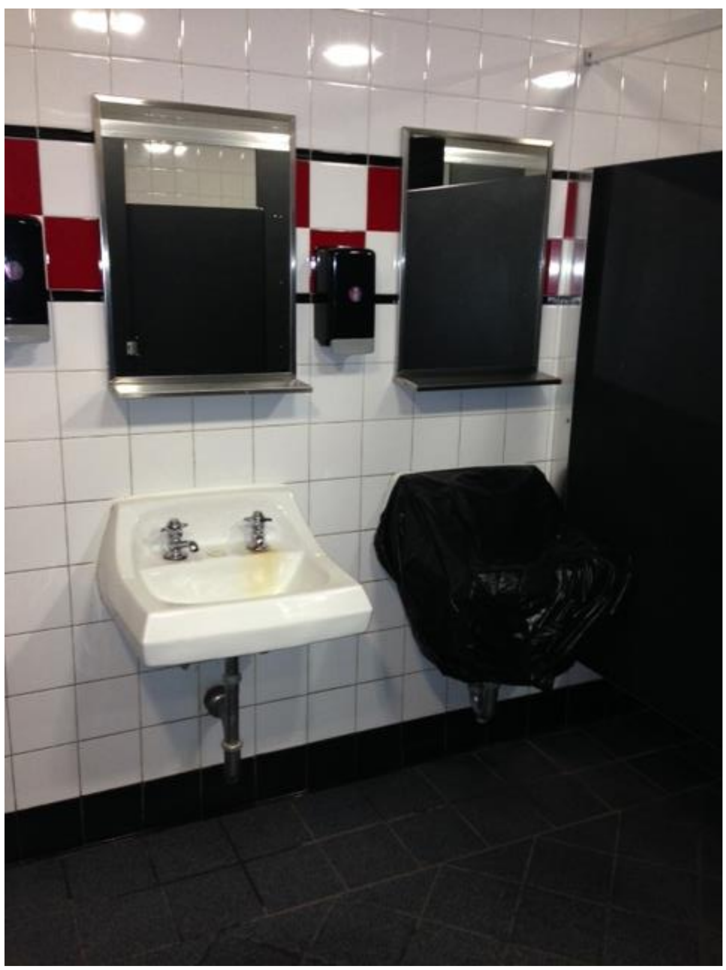
Trust officials stated that they receive checks on a semi-annual basis and do not have any procedures to verify that rental revenues are correct. By not verifying amounts received from EDC as rental revenue, the Trust does not know if it is receiving the correct amount. We reviewed revenues based on the percentage of gross ticket sales and miscellaneous revenues for Pier 79 for selected months in 2011, 2012, and 2013, and we concluded that the amounts paid to the Trust were correct.

The Trust should also receive a percentage of revenue from the Passenger Ship Terminal at Piers 88, 90, and 92. However, there is a supplementary agreement for renovations at those piers, which requires the Trust to pay a portion of the construction cost from 2006 to 2025, totaling $437.5 million. These amounts are offset against any revenue earned before the Trust receives any payments. The Trust was not provided an accounting of these monies, nor has it attempted to obtain one. We requested an accounting from EDC for 2006 to 2014 for $174.9 million, but as of May 6, 2014, it was not provided to us.

Contracts with Tenants

The Trust had 43 revenue contracts (including 36 permits and 7 leases), which generated revenues of about $24.3 million from April 1, 2010 to March 31, 2013. We reviewed nine revenue contracts totaling about $4.7 million to determine whether the contracts were properly managed. We found that:

- A tenant decreased its rent payments for loss of space and bathroom credits by $256,670 for the four years 2010 through 2013. The tenant is required to provide proof of payment for actual expenses incurred for the bathroom facilities. However, the Trust did not have documentation to justify these rent reductions taken by the tenant. In addition, we visited the public women's restroom at the tenant's facility on March 12, 2014, and found that one of the two sinks in the women's restroom was out of service. When we returned on March 24, 2014, the sink was still covered in a black garbage bag and not available for use. Because $221,049 of the tenant's rental payments were reduced for costs to maintain the bathrooms, the Trust should have ensured the tenant repaired the sink timely.



Broken sink covered by garbage bag in public women's restroom at the tenant's facility on March 12, 2014

- A tenant has been charged a fee of $1,200 a month for its marina permit since 1996. This permit does not contain an escalation clause, and the fee has not been increased since 1996. We noted that the cumulative rate of inflation for the period 2000 to 2014 is 45 percent, and the fee would have been $1,740 if it kept pace with inflation. In response to our preliminary findings, Trust officials agreed with our observations about the permit fee.
- A contract with a restaurant requires it to submit a monthly statement of gross receipts with supporting documentation to the Trust. Specifically, it "shall include a printout from its electronic accounting software program of all cash receipts throughout such month." We requested the electronic statement of cash receipts from April 1, 2010 through March 31, 2011. According to the CFO, the tenant has never submitted such printouts. In addition, the Trust does not verify the cash receipts reported until year end, when the tenant submits its "Annual Summary Statement of Gross Receipts," Income and Expense Statement, and tax returns. We noted that the tenant's internal audit discovered $3,816 of unreported income from 2011. However, Trust officials were not aware of this error until the tenant notified them and sent a check on July 31, 2012. In response to our preliminary findings, Trust officials indicated they are preparing a new lease that will require submission of copies of electronic statements of all monthly gross receipts, both cash and credit.

Contract Award Process

We sampled five revenue contracts that started between April 1, 2013 and January 14, 2014 to determine how the Trust established fair rental values and awarded the contracts. We found that the Trust does not have written procedures for awarding revenue contracts. In addition, we reviewed the contract documents and noted that the selection committee members were not identified. Also, the proposal package (including the postmark and time of receipt) was not available for four of the five sampled contracts.

Also, for one competitive procurement (the Greenwich Village Café project), the Trust received three proposals. The proposals were opened by five Trust staff, including a representative from the legal department. The Request for Proposal (RFP) stated, "Proposals received after the time and date listed above will be returned unopened and will not be considered for award." However, two of the proposals were received shortly after the deadline of 3:00 p.m. on January 29, 2010. No acknowledgement of the late receipt of the proposals was made in the Trust's proposal selection documentation.

The RFP also stipulated that "Failure to comply will result in the automatic disqualification of a submission from further consideration." The Trust requires responses to RFPs to have certain information on the submission envelope. Specifically, the name of the firm submitting the response, its address, the solicitation ID number, and return date must be indicated. However, we noted that one of the late proposals did not include the name of the firm on the envelope, as required. Also, the other late proposal did not include the bidder's name and address, solicitation number, or return date on the envelope.

Despite the late submissions and lack of compliance with other submission requirements, the

Trust awarded a contract to one of the late proposers for a period of five years. However, the Trust cancelled the contract after about 18 months because the firm did not meet its payment obligations to the Trust.

Recommendations

1. Strengthen controls over the award of revenue contracts and the monitoring of revenues from such contracts. Controls should include (but not be limited to): ensuring all revenue due the Trust is collected in a timely manner and obtaining detailed documentation from tenants for all adjustments to the amounts paid.

2. Ensure that tenants maintain facilities in good condition, including making necessary repairs promptly.

3. Formally evaluate monthly permit rates, relative to fair market value, for agreements that do not include escalation clauses. Revise permit terms accordingly.

4. Require EDC to provide complete and accurate documentation to support the construction and renovation costs for Piers 88, 90, and 92 which are offset against revenues otherwise due the Trust.

5. Increase the frequency of revenue review for contracts that involve percentage payments. Monthly remittances should include sufficient detail to support the monthly gross amounts.

6. Enforce compliance with RFP requirements for all vendors. This includes rejecting proposals that are not prepared in accordance with the instructions in the RFP.

Expense Contracts

From fiscal years 2011, 2012, and 2013, we reviewed a sample of ten contracts totaling about $36.1 million (from a population of 65 expense contracts totaling about $70.8 million). The ten contracts included both operations and capital contracts. We determined that the Trust did not sufficiently justify the awards of two contracts totaling $9.4 million (based on original contract values). One of these contracts was subsequently increased by more than $15 million for additional work without vendor competition.

Single Source Contracts

According to the Trust's 2011 Procurement Guidelines (Guidelines), in a Single Source procurement, the Trust must document in the procurement record: (i) the circumstances leading to the selection of the contractor, including alternatives considered; (ii) its rationale for selecting the specific vendor; and (iii) the basis upon which it determined costs were reasonable and how the conclusion was reached.

The Trust awarded a contract for $5.1 million to a vendor for "Construction Management Services" without competition. Under this contract, the vendor does the engineering for various park restoration projects and then procures, selects, and manages the related construction work performed by selected sub-contractors. Among several reasons, the Trust awarded the contract to the vendor over other construction management service companies because the contractor's work on other Trust projects was satisfactory, and the vendor was on-site and could quickly mobilize to meet the Trust's requirements.

Although the Trust had a list of alternative contractors for construction management, it did not contact any of them to determine whether they could meet the Trust's requirements. According to Trust officials, the contract was a single source procurement. Therefore, it did not need to query the other contractors. The Trust documented some of its rationale for selecting the vendor and the basis upon which it determined costs were reasonable. However, documentation of other important steps was lacking. Specifically, we determined that:

- The Trust did not have a system to formally evaluate contractors' performance. Instead, Trust officials relied solely on a statement from its Vice President for Design and Construction indicating that the contractor performed satisfactorily under the previously awarded contract;
- The Trust only compared the vendor's fees for the three of the 11 individuals who worked under a previously awarded contract. There was no evaluation for the eight others who worked on the contract; and
- There was no documentation to support the evaluation and determination of the reasonableness of the vendor's fees and approach. Further, we were advised that the Trust employee who made this determination was briefed by the vendor only one day before the contract went to the Board for approval.

Moreover, the contract was amended twice, increasing the contract nearly 300 percent. According to Trust officials, they did not bid out the additional contract work because it was primarily awarded to sub-contractors. Trust officials stated that the sub-contractors' work was competitively bid and was billed to the Trust without a mark-up. The contractor billed only for the additional construction management work involved. In addition, this contract was not submitted to the Office of the State Comptroller for approval before it was awarded, as required by the Public Authorities Reform Act of 2009. Trust officials advised us that they submitted the contract for approval after award.

Request for Proposal Documentation

According to the Trust's 2000 Procurement Guidelines, "an analysis of the proposals and/or bids submitted shall be documented in reasonable detail." In May 2003, the Trust awarded Contract A4020 for construction management services related to Segments 6 and 7 of the Park. According to the Contract Summary, the Trust issued a Request for Proposal (RFP) and received responses from 24 contractors. On March 4, 2003, the Trust received eight proposals ranging from $3,427,089 to $9,141,700. These amounts include the base bid, reimbursable amounts, fixed general conditions amounts, and alternatives. The Trust reviewed the eight proposals and selected five firms for interview. The Trust then determined the vendor that had the necessary experience, offered the most favorable financial terms, and best met the needs of the project as set forth by the RFP. Our review of the contract files showed that the RFPs ranged in value from $3,099,522 to $7,941,700.

We found the Trust awarded the contract to a vendor for $4,376,459, which was $551,834 more than the vendor's proposed amount of $3,824,625. The procurement records did not contain documentation to support the increase in the award. Although price is not the only factor in a RFP procurement, the vendor's proposal was $136,873 more than the lowest proposal. Based on the other proposals submitted, the increased award amount, and the lack of documentation supporting the increase, it is unclear that the vendor offered the Trust the most favorable financial terms.

According to the Contract Summary, all construction management services shall continue until the completion of construction in Segments 6 and 7, which was originally projected for the end of 2006. However, the Trust authorized two amendments (one in 2011 and the other in 2012), five years after the contract completion date, that changed the scope of work to include construction management services for Piers 81 and 97. The amended work also increased the total contract amount from $4,376,459 to $6,011,544 (a 37 percent increase). Based on the significant contract changes (including the estimated contract completion date and the increased scope of work and contract amount), the Trust should have used a competitive process to award the additional work.

Minority and Women-Owned Business Enterprise Procurements

The Trust awarded a contract for Stair and Elevator Architectural/Engineering Services. The vendor is an M/WBE and submitted a proposal for $198,510, which is under the $200,000 limit for awarding M/WBE contracts without competition. Nonetheless, for contracts of this amount, the Trust could seek competition among various M/WBEs to ensure it receives services at the most reasonable cost. Additionally, the Trust did not advertise the contract in the NYS Contract Reporter, as required. Trust management stated that they were not aware of the requirement to advertise in the Contract Reporter.

Recommendations

7. Ensure the Trust consistently follows its prescribed guidelines for the competitive procurement of goods and services.

8. Submit contracts to the Office of the State Comptroller for approval before the contract is awarded, as required by the Public Authorities Reform Act of 2009.

9. Expand procurement guidelines to include specific thresholds for when to bid out additional work and establish a formal contract evaluation process. Include formal analysis of the factors considered by Trust staff to evaluate proposals and support selections of vendors.

10. Formally consider competition from other M/WBE firms when awarding contracts approaching the $200,000 threshold for competitive procurement.

11. As required, ensure that contracts are advertised in the NYS Contract Reporter.

Cash and Investments

The Trust's Investment Guidelines (Guidelines) were approved by the Board of Directors on October 7, 1999. The Board is required by Section 2925 of the Public Authorities Law to annually approve the Guidelines, but there is no record this was done for the four years ended March 31, 2014. Trust officials advised they will obtain Board approval for fiscal year 2015.

The Guidelines require an Annual Investment Report to be filed with various officials in the Trust and State Government within 90 days after the close of each fiscal year. This report should include the Investment Guidelines, the results of the Annual Investment Audit, the investment income record of the Trust, and a list of total fees, commissions, or other charges paid to each investment banker, broker, etc. From April 1, 2010 to March 31, 2013, the Trust had the following amounts invested and/or in bank deposits:

Cash and Investments			
Asset	**2011**	**2012**	**2013**
Cash and Cash Equivalents	$12,651,526	$65,566,883	$60,920,767
Investments	61,265,455	5,501,466	0
Total	**$73,916,981**	**$71,068,349**	**$60,920,767**

Pursuant to an agreement between the Trust and its investment manager, dated February 29, 2000, the manager was required to manage the Trust's investments subject to and in accordance with the agreement and Trust Investment Guidelines. During November 2011, the Trust ended its agreement with the investment manager due to a decline in the market and because management fees exceeded earnings. The investments were moved to bank accounts in 2011. This resulted in the Trust having 14 bank accounts at two banks. Bank A had 12 accounts, and Bank B had two accounts.

Our audit determined that the Trust is relying on the Independent Auditor's Report on Investment Compliance, which is part of the annual certified financial report. However, this report did not include the investment income record of the Trust or contain a list of total fees, commissions, or other charges paid to each investment banker, as required.

We reviewed five months (October 2012, January 2013, June 2013, November 2013, and March 2014) to determine whether the Trust's bank deposits were collateralized in compliance with the Guidelines. We found the funds on deposit in 12 accounts with Bank A were collateralized, but there was no confirmation that the rating of the investment security met the Trust's Guidelines. The balances at Bank B were tenants' security deposits (about $330,000) and monthly rent wire transfers (about $289,000 from a major tenant). These amounts exceeded the Federal Deposit Insurance Corporation limit of $250,000. The Trust had a bank statement for one of the accounts indicating that the collateral for October 2012 was $375,021, but did not provide a statement for the other account. Since the aggregate balance in the two accounts for that period totaled

$1,997,308, the Trust did not document that there was sufficient collateral for all funds on deposit.

In March 2013, Bank B unilaterally ended the tri-party agreement and moved the Trust's collateral from an individual account to an omnibus account for all New York State funds. The Trust was not aware of this change until May 2014, when officials followed up on our request for evidence that the investments were collateralized. Trust management stated they have revised the procedure requiring the tenant to wire its monthly rent to a different account at Bank A. Also, as with the other bank, the Trust did not periodically ensure the investment ratings were in compliance with its Guidelines.

Recommendations

12. Approve Investment Guidelines annually as required by Section 2925 of the Public Authorities Law.

13. Prepare an Annual Investment Report in compliance with all the specified requirements.

14. Monitor and periodically verify collateral amounts and investment ratings for all accounts.

Budget and Expenditure Control

State Comptroller's Regulation 2 NYCRR Part 203 (Regulation) prescribes the procedures that public authorities (including the Trust) should follow for budget management and approval. The Regulation requires the Trust to have supporting documentation for its budget assumptions; however, officials provided no documentation for the three years (2011- 13) in our audit scope.

The Regulation also requires a written mid-year update to the Board on the budget and associated financial plan and at least quarterly updates to the Board on the status of the actual revenues and expenses compared to annual budget targets. However, there was no evidence that mid-year updates were provided to the Board. The Trust does issue quarterly budget reports, which compare budget to actual expenditures and revenues. However, they do not contain explanations of differences. For example, the Office Equipment/Furniture item was budgeted at $104,250, but as of December 2013, $146,647 was spent (or 41 percent above the budget). The quarterly report shows this, but it does not explain what happened or how the expenditure was justified. When we asked Trust officials about this, officials told us that a variance of 10 percent was considered significant. Hence, an explanation and approval for expenditures above the budgeted amount should have been provided.

The Trust's budgets for fiscal years 2012 to 2014 show revenue from charitable contributions totaling $2.77 million. We noted that in 2012, the amount was $20,000, and in 2013 it was increased to $1 million. This is a substantial increase; however, there was no documentation to support it. In addition, for the 2014 fiscal year, quarterly reports from the Trust's independent accounting firm indicate $1.9 million in charitable contributions - not the $1.75 million the Trust budgeted. However, without formal pledges with each source clearly identified along with a record of payment, it is difficult to determine if the budgeted charitable revenues were actually received. Moreover, based on our review of the Trust's financial statements, we concluded that the Trust received $245,380 less in charitable revenues than it budgeted from 2012 to 2014. The Trust should maintain documentation of the amounts pledged along with the corresponding payments to help ensure that charitable contributions needed for Park operations are received.

Recommendations

15. Improve budget procedures to ensure compliance with the Regulation, including budget updates, quarterly reports, explanations of variances, and determinations of their propriety. Maintain support for budget assumptions and calculations, as required by the Regulation.

16. Ensure budget estimates of revenues from charitable contributions are adequately supported by documentation, including pledges, corresponding payments, and other pertinent records and analysis.

Time and Attendance

The Trust is responsible for ensuring that its employees are paid the proper amounts, depending on their individual pay rates, and that their leave accruals are properly accounted for. We reviewed the payroll records for seven employees for six payroll periods. We found that five of the seven employees had time sheets for at least one pay period without supervisory approvals. One of the five employees did not have supervisor approval for three consecutive pay periods. As such, the Trust had limited assurance that personnel worked the hours they claimed on their time sheets. The supervisors who failed to approve employee time sheets did not ensure that the Trust received the services it paid for.

The payroll administrator, who started in November 2013, stated that when she receives a time sheet without supervisory approval, she requires the supervisor to manually sign the time sheet. In response to preliminary findings, officials stated that the instances we identified were for a limited duration, when they did not have a full-time payroll administrator. However, the absence of a payroll administrator should not have prevented supervisors from approving time sheets.

Further, from June 2013 to November 2013, the duties of the payroll administrator were assigned to the Trust's internal auditor, an employee living out of state and working from home. This employee was full-time and was paid an annual salary of $89,945 in 2013. The employee performed her work functions through the Trust's computer network.

We found that this employee has had an off-site work arrangement with the Trust since 2006. Over that time, this employee has held the positions of Payroll Administrator, Account Manager, Controller, and Internal Auditor. With the exception of Internal Auditor, the Trust has subsequently filled these positions with full-time, on-site staff. The Trust could not provide documents to demonstrate it is obtaining sufficient service and benefit from this employee in relation to the employee's compensation. In responding to the draft report, Trust officials advised us that they have taken steps to improve the reporting and documentation of the employee's activities.

Recommendations

17. Instruct supervisors of the importance of reviewing and approving by signing employee time cards promptly.

18. Formally assess the activities and productivity of the employee who is working at home and out-of-state. Revise this employee's work assignments and/or compensation, as appropriate.

Equipment Inventory

The Trust Asset Inventory Policies and Procedures require an annual inventory of its assets. There are two definitions of a Trust asset; one definition states "any physical object owned by any department of the Trust." The other definition requires meeting one of four criteria: (1) intended for checkout (a formal process for temporary assignment of an asset to staff), (2) the department elects to track it, (3) value of $1,000 or more, and (4) a useful life greater than one year.

We requested the Trust's annual inventories for 2010-13. The Trust provided only one Asset Inventory dated December 13, 2013, containing 2,844 items with a historical cost of $4,263,032. We selected a judgmental sample of 74 items, valued at $170,246, which consisted primarily of computer equipment, high value maintenance equipment, a vehicle, and small high risk items to verify. We located 72 of the items. The two missing items were binoculars. Subsequently, Trust officials provided us with their "Hurricane Sandy Environment and Education Department Losses" chart, which showed that two binoculars were contaminated, and as such, Trust staff disposed of them.

We also selected two items from the parking garage to verify back to the asset inventory listing. The items were a generator valued at $326 and a drill valued at $303. The Trust Asset Inventory listing did not include these two items. The Trust's inventory does not include any assets attributed to the garage operations.

Our sample revealed opportunities to improve the Trust's asset inventory controls. These areas of improvement pertained to the conduct of annual physical inventories, keeping the inventory list current and complete, and deleting items that are destroyed or otherwise disposed of. Weak asset inventory controls could increase the risk of lost Trust assets and assets not available for use, as well as the inaccurate accounting for Trust assets.

Recommendation

19. Strengthen asset inventory control procedures by ensuring that: physical inventories of assets are conducted annually; inventory listings are current, complete, and accurate; and items that are lost or otherwise disposed of are deleted from the listing.

Audit Scope and Methodology

The audit objective was to determine whether the Hudson River Park Trust has established adequate controls over the following financial management functions: revenue and collection; procurement and contracting; time and attendance; budgeting and expenditure control; cash and investments; and equipment and asset management. We audited selected aspects of these financial management practices for the period April 1, 2010 through March 26, 2014.

To accomplish our objective, we reviewed the relevant sections of State law, the Trust's procedures, procurement guidelines, contract files, and regulations. We also interviewed officials and staff involved with Trust financial operations and made visual observations of Trust activities. We reviewed time and attendance records for seven employees for the period (selected judgmentally) of June 1 through August 30, 2013.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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

This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

We provided Trust officials with a draft copy of this report for their review and formal comment. In their response to the draft report, Trust officials concurred with most of our recommendations and indicated that they have already taken actions to adopt several of them. Trust officials also indicated that they did not agree with some of our findings or believed that they required further clarification. Consequently, we revised certain matters in the final report. Also, our rejoinders to comments in the Trust's response are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chair of the Hudson River Park Trust 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 why.

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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

Hudson River Park Trust

October 17, 2014

Carmen Maldonado
Audit Director
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Dear Ms. Maldonado:

Thank you for this opportunity to comment on the Office of the State Comptroller ("OSC") Draft Audit Report concerning selected financial management practices of the Hudson River Park Trust (the "Trust"). The field work for the audit took place from November 2013 to May 2014, during which time your staff was on-site in our offices.

Overall, the Trust views the Draft Audit Report as an opportunity to improve our practices and procedures. We have already adopted several of OSC's recommendations, and will explore ways to best incorporate others. You should note that we concur with most of the OSC recommendations. However, as detailed below, the Trust does not agree with a number of the findings, or believes that they should be further clarified.

We have addressed each of your areas of findings in the order in which they appear in Draft 2013-S-56 dated August 2014, and discuss your recommendations at the end of our comments. Recommendations #12, #13 and #14 are discussed together with the findings.

I. <u>REVENUE CONTRACTS</u>

> **OSC FINDING (page 5):** "Regarding the EDC agreement for Piers 79 and 94, the Trust received only partial rent payments and late fees for 2013, and the amounts paid for base rent for Pier 79 were incorrect. The Trust was remiss in not monitoring its receivables to ensure timely payment. As of April 18, 2014, the Trust received a payment totaling $119,175 for rent and late fees for Pier 79 for all of 2013 and seven months' rent for Pier 94. The rent payments are required to be made semiannually. A half year of Pier 79's rent was paid late, and the Trust is still owed five months' rent totaling $40,000 for Pier 94. Also, EDC did not include an increase due to changes in the Consumer Price Index."

TRUST COMMENT: The Hudson River Park Act (the "Act") does not grant the Trust a right of approval, audit or enforcement for leases and other agreements between the City

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of New York (the "City"), acting through NYCEDC, and tenants, permittees, and other occupants using Pier 79 and 94. Currently, the Act requires that the City remit to the Trust 20% of revenue that is actually collected (i.e., income recorded on a cash basis) by the City from these two properties, not what is owed to the City (i.e., income recorded on an accrual basis). Payments from NYCEDC, which do not constitute rent to the Trust, are rendered, generally, on a semiannual basis in arrears, though the Act does not specify a particular payment schedule or provide for any additional fees to the Trust if payments from NYCEDC are late. Thus, the OSC finding that the Trust was owed $40,000 at the time NYCEDC made its payment in April 2014 for amounts from the Pier 79 tenant in calendar year 2013 is not correct, because those payments were not received by NYCEDC until January 2014. The amounts in question were included in the NYCEDC semiannual payment to the Trust for funds collected the first six months of 2014, which was paid in early September 2014.

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Fundamentally, the Trust depends on the City and NYCEDC to properly administer and enforce these agreements (including the application of requisite CPI increases), and relies on representations by NYCEDC at the time the statements are submitted, and independent audits performed on NYCEDC, to ensure the accuracy of collections. The Trust monitors payments and reconciles the revenue collection reported on statements generated by NYCEDC with the 20% payment obligation due the Trust. OSC suggests in its finding that the Trust has a further obligation to verify that amounts received by NYCEDC from tenants, permittees, and other occupants using Pier 79 and 94 are paid in accordance with occupancy agreements then in effect. While the Trust agrees in principal with this finding, OSC should recognize that the Trust's ability to independently verify revenue paid to NYCEDC is limited under the statute in that the Act does not grant the Trust third party rights of enforcement with regard to any agreements between the City and its tenants, permittees, and other occupants.

The Trust acknowledges that NYCEDC's payment to the Trust for collections received in the first half of 2013 was paid late, and will attempt to address this proactively in the future by sending semiannual billing reminders to NYCEDC. In addition, the Trust will share OSC's findings with respect to the unenforced CPI charges for the lease cited, and it will ask for a response.

> **OSC FINDING (page 5):** "The Trust should also receive a percentage of revenue from the Passenger Ship Terminal at Piers 88, 90 and 92. However, there is a supplementary agreement for renovations at those piers, which requires the Trust to pay a portion of the construction cost from 2006 to 2025, totaling $437.5 million. These amounts are offset against any revenue earned before the Trust receives any payments. The Trust was not provided an accounting of these monies, nor has it attempted to obtain one. We requested an accounting from EDC for 2006 to 2014 for $174.9 million, but as of May 6, 2014, it was not provided to us."

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* See State Comptroller's Comments, page 36.

TRUST COMMENT: As discussed below, following conversations with OSC the Trust requested additional information from NYCEDC and was informed that anticipated construction costs for the twenty year period exceed $437.5 million. Under the 2006 agreement, NYCEDC can claim an annual credit of one-twentieth of the anticipated twenty year expenditure for certain improvements to the Passenger Ship Terminal (Piers 88, 90 and 92). This credit can be applied against amounts otherwise owing to the Trust for 20% of revenue collected by NYCEDC from the Passenger Ship Terminal. On its regularly submitted statements to the Trust, NYCEDC has claimed a credit equal to one-twentieth of the originally estimated $437.5 million construction cost, but did not provide updates as to the amounts actually spent and the total anticipated expenditure over the balance of the twenty year period. According to information recently received, NYCEDC has expended, or is currently in contract for, $267,147,987 of pier improvement work (or more than the $174.9 million that OSC was seeking to verify), and anticipates spending an additional $239,392,185 over the balance of the twenty year period for a total expenditure of $506,540,172. Since this updated total is more than the originally estimated $437.5 million, the annual credit claimed by NYCEDC for 2006 to 2014 is not less than the estimated amount provided for in the 2006 agreement, and no additional sum appears to be owed to the Trust. The Trust agrees with OSC's recommendation that it should obtain detailed documentation to support these adjustments, and it will make such a request to NYCEDC.

> **OSC FINDING (page 6):** "A tenant decreased its rent payments for loss of space and bathroom credits by $256,670 for the four years 2010 through 2013. The tenant is required to provide proof of payment for actual expenses incurred for the bathroom facilities. However, the Trust did not have documentation to justify these rent reductions taken by the tenant. In addition, we visited the public women's restroom at the tenant's facility on March 12, 2014, and found that one of the two sinks in the women's restroom was out of service."

TRUST COMMENT: From our own experience operating public restrooms in the park, we estimated prior to the OSC audit that the amount of the claimed credit was likely less than what is actually expended by the tenant to maintain the public restrooms adequately. The Trust has now obtained bathroom maintenance cost information from the tenant as required under the lease that indicates that the claimed rent credit is less than the actual amount expended. The Trust will now request additional documentation from the tenant to further substantiate these reported expenditures. In addition, the Trust has initiated a program of random inspections to monitor whether the tenant makes bathroom repairs in a timely fashion.

> **OSC FINDING (page 7):** "A tenant has been charged a fee of $1,200 a month for its marina permit since 1996. This permit does not contain an escalation clause, and the fee has not been increased since 1996. We noted that ...the fee would have been $1,740 if it kept pace with inflation."

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TRUST COMMENT: The Trust recently instituted a rate increase to $1,883 monthly. Please note that the cited permit is only for a small portion of the tenant's overall marina area, and that the balance of the marina is included within tenant's leased premises and subject to biannual CPI rate increases.

> **OSC FINDING (page 7):** "A contract with a restaurant requires it to submit a monthly statement of gross receipts with supporting documentation to the Trust. Specifically, it 'shall include a printout from its electronic accounting software program of all cash receipts throughout such month.' We requested the electronic statement of cash receipts from April 1, 2010 through March 31, 2011. According to the CFO, the tenant has never submitted such printouts."

TRUST COMMENT: As Trust property management staff began administering the lease, they realized that because cash receipts form only a portion of total gross receipts (upon which the percentage rent is calculated) collection of these limited monthly electronic statements would not necessarily enhance revenue collection and would not be administratively efficient. As noted below, the Trust relies instead on tenant's monthly certified statements of gross receipts with an annual true-up. The Trust is currently preparing a new permit for this tenant that will require monthly submission of electronic statements for all gross receipts, both cash and credit.

> **OSC FINDING (page 7):** "In addition [for the same tenant referenced immediately above], the Trust does not verify the cash receipts reported until year end, when the tenant submits its 'Annual Summary Statement of Gross Receipts,' Income and Expense Statement, and tax returns."

TRUST COMMENT: OSC cites one year in which the tenant made an additional percentage payment to the Trust of $3,816 after completion of its financial audit. Under the current lease between the Trust and the tenant, the submission of such an annual audited statement to the Trust is required. Gross receipts subject to percentage rent are established as the highest of those shown on certified statements (submitted monthly and annually), tax returns (submitted annually) and the tenant CPA's annual financial audit report (submitted annually). Tax returns and CPA audit reports are prepared after the close of the tenant's fiscal year, with the audit report necessarily being last. In the instance cited by OSC, the additional payment became due when the tenant's audit report was completed after the close of the fiscal year, in accordance with the lease and *not* to correct an error.

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> **OSC FINDING (page 7):** "We found that the Trust does not have written procedures for awarding revenue contracts. In addition, we

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> reviewed the contract documents and noted that the selection committee members were not identified. Also, the proposal package (including the postmark and time of receipt) was not available for four of the five sampled contracts."

TRUST COMMENT: The Trust does adhere to established practices with respect to evaluating and awarding revenue contracts. These practices include: (1) the President or another member of staff identifying an opportunity for revenue generation consistent with the Trust's goals; (2) drafting an RFP which is subject to extensive internal review; (3) designation of a single contact person; (4) advertisement using the Trust's web site, the NYS Contract Reporter, and direct solicitation to target companies/interested parties; (5) opening of the RFP proposals and recording results in the presence of multiple staff, including a representative from the Legal Department; (6) selection of a review committee by the President; (7) requesting follow-up clarification from respondents, as may be necessary; (8) conducting one or more interviews between respondents with responsive proposals and the full review committee; (9) researching respondents' references and background; (10) determining the degree to which respondents meet RFP criteria, completing an evaluation matrix for all proposers; and (11) preparing a recommendation memorandum for approval by the President. Certain revenue contracts, such as long term leases, are also subject to the review and approval of the Board of Directors.

The Trust will develop a more formal written description of these practices to help ensure the uniform administration of revenue contract awards. As recommended, these procedures will include a requirement for saving delivery packages showing date and time stamps of receipt, and documentation of selection committee membership.

> **OSC FINDING (page 7):** "[F]or one competitive procurement (the Greenwich Village Café project), the Trust received three proposals....However, two of the proposals were received shortly after the deadline of 3:00 p.m. on January 29, 2010....Despite the late submissions and lack of compliance with other submission requirements, the Trust awarded a contract to one of the late proposers for a period of five years....However, the Trust cancelled the contract after about 18 months because the firm did not meet its payment obligations to the Trust."

TRUST COMMENT: The Trust discussed this matter at length with OSC when they were at our offices. In this instance Trust staff exercised reasonable discretion, in a fair and even-handed manner, to accept late submissions due to a very unusual and documented circumstance, and the result benefited the Trust financially.

Just prior to the 3 pm deadline on January 29, 2010, staff was contacted by one of the eventual RFP respondents indicating that he had just been in a bicycle accident while on his way to deliver the proposal. The injured respondent asked for additional time to deliver the RFP package. Given the unusual circumstance, Trust staff agreed to extend the deadline slightly; this respondent's submission was received 31 minutes after the 3 pm deadline. Since the Trust had decided to accept one late submission, it felt obliged to

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also accept a second late submission that was delivered at 3:11 pm. All of this was documented in the file provided to OSC.

We have also previously explained that while two submission envelopes did not strictly comply with the procedures outlined in the RFP instructions, there was no possibility of confusion of content or premature opening – the purpose of the Trust's labeling requirement -- since the packages were hand delivered by respondents directly to pertinent staff. Moreover, it should be noted that the labeling requirements were not included among the requirements described as "mandatory" in the RFP.

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With only one bid received timely, and in light of the unusual circumstances surrounding the accident and request for additional time, Trust staff determined that it was in the best interests of the Trust to accept the two late proposals and documented that fact. As it turned out, the winning bidder's rental proposal was nearly twice as high as the only other responsive bid, thus presenting the greatest advantage to the Trust and affording the benefit of competition to the public. However, the Trust acknowledges that the exercise of this discretion was not specifically provided for in the RFP, and that Trust staff seeking to deviate from the RFP should have secured approval from the President or her designee.

Lastly, while the Trust has not always retained all time stamped envelopes, it will do so going forward to document adherence to its process and timeliness of submissions.

II. EXPENSE CONTRACTS

OSC FINDING (PAGE 9): "The Trust did not have a system to formally evaluate contractors' performance. Instead Trust officials relied solely on its Construction Manager's statement that the contractor performed satisfactory under the previously award contract."

TRUST COMMENT: As a factual correction, OSC should note that the cited statement was from the Trust's Vice President of Design and Construction, who had direct supervisory responsibility for the vendor's work under the previously awarded contract, and not its "Construction Manager" (which is an outside contracted entity). The Trust assumes that OSC does not dispute that senior Trust staff with direct knowledge and experience dealing with vendors may draw upon their knowledge and past experience when recommending whether to enter a new contract with a vendor, and further that, absent some other reason not present here, direct experience should not be discounted or deemed unreliable. Nevertheless, the Trust understands OSC's preference for "a system to formally evaluate contractors' performance," and will consider how best to adopt and implement such a system moving forward.

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> **OSC FINDING (PAGE 9):** "The Trust only compared the vendor's fees for the three individuals who worked under a previously awarded contract. However, there was no evaluation for the 8 others [who] worked on the contract."

HRPT COMMENT: In evaluating the service contract, the Trust focused on the vendor's proposed fees for the three key professionals anticipated to bill at the highest rates and percentages of overall contract time. The proposed rates for these three professionals were compared to the rates then in effect for three similar professionals working under a competitively procured Trust contract (with the same vendor). The Trust found these rates to be equivalent and reasonable and shared this analysis with OSC. When the additional eight professionals authorized under the initial contract were later identified, their resumes were reviewed by the Trust's Vice President of Design and Construction to confirm that their hourly rates were commensurate with their experience levels and qualifications. This subsequent evaluation was based on the Vice President's knowledge of rates charged for comparable professionals. We understand and agree with OSC that this review of the additional 8 professionals was not adequately documented in the file, but we do not believe that this shortcoming detracts significantly from the Trust's contract evaluation process.

> **OSC FINDING (page 9):** "There was no documentation to support the evaluation and determination of the reasonableness of the vendor's fees and approach. Further, we were advised that the Trust employee who made this determination was briefed by the vendor the day before the contract went to the Board for approval."

HRPT COMMENT: OSC was provided with a procurement memorandum, approved by the Trust's President, which documented the evaluation process and determination of fees and approach. In addition, and as back-up, OSC was provided with the original rate sheet for the proposed contract, and the then-current hourly rates for the three professionals working under a separate and competitively procured HRPT construction management contract. The total (loaded) hourly fee for these three professionals alone under the proposed contract was approximately half of the total budgeted staff fee for all eleven professionals for the full MEP phase of the proposed contract. Thus, relying on the rate comparison for the three key individuals was a statistically significant and valid basis for evaluating the vendor's fee proposal and determining that it was reasonable. The briefing by the vendor cited by OSC occurred during a portion of the meeting between Trust senior staff and its outside Construction Management industry expert to vet the proposed contract; it was not between the vendor and a single Trust employee. The inclusion of the outside Construction Management industry expert was supplemental and not required under the Trust Procurement Guidelines. OSC correctly pointed out in earlier discussions that the Trust failed to keep meeting minutes on that occasion as back-up documentation.

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> **OSC FINDING (page 9):** Moreover, the contract was amended twice, increasing the contract nearly 300 percent. According to Trust officials, they did not bid out the additional contract work because it was primarily awarded to sub-contractors. Trust officials stated that the subcontractors' work was competitively bid and was billed to the Trust without a mark up. The contractor billed only for the additional construction management work involved. "

HRPT COMMENT: The initial Trust Board authorization expressly contemplated subsequent amendments with cost increases as additional scope was prepared and subsequent competitively bid subcontracted construction work was included in the contract. A Board memorandum documenting this was provided to OSC. These subsequent subcontracted bidding opportunities assured that the Trust received the best prices and other benefits of competition.

> **OSC FINDING (page 9):** "In addition, this contract was not submitted to the Office of State Comptroller for approval before it was awarded..."

HRPT COMMENT: The Single Source contract was required to be filed with OSC within 60 days of award as an exempt contract; however the filing did not occur until beyond that allowable time. The Trust is revising the contract review checklist used by its Finance and Legal staff to ensure that all such filings and requests for approval are timely made in the future.

Contract A4020 Construction Management Services for Park Segments 6 and 7

> **OSC FINDING (page 10):** "According to the Contract Summary, the Trust issued a Request for Proposal (RFP) and received responses from 24 contractors. On March 4, 2003, the Trust received eight proposals ranging from $3,427,089 to $9,141,700. These amounts include the base bid, reimbursable amounts, fixed general conditions amounts, and alternatives. The Trust reviewed the eight proposals and selected five firms for interview.... Our review of the contract files showed that the RFPs ranged in value from $3,099,522 to $7,941,700."

HRPT COMMENT: The Trust provided OSC with original bid documents and bid compilation summaries from 2003. These documents indicated that the initial eight bids ranged from $3,427,087 to $9,141,700, inclusive of base bid and all alternates, reimbursables, and fixed general conditions. The 2003 RFP required each respondent to provide pricing for each of these items, including separate pricing for each of five identified alternates. We are unable to determine how OSC reached the conclusion that the initial range for proposal responses was different from that indicated above. After examining OSC's ranges closely, we believe the inconsistency may be because OSC did not include *all* of these separate pricing components as part of a complete submission.

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By way of example, the original March 2003 submission for the low bidder, which was shared with OSC, shows the value to be $3,427,087 and not $3,099,522:

Base Bid (sub proposals A-E): $3,032,622
Alternates (sub proposals F-J): $327,565
Reimbursable Expenses – Base Bid (sub proposals A-E): $23,700
Fixed General Conditions – Base Bid (sub proposals A-E): $43,200
Total Contract Value: $3,427,087

The Trust can document the other submissions in the same fashion, in each case showing that the sum of all four components matches the amounts stated in the Board memo and the bid tabulation prepared by staff at the time of the submission and shared with OSC. The Trust believes that it is standard industry practice to require consultants and contractors to itemize pricing in this manner as it ultimately reduces cost exposure for possible change orders.

* Comment 6

OSC FINDING (page 10): "We found the Trust awarded the contract to a vendor for $4,376,459, which was $551,834 more than the vendor's proposed amount of $3,824,625."

HRPT COMMENT: After carefully reviewing the bid record, we are unable to determine how OSC determined that the vendor's proposed amount was $3,824,625. Records shared with OSC show that, after receiving the initial proposals, the Trust undertook a review and selection process in accordance with the RFP. This process entailed selecting five of the eight bidders for interviews, clarifying scopes to confirm approaches to the tasks, and ultimately, resubmittals of proposed fees to reflect refinements to the proposals based on each firm's better understandings of the scope requirements post interviews. The revised bids were structured in the same fashion as above, inclusive of all elements. As shown in the summary shared with OSC, the bid ranges after this second round were from $3,715,464 to $4,369,914. The ultimately selected respondent reduced its proposed fee to $3,978,629 – a 42 percent reduction from its original submission. The final amount brought to our Board for approval was $3,978,599. With the addition of a 10 percent contingency – a standard feature of Trust contracts recommended to the Trust's Board -- the Trust's Board authorized the expenditure of $4,376,458 (i.e., $3,978,599 + $397,859).

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The amounts above, along with those for the other four submissions, are documented in the "Fee Analysis" shared with OSC. This information demonstrates that the Trust did not award the contract for $551,834 more than the vendor's bid.

* Comment 6

OSC FINDING (page 10): "Although price is not the only factor in the RFP procurement, the vendor's proposal was $136,873 more than the lowest proposal. Based on the other proposals submitted, the increased award amount, and the lack of documentation supporting the increase, it is unclear that the vendor offered the Trust the most favorable financial terms."

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HRPT COMMENT: As OSC acknowledges, the 2003 RFP identifies selection criteria other than price and did not require the Trust to select the lowest bidder. The RFP specifically states that price would only be one of the criteria for selection -- see pages 8-11 of the RFP. Further, HRPT's then-applicable 2000 Procurement Guidelines provide: "Analysis of proposals and/or bids submitted shall be documented in reasonable detail. For personal services contracts, the technical merits of the proposals and the experience and capabilities of the person/firms will be significant factors in selecting the contractor, provided that the price, fees, charges or billing rates for performing the services are reasonable and competitive . . ." The substantial reduction in the bid price from $6,898,861 to $3,978,599 for the most qualified vendor demonstrates the Trust's ability to secure both a good price and good quality for the services.

> **OSC FINDING (page 10):** "The Trust authorized two amendments (one in 2011 and the other in 2012), five years after the contract completion date, that changed the scope of the work to include construction management services for Piers 81 and 97. The amended work also increased the total contract amount from $4,376,459 to $6,011,544 (a 37 percent increase.) Based on the significant contract changes (including the estimated contract completion date and the increased scope of work and contract amount), the Trust should have used a competitive process to award the additional work."

HRPT COMMENT: The Trust disagrees with two aspects of this statement: (1) that the Trust changed the scope of work when it allowed the referenced amendments, and (2) that the work continued beyond the authorized completion date.

* Comment 7

As documented in the advertisement for this solicitation, as well as in the RFP itself, the Trust sought a team to provide construction management services for marine and upland site work and building construction work within Segments 6 and 7 of Hudson River Park, extending from West 25th Street to West 59th Street. The Pier 81 work and Pier 97 work are both within this same geographic area, and the construction management services required for these two contract amendments was within the scope originally RFP'd. In addition, Board authorization of the original contract dated May 22, 2003 noted that "all construction management services shall continue *until the completion of construction* in segments 6 & 7, *estimated* to be completed by the end of 2006." The Board could not know at that time that completion of the segments would be delayed by a slowdown in governmental funding, or that another government agency would be late in vacating Pier 97, thus making the site unavailable for construction for an extended period.

In its amendment approvals of 2011 and 2012, the Board recognized that this initial completion date estimate was optimistic, and authorized additional work in segments 6 & 7 with an extended completion date. In recommending these amendments to the Trust's Board, staff determined that since the work was within the same geographic area as that originally bid and approved, and also entailed the same services, it was acceptable to

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update fees to 2011 and 2012 rates using the original method for determining a reasonable and competitive fee for the amended services. Notwithstanding these facts, the Trust concurs with OSC's recommendation that it should establish clear criteria to identify when to bid out additional work, even if within scope, and agrees that it must better document its procurement process should it wish to amend a contract, rather than rebid services. The Trust also acknowledges that the Board authorizations for the two amendments included an expansion of scope from that originally approved. However, this expansion was within the scope described in the 2003 RFP.

Minority and Woman-Owned Business Enterprise Procurements

> **OSC FINDING (page 10):** "The Trust awarded a contract [to a] vendor [that] is an M/WBE ... for $198,510. [F]or contracts of this amount, the Trust could seek competition among various M/WBEs to ensure it receives services at the most reasonable cost. Additionally, the Trust did not advertise the contract in the NYS Contract Reporter, as required."

HRPT COMMENT: The Trust takes its responsibility to comply with Article 15-A and related regulations pertaining to contracting with qualified M/WBE firms very seriously, as evidenced by annual reports of the Empire State Development Division of Minority and Women's Business Development, accessible at http://www.esd.ny.gov, which demonstrate that the Trust meets or exceeds required M/WBE contracting goals. The Draft Report found no fault with the Trust's compliance with statutes and regulations concerning M/WBE contracting in general. The Draft Report discusses one particular procurement, rather than M/WBE procurements generally, as the Report heading suggests. The State over the past several years has provided additional training, clarification of rules, and expanded opportunities to increase M/WBE contract participation statewide. As new initiatives have been identified by the State, the Trust has sought to implement them as soon as practicable and in accordance with regulations. In this particular procurement, the Trust erred in its belief that it could reach out directly to this M/WBE vendor rather than advertising the opportunity to all M/WBEs. However, the Trust notes that the purchase was made in conformity with the Procurement Guidelines then in effect which did not include the cited advertising requirement, and the Trust ensured that the proposed rates were appropriate for the nature of the work.

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The Trust's Procurement Guidelines adopted in September 2010 recommended securing three price quotes from different contractors "wherever feasible ... unless the selection determination is based on other criteria besides cost." As articulated in the selection memo provided to our Board of Directors, this vendor was not selected solely because of cost or its M/WBE status. The supporting Board memo and other procurement documentation states that: (1) the "[Vendor] has worked on several projects within the Pier 40 complex including various architectural building surveys to support the relocation of various tenant and Trust facilities; (2) "The quality of [Vendor]'s services on these prior engagements has been excellent"; and (3) the vendor's proposed pricing was in

* Comment 9

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conformance with the hourly rates used by various design teams working for HRPT at that time.

The Trust's 2011 Procurement Guidelines added the requirement to advertise all M/WBE discretionary purchases in the NYS Contract Reporter. The Trust utilized appropriate procedures then in effect in the letting of the subject contract, and now follows guidelines for discretionary spending contracts that match OSC's recommendation.

III. CASH AND INVESTMENTS

OSC RECOMMENDATION #12 (page 12): Approve Investment Guidelines annually as required by Section 2925 of the Public Authority Law.

HRPT COMMENT: The Trust acknowledges OSC's finding and agrees with its recommendation. We note that the Trust's Board of Directors approved the Investment Guidelines at its regular meeting on May 20, 2014. As such, the Trust is now in compliance with this requirement.

OSC RECOMMENDATION #13 (page 12): Prepare an Annual Investment Report in compliance with all the specified requirements.

HRPT COMMENT: As the OSC Report notes, the Trust mistakenly believed that its annual Independent Auditor's Report on Investment Compliance satisfied all requirements, and submitted the auditor's report electronically as the Annual Investment Report in its annual filing with the ABO Public Authorities Report Information System (PARIS). The Trust will file the appropriate Annual Investment Report at the next required date, to the extent required. Due to liquidity concerns caused by Hurricane Sandy repair costs, and the prevalence of very low bond interest rates, the Trust's funds are presently in savings and short-term money market accounts. As such, they may not qualify as "investments" subject to the noted reporting requirement.

OSC FINDING (page 12): "Trust management stated that they have revised the procedure requiring the tenant to wire its monthly rent to a different account. However, the tenants' security deposits are not totally protected because they exceed the $250,000 FDIC amount."

HRPT COMMENT: As a factual correction, Trust management stated that they have directed the tenant's security deposit to Bank A, which offers full collateral protection, and not a different account at Bank B. Funds currently remaining on deposit in each of the accounts at Bank B do not exceed the FDIC insurance limit. No funds are automatically deposited to Bank B. Recognizing fully the lack of adherence to the Investment Guidelines and applicable regulations with respect to monitoring deposit collateralization at Bank B, the Trust notes that Bank B is financially sound as evidenced by a Tier 1 equity capital ratio of 13.8%, which is well above the ratio for most of its peers.

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OSC RECOMMENDATION #14 (page 12): Monitor and periodically verify collateral amounts and investment ratings for all accounts.

HRPT COMMENT: The Trust acknowledges OSC's findings, except as noted above, and we agree with its recommendation. However we question whether investment rating for United States Government issued securities requires periodic verification of investment credit rating and will research this issue further.

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IV. BUDGET AND EXPENDITURE CONTROL

OSC FINDING (page 12): "State Comptroller's Regulation 2 NYCRR Part 203 (Regulation) prescribes the procedures that public authorities (including the Trust) should follow for budget management and approval. The Regulation requires the Trust to have supporting documentation for its budget assumptions; however, officials provided no documentation for the three years (2011-13) in our scope."

HRPT COMMENT: The Trust has the supporting budget documentation for the three years (2011-13) in its files and can make that information available to OSC upon request. Trust staff provided and reviewed budget documentation with OSC staff for the current and prior budgets on April 16, 2014 but was unaware that the examiner wished to see the prior three years.

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OSC FINDING (page 12): "The Regulation also requires a mid-year update to the Board on the budget and associated financial plan and at least quarterly updates to the Board on the status of the actual revenues and expenses compared to annual budget targets. However, there was no evidence that mid-year updates were provided to the Board. The Trust does issue quarterly budget reports, which compare budget to actual expenditures and revenues. However, they do not contain explanations of differences."

HRPT COMMENT: The Trust has provided mid-year budget updates to its Board Audit/Finance Committee, and commencing this year will provide the required mid-year report to the full Board to be compliant with the cited regulation. Budget updates with explanations of any variance are currently provided to members at each Board meeting. Additionally, the Trust issues quarterly budget reports to the Governor, the Speaker of the Assembly, the Temporary President of the Senate, the State Comptroller, the Chair of the Senate Finance Committee, the Chair of the Assembly Ways and Means Committee, the Mayor of the City of New York, the Speaker of the City Council of the City of New York, the Comptroller of the City of New York, and Community Boards One, Two and Four within the Borough of Manhattan. Current quarterly reports in the current year include explanations of material variances.

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OSC FINDING (page 12): "For example, the Office Equipment/Furniture item was budgeted at $104,240, but as of December 31, 2013, $146,647 was spent (or 41 percent above budget). The quarterly report shows this, but does not explain what happened or how the expenditure was justified."

HRPT COMMENT: As discussed above, quarterly budget reports now include explanations of significant variances. In the example cited by OSC, the Office Equipment/Furniture budget line is a roll-up category that includes, among other items, rental equipment used by the Trust's Operations and Maintenance Department. The 41% variance noted by OSC was in connection with an unanticipated repair to a sewer line. While that repair was underway, the Trust contracted for the rental of temporary waste holding tanks and pump out services. The actual cost of the rental equipment and associated service caused the budget variance.

OSC FINDING (page 12): "We note that in 2012, the amount [of charitable contributions] [in the budget] was $20,000, and in 2013 it was increased to $1 million. This is a substantial increase; however there was no documentation to support it."

HRPT COMMENT: The Trust shared with OSC its agreement with Friends of Hudson River Park, which accounts for the $1 million increase. The Trust also shared with OSC payment checks substantiating the contributions. This agreement was the subject of a Significant Action by the Trust which included a public hearing, public comment period and adoption of a Board resolution. For future budget documentation the Trust will identify the primary source of anticipated contributions, and the basis for such anticipated contributions, if significant.

OSC FINDING (page 13): "[B]ased on our review of the Trust's financial statements, we conclude that the Trust received $245,380 less in charitable revenues than it budgeted from 2012 to 2014. The Trust should maintain documentation of the amounts pledged along with the corresponding payments to help ensure that charitable contributions needed for Park operations are received."

HRPT COMMENT: The budget variance noted by OSC resulted from a reclassification of a significant contribution expected in the 2014 budget from "Contribution" to "Grant." Combining the Contribution and Grant budget lines for 2012 to 2014, the Trust received $1.2 million more than budgeted as the amount of the 2014 grant was larger than expected when the budget was prepared.

V. TIME AND ATTENDANCE

OSC FINDING (page 13): "We reviewed the payroll records for seven employees for six payroll periods. We found that five of the seven employees had timesheets for at least one pay period without supervisory approvals. One of the five employees did not have supervisor approval for three consecutive pay periods."

HRPT COMMENT: OSC identified certain limited instances in the summer of 2013 where supervisory approval was not apparent in the payroll records, noting that this failed to provide sufficient assurance that personnel worked the reported hours. The Trust agrees with OSC's recommendation #17 on this matter. We attribute the identified deficiency to turnover in the payroll administrator position. OSC's recommendation has been implemented, and the Trust will continue to ensure that supervisors conduct appropriate review of employees' time.

OSC FINDING (page 14): "We found that this employee had an off-site work arrangement with the Trust since 2006. Over that time, this employee has held the positions of Payroll Administrator, Account Manager, Controller, and Internal Auditor. With the exception of Internal Auditor, the Trust has subsequently filled these positions with full-time, on-site staff."

HRPT COMMENT: This finding fails to mention that, as is known by OSC, the off-site work arrangement is the result of a legally required accommodation. It should be noted further that the employee was a full time on-site employee of the Trust from 1999 to 2006, and previously worked as full-time on-site staff of Hudson River Park Conservancy (the Trust's predecessor organization and subsidiary of Empire State Development Corporation) from 1993 to 1999. As the staffing and skill level of the Trust's Finance Department have evolved over the past 8 years to more closely match the work flow of the organization as a whole, the job title and function of this employee have also shifted. The employee is currently serving as Assistant Finance Director, performing work principally, but not exclusively, through the Trust's computer network.

* Comment 13

OSC FINDING (page 14): "The Trust could not provide documents to demonstrate it is obtaining sufficient service and benefit from this employee in relation to the employee's compensation."

HRPT COMMENT: With the exception of a single date in December 2013, OSC did not request documents to demonstrate that the Trust is obtaining sufficient service and benefit from this particular employee. The employee's daily and monthly job functions include reviewing entries posted to the general ledger, reconciling accounts payable and receivable to the applicable sub-ledgers, reviewing and approving payroll processing and reports, processing bi-weekly payroll in the absence of the payroll coordinator, preparing schedules and reconciliations for external auditors, and posting journal entries at year end closing. This work has been routinely reviewed and accepted by the Trust's outside financial auditor. Had OSC requested additional documentation, it would have been provided. The employee is currently a direct report to the Director Finance, who supervises daily activities. Recognizing OSC's concern, and to better document the employee's work, the Trust and the employee have adopted a system whereby key daily work activities are now recorded in the notes field of the regular ADP timesheet.

VI. EQUIPMENT INVENTORY

OSC FINDING (page 14): "We requested the Trust's annual inventories for 2010-2013. The Trust provided only one Asset Inventory dated December 13, 2013, containing 2,844 items....The Trust's inventory does not include any assets attributed to the garage operation."

HRPT COMMENT (page 14): The Trust has maintained a single "live" inventory list which is periodically updated when assets and property are added or deleted. Prior to the OSC audit the Trust did not maintain snap shot files which showed the status of physical inventory for prior years, but will do so now. The Trust will also incorporate the garage, which historically has been a distinct operation, as a category within the overall inventory list.

VII. RECOMMENDATIONS

The Trust accepts and agrees with OSC's recommendations. With respect to Recommendation #6, while we agree that RFP requirements should be enforced on all vendor respondents, we may look to modify the requirements to allow some flexibility in the administration of proposal acceptance. The issuance of RFPs is often a costly and time consuming effort, and rejecting proposals because of technical defects may not be in the best interest of the Trust. We will examine the circumstances under which staff can exercise permissible discretion with proper documentation. We accept Recommendation #17 with respect to Time and Attendance, but reserve on any further recommendations in this category at this time.

The Trust respectfully requests that your office take the Trust's comments into account and make such revisions as may be necessary and appropriate in your judgment to the Draft Audit Report. We look forward to continuing to work with OSC to implement the various recommendations contained in the report. Again, we thank you for your time and consideration in this matter.

Sincerely,

Madelyn Wils
President

cc: Diana Taylor, Chairperson
Daniel Kurtz, CFO
Sikander Zuberi, Director of Finance
William Heinzen, General Counsel

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State Comptroller's Comments

1. Section 10b of the Act requires such payments due the Trust to be expeditiously transferred to it. We question whether a payment made nearly six months after it is due is consistent with the requirement for expeditious transfer.
2. Contrary to the Trust's response, a tenant official stated that during an internal audit it was determined that income of $3,816 was not reported, and consequently, the tenant sent the Trust a check to correct the error (underpayment). Moreover, as detailed in our report, the Trust was not aware of the error until it received the tenant's check.
3. We applied the Trust's written policies and procedures to assess its receipt and evaluation of bids for major projects and procurements. The fact remains that the Trust did not comply with its written procedures in the cases cited in our report.
4. Based on the information provided by the Trust, we revised the final report to reference the Vice President for Design and Construction.
5. According to Trust officials, the meeting between Trust management and its outside "Construction Management industry expert" was not required by the Trust's Procurement Guidelines. We do not question this. However, we do question the adequacy of an informal briefing one day before a $5 million contract was presented to the Board for approval. Further, documenting the briefing does not mitigate the lack of time for a meaningful review of the proposed work.
6. We believe the numbers presented in our report are correct. Trust officials provided us with multiple versions of the summaries of the dollar amounts used to evaluate this contract, and as such, they are likely referencing a different version of the summary. Moreover, one of the cost components represented "alternatives" and referred to work that would be done "if the circumstances allow." Due to the uncertainty as to whether certain expenses would be incurred, the RFPs should have been evaluated and a contract awarded for the work that was actually required (and not for work which likely would not have been performed).
7. We reviewed the information provided by the Trust and concluded that the amount in our report is correct. Further, contrary to the Trust's response, the documents provided clearly indicated that the scope (and estimated cost) of the work changed for both of the amendments. In both cases, the contract was awarded to the same contractor, although no RFP had been issued for the additional work.
8. The requirement for advertising in the NYS Contract Reporter became effective in 2006. Thus, the Trust should have advertised the contract.
9. The Trust provided us with a memorandum stating: "In March 2011, HRPT's Board of Directors approved a contract with Company A for Pier 40 Stair and Elevator Architectural/Engineering Services. As detailed in the March 24, 2011 Board memo, the Trust selected Company A primarily because New York State allows for discretionary purchases from certified M/WBE vendors in amounts below $200,000 pursuant to Section 2829 of the Public Authorities Law." Although the memorandum mentions that other factors were considered, we concluded that the most significant factor in the selection of Company A was, in fact, its M/WBE status.
10. Based on the Trust's response, we revised our report, including deletion of the sentence

in question pertaining to the tenants' security deposits.

11. Trust officials should periodically research the valuation of U.S. issued securities. Even relatively small fluctuations in prevailing interest rates can have material impacts on securities, particularly those of longer-term duration.
12. We returned to the Trust on October 20, 2014 (after our draft report was issued), to review the e-mails and worksheets referenced in the Trust's response that would illustrate compliance with State Comptroller's Regulation 2 NYCRR Part 203. We note that these documents were not previously provided to us. Further, we found the information did not provide required information such as: (1) detailed estimates of projected operating revenues and other sources of funding; (2) an explanation of the public authority's relationship with the unit or units of government, if any, on whose behalf or benefit the authority was established; and (3) a statement of the annual projected capital cost broken down by category and sources of funding.
13. Trust officials have provided an accommodation to this employee for several years, but did not have adequate documentation to demonstrate that they properly monitored the employee's work. Based on the Trust's response to the draft report, we revised our presentation of this matter to focus more specifically on the weakness in the oversight of the employees' activities.