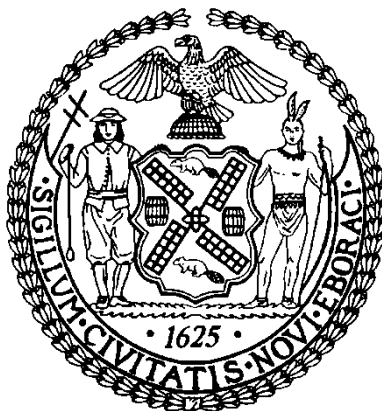


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Department of
Parks and Recreation's Controls over the
Awarding of Concessions**

FK10-129A

December 5, 2011



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

December 5, 2011

To the Residents of the City of New York:

My office has audited the Department of Parks and Recreation's (Parks) controls over the awarding of concessions. We audit City agencies such as Parks as a means of ensuring that they effectively manage City assets entrusted them and do so in accordance with applicable rules and regulations.

Parks is responsible for managing over 29,000 acres of City parkland. As the custodian of this land, Parks is also responsible for soliciting and awarding concessions to operate various recreational, dining, parking lot, and retail facilities. In Fiscal Years 2008, 2009, and 2010, Parks reported concession revenues of \$52,585,844, \$46,079,926, and \$39,830,380, respectively.

The audit revealed that Parks needs to improve management of its concession solicitation and award process to ensure that: contracts are executed in a timely manner, enabling concessions to continuously operate; viable bids and proposals are accepted; and solicitations are competitive. With improved planning and management of the solicitation and award process, Parks could have collected up to \$8.8 million in additional concession revenue.

Furthermore, our review found that Parks failed to maintain critical documents or to document key decisions that ensure the integrity of concession awards for the competitive sealed bid and proposal processes. Specifically, Parks did not maintain documentation to support that it awarded concessions to the highest rated, responsive bidders and proposers; did not maintain documentation to support that officials responsible for recommending concession awards were free from bias and potential or actual conflicts of interest; and lacked adequate key controls that would allow Parks and other City agencies to make proper responsibility determinations. As a result, we are not able to ascertain whether Parks properly awarded concessions.

Additionally, Parks improperly granted numerous sole source concessions to not-for-profits, and lacked written policies and procedures and adequate controls over concession files.

The results of our audit have been discussed with Parks officials and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov.

Sincerely,



John C. Liu

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Department of Parks and Recreation's
Controls over the Awarding of Concessions**

FK10-129A

AUDIT REPORT IN BRIEF

The Department of Parks and Recreation (Parks) is responsible for managing over 29,000 acres of City parkland. As the custodian of this land, Parks is also responsible for soliciting and awarding concessions to operate various recreational, dining, parking lot, and retail facilities. These include golf courses, tennis courts, restaurants, and food carts. The concession solicitation and award process is overseen by the Mayor's Office of Contract Services (MOCS) and governed by the Franchise and Concession Review Committee (FCRC) rules, which are codified in Title 12 of the Rules of the City of New York. These rules allow concessions to be granted using competitive, semi-competitive, and non-competitive methods. Concessions solicited through competitive methods must be awarded to the highest rated, responsive, and responsible bidders and proposers.

Parks oversees approximately 500 concessions throughout the five boroughs. These concessions generate approximately 91 percent of the City's total concession revenue. Typically, concessionaires pay Parks minimum stated fees or percentages of gross receipts. Concession revenues account for more than half of Parks' revenues which are used to support Parks' programs and services. In Fiscal Years 2008, 2009, and 2010 Parks reported concession revenues of \$52,585,844, \$46,079, 926, and \$39,830,380, respectively.

Audit Findings and Conclusions

Parks needs to improve management of its concession solicitation and award process to ensure that: contracts are executed in a timely manner, enabling concessions to continuously operate; viable bids and proposals are accepted; and solicitations are competitive. With improved planning and management of the solicitation and award process, Parks could have collected up to \$8.8 million in additional concession revenue (\$6.9 million for continuous operations and \$1.9 million for rejected bids), as detailed in Appendices I and II.

Furthermore, our review found that Parks failed to maintain critical documents or to document key decisions that ensure the integrity of concession awards for the competitive sealed bid and proposal processes. Specifically, Parks did not maintain documentation to support that it awarded concessions to the highest rated, responsive bidders and proposers; did not maintain documentation to support that officials responsible for recommending concession awards were

free from bias and potential or actual conflicts of interest; and lacked adequate key controls that would allow Parks and other City agencies to make proper responsibility determinations. As a result, we are not able to ascertain whether Parks properly awarded concessions.

Additionally, Parks improperly granted numerous sole source concessions to not-for-profits. Our review noted that Parks entered concession contracts with various not-for-profit organizations without FCRC review and approval. Consequently, these sole source awards, contracts, and associated revenues lack oversight, transparency, and accountability. Parks also lacked written policies and procedures and adequate controls over concession files. As a result, Parks' employees may not have performed their jobs properly or consistently, and proprietary and other sensitive information may have been compromised.

Audit Recommendations

To address these issues, we make 22 recommendations, including that Parks should:

- Track the solicitation and award process to ensure that it progresses in a timely manner.
- Make and retain approved written determinations to reject all bids or proposals that detail why an award is not in the City's best interest.
- Examine why it receives a small number of responses to solicitations and initiate appropriate corrective action to increase competition for future solicitations.
- Maintain and retain in concession files all documentation supporting and evidencing bid and proposal ratings.
- Maintain and retain in concession files all documentation evidencing that bids and proposals were received within submission deadlines.
- Ensure that Committee members sign Evaluator Affidavits when completing proposal rating sheets.
- Complete Vendor Information Exchange System (VENDEX) or other comprehensive performance evaluations.
- Comply with FCRC rules when granting sole source concessions to not-for-profits.
- Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for the solicitation, receipt, safeguarding, opening, and evaluation of bids and proposals, and the award and registration of contracts.
- Appropriately restrict access to and establish accountability for custody of concession files.

Agency Response

Parks submitted a two-part response: a three-page cover letter and a 10-page Summary of Objections to the Report's Findings and Recommendations (Summary of Objections). A reading of the cover letter could easily lead a reader to conclude that Parks disagreed with the entire report. However, somewhat hidden within the Summary of Objections were some acknowledgements by Parks, which we appreciate, that the report was correct on some very important points including that a significant portion of its concession portfolio "should have been awarded in a more time effective manner." In addition, Parks agreed to implement a number of our recommendations, including those relating to the advertisement of solicitations, corrective actions to be taken to increase competition for concession contracts, and efforts to ensure that selection committee members assigned to evaluate vendors' concession proposals are free from any potential conflicts of interest. Concerning the remaining areas of the report, Parks often presents arguments that do not really address the report's findings but, rather, serve to obscure the issues.

INTRODUCTION

Background

Parks is responsible for managing over 29,000 acres of City parkland. As the custodian of this land, Parks is also responsible for soliciting and awarding concessions to operate various recreational, dining, parking lot, and retail facilities. These include golf courses, tennis courts, restaurants, and food carts. The concession solicitation and award process is overseen by MOCS¹ and governed by FCRC rules, which are codified in Title 12 of the Rules of the City of New York. These rules allow concessions to be granted using competitive sealed bids (bids)², competitive sealed proposals (proposals)³, negotiated concession⁴, and different processes⁵ such as sole source awards. Parks generally awards concessions using the bid and proposal processes. Concessions solicited through these methods must be awarded to the highest rated, responsive, and responsible bidders and proposers. Factors that affect concessionaires' responsiveness include submission of bids and proposals by the time and date and in the form specified. And factors that affect concessionaires' responsibility include satisfactory records of performance and business integrity. Parks determines the highest rated bidders and proposers by calculating the total net present value of bid fee offers and appointing Selection Committees to evaluate and score proposals. Further, the Parks Concession Manager is required to make written determinations of responsiveness and responsibility for all concession awards.

Parks oversees approximately 500 concessions throughout the five boroughs. These concessions generate approximately 91 percent of the City's total concession revenue. Typically, concessionaires pay Parks minimum stated fees or percentages of gross receipts. Concession revenues account for more than half of Parks' revenues which are used to support Parks programs and services. In Fiscal Years 2008, 2009, and 2010 Parks reported concession revenues of \$52,585,844, \$46,079, 926, and \$39,830,380, respectively.

¹ FCRC § 1-02 states that the Director of the Mayor's Office of Contract Services is "the person to whom the authorization is delegated by the Mayor to perform all Mayoral reviews, make all Mayoral determinations and give all Mayoral approvals and certifications regarding concessions."

² FCRC § 1-12 (a) (1) requires that bids be used whenever practicable and advantageous to the City.

³ FCRC § 1-13 (a) (1) states that proposals may be used when agencies determine that it is not practicable or advantageous because either: "Specifications cannot be made sufficiently definite and certain to permit selections based on revenue to the City alone; or Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors."

⁴ FCRC § 1-14 (b) (2) allows agencies to negotiate concessions when it is not practicable and advantageous to use bids or proposals because of a time-sensitive situation such as when an existing concession contract has been terminated.

⁵ FCRC § 1-16 (a) (c) Parks must obtain prior FCRC approval for the use of different procedures and resulting concession contracts. Different procedures include Sole Source and Not-for-Profit Concessions.

Objectives

The objectives of this audit were to:

- Assess Parks' controls over awarding of concessions, and
- Determine whether Parks complied with the FCRC and other relevant rules and regulations.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was Fiscal Years 2009 and 2010. We conducted additional tests subsequent and prior to this period to evaluate current controls and to expand on the effects of certain audit findings. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Parks officials and discussed at an exit conference held on August 31, 2011. On October 6, 2011, we submitted a draft report to Parks officials with a request for comments. We received a written response from Parks officials on November 2, 2011.

There are two parts to the Parks response: a three-page cover letter and a 10-page Summary of Objections to the Report's Findings and Recommendations (Summary of Objections). A reading of the cover letter could easily lead a reader to conclude that Parks disagreed with the entire report. However, somewhat hidden within the Summary of Objections were some acknowledgements by Parks, which we appreciate, that the report was correct on some very important points. For example, Parks challenges our conclusion that it had foregone \$6.9 million in revenue by not issuing concession solicitations far enough in advance of existing contract expiration dates and by not awarding contracts on a timely basis after the solicitations. Nonetheless, in reference to \$3 million of the \$6.9 million, Parks states in its Summary of Objections that "we agree that our solicitations for mobile food units should have been awarded in a more time effective manner." Parks further states that "during the last year, we engaged in a comprehensive review of our solicitation and award process and have identified several

strategies for reducing the amount of time necessary to award these concession types.” In addition, Parks agreed to implement a number of our recommendations, including those relating to the advertisement of solicitations, corrective actions to be taken to increase competition for concession contracts, and efforts to ensure that selection committee members assigned to evaluate vendors’ concession proposals are free from any potential conflicts of interest.

Concerning the remaining areas of the report, Parks often presents arguments that do not really address the report’s findings but, rather, serve to obscure the issues. Parks argues that our report is only focused on the need to maximize concession income “without regard to the impact those uses would have on the public purpose of our parks, and would have us do so without regard to whether the potential concessionaires were bankrupt, corrupt, delinquent in tax payments or otherwise fail to demonstrate that they can be responsible business partners.” These comments reflect a significant misreading of our report. We acknowledge in the report that Parks needs to consider many factors in its awarding of concession contracts. In fact, our report identifies a number of ways by which Parks could better ensure that all bidders and proposers for these contracts are treated fairly, that the bids and proposals are evaluated properly, and that the vendors it selects are responsive and responsible.

Concerning the specific concession contracts about which Parks expresses concern in their response, Parks generally identifies circumstances, such as renovation delays, that Parks maintained prevented it from issuing concession contracts or ensuring continuity of concessionaire services before the existing contracts expired. While several of these circumstances might delay the solicitation and award process (and adjustments were made to our calculations of foregone revenue for certain delays, such as those relating to court orders and anticipated construction times), the main point is that Parks has not allowed itself sufficient time for the solicitation process even when no complication arises. As a result when complications do arise, the problem is further exacerbated. Furthermore, some of the delays in the awarding of new contracts can be attributed to shortcomings at Parks, such as weaknesses in its concession proposal evaluation process.

In addition, when an existing concession contract expires without a new contract being in place, Parks sometimes temporarily extends the existing contract. However, when Parks does so, it usually asks the vendor to pay the concession fees required by the existing contract. Our report argues that rather than simply extending the contracts, Parks should negotiate interim agreements with the vendors, as required by FCRC Rules, and, in those situations in which current market rates would support an increase in the concession fees to be paid by the vendors, require the vendors to pay these higher fees during the interim period.

A detailed discussion of the Parks response is included as an appendix to this report, and the full text of the Parks response is included as an addendum.

FINDINGS AND RECOMMENDATIONS

Parks needs to improve management of its concession solicitation and award process to ensure that: contracts are executed in a timely manner, enabling concessions to continuously operate; viable bids and proposals are accepted; and solicitations are competitive. With improved planning and management of the solicitation and award process, Parks could have collected up to \$8.8 million in additional concession revenue (\$6.9 million for continuous operations and \$1.9 million for rejected bids), as detailed in Appendices I and II.

Furthermore, our review found that Parks failed to maintain critical documents or to document key decisions that ensure the integrity of concession awards for the competitive sealed bid and proposal processes. Specifically, Parks did not maintain documentation to support that it awarded concessions to the highest rated, responsive bidders and proposers; did not maintain documentation to support that officials responsible for recommending concession awards were free from bias and potential or actual conflicts of interest; and lacked adequate key controls that would allow Parks and other City agencies to make proper responsibility determinations. As a result, we are not able to ascertain whether Parks properly awarded concessions.

Additionally, Parks improperly granted numerous sole source concessions to not-for-profits. Our review noted that Parks entered concession contracts with various not-for-profit organizations without FCRC review and approval. Consequently, these sole source awards, contracts, and associated revenues lack oversight, transparency, and accountability. Parks also lacked written policies and procedures and adequate controls over concession files. As a result, Parks' employees may not have performed their jobs properly or consistently, and proprietary and other sensitive information may have been compromised.

Parks Did Not Ensure that Concessions Continuously Operated, Resulting in Foregone Revenue of \$6.9 Million

Parks did not issue solicitations far enough in advance of existing contract expiration dates and track the solicitation and award process to ensure it progressed in a timely manner. Taking into consideration certain delays, such as those relating to court orders and anticipated construction times, we estimate by not ensuring that concessions continuously operated, Parks lost concession revenues of up to \$6.9 million (see Appendix I). FCRC rules require Parks to initiate the solicitation process at least three months in advance of existing contract expiration dates. Further, according to Parks officials, Parks initiates this process one year in advance of existing contract expiration dates "because it is a very time consuming process." However, Parks generally did not comply with FCRC rules or its internal policy and once solicited, Parks did not track the process to ensure that it progressed. Consequently, when Parks' existing concession contracts expired, Parks did not have new concession contracts executed and new concessionaires could not start operating as follows:

Table I

Analysis of Timeliness of Award⁶ for Contracts Expiring in Fiscal Years 2008 through 2010
That Were Not Solicited One Year in Advance of Existing Contract Expiration Dates

Fiscal Year	Contracts Expiring	Contracts Not Executed in Timely Manner	%	Contracts Not Subsequently Awarded	%	Contracts Executed in Timely Manner	%	Contracts Awarded After Multiple Solicitations	%
2008	111	81	73.0	14	12.6	13	11.7	3	2.7
2009	141	87	61.7	52	36.9	1	0.7	1	0.7
2010	125	86	68.8	39	31.2	0	0	0	0
Total	377	254		105		14		4	

Table II

Analysis of Solicitation and Award Time and Resulting Foregone Revenue
for Contracts Not Executed in a Timely Manner in Fiscal Years 2008 through 2010

Fiscal Year	Contracts Not Executed in Timely Manner	Contracts Not Executed in Timely Manner Resulting in Foregone Revenue	Average Actual Time to Solicit and Award⁷ (Months)	Average Time Allowed to Solicit and Award⁸ (Months)	Total Foregone Revenue⁹
2008	81	79	10.2	0.7	\$1,340,232
2009	87	84	10.3	2.2	1,640,605
2010	86	82	11.5	4.4	3,880,437
Total	254	245	10.7	2.5	\$6,861,274

Based on the analysis above, Parks allowed itself an average of 2.5 months to complete the solicitation and award process. However, this process takes considerably more time to

⁶ We considered Parks to be timely if the gap between existing concession contract expiration dates and newly awarded concession contract start dates was less than one month.

⁷ The actual time to solicit and award is the amount of time elapsed between Concession Agreement Pre-Solicitation Review Memorandum approval and the new contract start date.

⁸ The allowed time to solicit and award is the amount of time elapsed between Concession Agreement Pre-Solicitation Review Memorandum approval and the anticipated contract start date.

⁹ For all concessions that had gaps of one month or more between expiring and newly awarded contracts, we calculated total revenue that was not charged under contracts based on new contract payment terms—\$7,457,402. We then offset total fees charged under TUAs—\$596,128—to determine total foregone revenue of \$6,861,274.

complete—10.7 months. Further, while Parks sometimes extended the terms of expired contracts or issued Temporary Use Agreements (TUAs), these interim agreements were rarely used, covered limited time periods, and generally provided for lesser fees.

Most notably, Parks issued one concession contract and three TUAs to operate mobile food trucks at the former Tavern on the Green restaurant location, and in the interim, it charged fees totaling only \$49,924 for these operations. By not ensuring that Tavern on the Green continuously operated, we estimate that Parks has foregone concession revenue of nearly \$2.2 million and the City and State have foregone sales tax revenue of nearly \$3.7 million for the period March 2010 through June 2011. Furthermore, the City has lost approximately 500 restaurant jobs. On February 2, 2009, Parks issued a solicitation for this concession for which responses were due by May 1, 2009. Subsequently, Parks extended the submission deadline to May 18, 2009. Parks' existing contract expired on December 31, 2009. Therefore, Parks allowed itself just 11 months to: solicit proposals, conduct site tours, receive and evaluate proposals, negotiate with and vet proposers, select a proposer, broker an agreement between the recommended proposer and the New York Hotel Trades Council (the Council), recommend an award, and execute and register a contract. More than two and half years later, this process is still ongoing. Although Parks selected a proposer in August 2009, Parks could not broker an agreement between its recommended proposer and the Council. Parks allowed this process to go on for nearly nine months before ceasing negotiations with the recommended proposer in May 2010. Further, since that time, Parks has not negotiated with the remaining two proposers or made plans to resolicit this concession. As Tavern on the Green was Parks' top-grossing concession, we believe that Parks should have allowed itself significantly more time than its informal standard amount of time—one year—for this process and question whether Parks appropriately managed this concession to ensure that it progressed in a timely manner.

Parks Response: “Parks solicited for this concession well in advance of the expiration of the prior term....

The incumbent concessionaire, already deeply in arrears to Parks for unpaid concession fees, declared bankruptcy prior to the end of its term. At no time could Parks have determined that incumbent to be a responsible concessionaire for a new award. Meanwhile, the facility was in tremendous need of renovation and the Bankruptcy Court allowed the incumbent to remove and sell most of the fixtures and equipment, further diminishing the premises' status as an ongoing operation....

While the highest scored proposer was ultimately unsuccessful in negotiating a concession agreement, even if it had succeeded, the capital improvements required to reopen this City asset were sufficiently substantial to make continuous operation impractical, if not impossible. Contrary to the Recommendations, Parks could not have awarded to either of the other proposers, both of which scored significantly lower, including the bankrupt incumbent.”

Auditor Comment: Parks has acknowledged that restaurants are among the most complicated concessions to award. This is supported by Parks own data which shows that each of the restaurant concessions awarded during our audit period took considerably

more than one year to award. Nevertheless, with Tavern on the Green, Parks allowed itself just 11 months to solicit proposals, conduct site tours, receive and evaluate proposals, negotiate with and vet proposers, select a proposer, broker an agreement between the recommended proposer and the Council, recommend an award, and execute and register a contract. Since Parks knew that the Tavern on the Green solicitation and award process would be contentious, we believe that Parks should have allowed itself significantly more time than its informal standard amount of time—one year—for this process.

In its response, Parks further asserts that continuous operations were “impractical, if not impossible” because “the Bankruptcy Court allowed the incumbent to remove and sell most of the fixtures and equipment and Tavern on the Green required substantial capital improvements.” However, Parks was well aware that existing fixtures and equipment would be removed. This was a condition of the incumbent’s contract, and Parks disclosed this to prospective proposers in its RFP. Moreover, Parks’ assertion that continuous operations were impractical or impossible is contrary to Parks’ RFP, which advised proposers that they would be “required to cooperate with the current concessionaire to achieve an orderly transition of operations in order to avoid disruption of services.” Parks gave proposers the option of “closing the entire facility during the construction period” or renovating “in phases, keeping certain areas of the facility open while renovations take place in other areas.” Parks’ recommended proposer offered to perform capital improvements in phases and to pay fees immediately upon commencement. Since Parks accepted this as a viable offer in August 2009, we do not understand how Parks can now say continuous operations are impractical or impossible.

Additionally, Parks contends that it “could not have awarded to either of the other proposers” in part because the incumbent was “bankrupt” and “non-responsible.” However, Parks should then have made a written determination of non-responsibility, maintained it in the concession file, submitted it to MOCS, and included it in the VENDEX database as required by FCRC rules. However, Parks did not do so and instead, short-listed the incumbent proposer. Nevertheless, if Parks cannot recommend an award, Parks should immediately resolicit this concession so that Parks can actually capitalize on “the ‘Tavern on the Green’ name, which remains an asset... valued at several million dollars.”

In another instance, Parks did not ensure that a concession to run eight food pushcarts in Battery Park operated continuously. This resulted in foregone revenue of \$351,404 for the period January through May 2008. On December 5, 2007, Parks issued a solicitation for this concession for which responses were due by January 10, 2008. Parks’ existing contract expired on December 31, 2007. Therefore, Parks allowed itself less than a month to solicit, receive, and evaluate bids; conduct a background check; recommend an award; and execute and register a contract. As bids were not due until after the existing contract expired, Parks clearly did not issue this solicitation far enough in advance and properly manage it to ensure its timely progression.

Recommendations:

Parks should:

1. Consider the actual time it takes to solicit and award concessions and issue solicitations accordingly to preclude the loss of concession revenue.
2. Track the solicitation and award process to ensure that it progresses in a timely manner.

Parks Response: “Parks already follows the practices set forth in Nos. 1 and 2, and for the reasons explained above, those recommendations have nothing to do with the gaps in revenue complained about in the Report.”

Auditor Comment: Parks does not, as we did, conduct historical analyses to determine the amount of time it takes to solicit and award concessions. Consequently, Parks was unable to consider this information and preclude the loss of concession revenue.

Additionally, Parks does not formally track the solicitation and award process to ensure that it progresses in a timely manner. During the audit, Parks maintained that

“To track the proposal / bid review process, Parks created an informal e-mail system that requests updates on the various solicitations that are or have been drafted at Parks. First, Parks project managers update the list internally. That list is then sent to Law and MOCS who provides updates, as applicable, to each RFB or RFP under review. These updates enable Parks to determine exactly where a document is at a given time and often an estimated timeframe for when reviews by Parks, MOCS and/or Law will be completed. The informal system includes the following column headings: concession, initial date sent to MOCS, date sent to Law, expiration of the current contract, date the RFP/B must be released and the name of the Project Manager and Attorney working on the solicitation. This is typically circulated once every 2 weeks. This system has been a useful tool in tracking the solicitation review and will continue to serve its purpose until Stage 2 of APT (which is currently only used for procurements) is available online. The division management also uses informal methods to track the progress of each project assigned to each project manager.”

However, Parks did not provide us any evidence of its informal emails, lists, spreadsheets, or other informal tracking methods. Moreover, as evidenced by the report findings, these informal tracking methods were not effective. Therefore, we reiterate that Parks should track the solicitation and award process to ensure that it progresses in a timely manner. Specifically, Parks should implement a tracking system that would allow Parks to readily see the status of all solicited concessions, including but not limited to: process stage (e.g., drafting solicitation, solicitation issued and submissions pending, initial bid/proposal evaluation, etc. ...); allotted time

for process; actual process time to date; and process time remaining. Further, Parks should routinely review this information and expedite processes as necessary to ensure concessions continuously operate.

3. Charge concessionaires operating under expired contracts or TUAs fees that are commensurate with anticipated new contract terms.

Parks Response: “As described above, Parks has no legal basis to require concessionaires to follow No. 3.”

Auditor Comment: Ideally, Parks should execute contracts in a timely manner so that it can capitalize on current market rate fees offered by prospective concessionaires. If this is not possible due to extenuating circumstances, then we recommend that Parks negotiate extension or interim agreements—in accordance with FCRC rules—that provide current market rate fees.

4. Immediately recommend an award for Tavern on the Green or resolicit this concession.

Parks Response: “Parks will release an RFP later this year for Tavern on the Green, which will take into account the substantial alterations to the facility.”

Parks Improperly Rejected Bids and Proposals Resulting in Foregone Revenue of \$1.9 Million

Parks rejected all bids and proposals for 11 concession solicitations without required written justification. Consequently, Parks lost concessions revenue of more than \$1.9 million (see Appendix II). Under FCRC rules, Parks must award concessions to the highest rated, responsive, and responsible bidders and proposers, unless Parks determines that an award would not be in the City’s best interest. For significant¹⁰ bids and all proposals, such determinations must be made in writing by the Concession Manager, approved by the Agency Head, and retained in concession files. However, for these 11 solicitations, Parks made no such determinations. For example, in 2009, Parks rejected all bids for a significant concession to sell t-shirts in multiple locations in Central Park and Theodore Roosevelt Park. Parks resolicited this concession in 2010 and again rejected all bids. In both instances, Parks did not maintain documentation to justify its decision. This concession has not operated since June 2009, resulting in approximately \$643,222 in foregone revenue.

Parks Response: “Parks also rejected bids for t-shirt sales, determining that it was in the City’s best interests to do so because the operators could not, in fact, succeed at the location identified in the bid. The high bid offered the same amount that the prior

¹⁰ FCRC rules define a significant concession as any concession that has: projected annual City revenue of more than \$100,000; a term of 10 or more years; or significant land use impacts and implications, in accordance with City Planning Commission rules, or for which an environmental impact statement is required by law.

concessionaire had been obligated to pay. But that incumbent had defaulted, as a result of competition from disabled veteran vendors selling at nearby locations. These circumstances made the collection of the new bidder's projected revenue highly unlikely."

Auditor Comment: The high bid offered was the same amount that Parks RFP reported as "the actual annual fees paid to Parks by the current concessionaire." Additionally, Parks' concessionaire ledgers evidence that the incumbent did in fact pay these fees. Consequently, Parks should not have rejected it. Moreover, if Parks deemed the highest bidder as not having the capability in all respects to perform fully the concession requirements, Parks should have made a written determination of non-responsibility and awarded this concession to the next highest, responsive, and responsible bidder, as required by FCRC Rules.

Parks Response: "Parks rejected a bid from New York One for a pushcart operation in Central Park based on operational and business integrity concerns. The Report states that Parks rejected these bids '...without required written justification.' This is incorrect. Parks correctly documented its decision to reject these bids....Parks concession files' include memos signed by the agency's Concession Manager and Agency Head authorizing rejection of these bids. The auditors were given these memos yet the Report makes no mention of them. Parks had documented problems with New York One's performance, audit discrepancies and failure to pay taxes, and accordingly rejected the bids for these locations in the best interests of the City."

Auditor Comment: Again, Parks did not make and retain approved written determinations to reject all bids or proposals that detail why an award is not in the City's best interest. Moreover, Parks should not reject all bidders/proposers because the highest rated bidder/proposer is non-responsible or has responsibility issues. Rather, Parks should make a written determination of non-responsibility and award concessions to the next highest, responsive, and responsible bidder/proposer, as required by FCRC Rules.

Recommendation:

Parks should:

5. Make and retain approved written determinations to reject all bids or proposals that detail why an award is not in the City's best interest.

Parks Response: "Parks already follows this practice."

Auditor Comment: Parks rejected all bids and proposals for 11 concession solicitations without required written justification. For the concessions we reviewed, Parks maintained only one written determination to reject all bids. However, even this determination did not detail the reason for such action. It merely stated that the highest bidder "did not meet the criteria to be awarded the Permit Agreement" and did not justify why it was in the City's best interest to reject the remaining bidders. Therefore, we reiterate that Parks should make and retain approved written

determinations to reject all bids or proposals that detail why an award is not in the City's best interest.

Parks Did Not Properly Advertise Solicitations and Provide Sufficient Time to Respond

Parks did not properly advertise solicitations and provide bidders and proposers sufficient time to respond. As a result, Parks did not receive competitive responses and offers. Moreover, in many instances Parks did not receive any responses. Under FCRC rules, Parks must advertise solicitations in at least 10 successive issues of The City Record and provide bidders and proposers minimum response times of 10 business days and 20 days, respectively. However, our review noted that:

- Parks did not receive competitive responses for 216 of 240 pushcart concessions as follows: 113 concessions yielded no bids, 80 concessions yielded a single bid, and 23 concessions yielded two bids. These concessions were solicited through a single City-wide solicitation that was advertised for only one day. While Parks requested that the Department of Citywide Administrative Services (DCAS) advertise this solicitation in the prescribed minimum 10 successive issues of The City Record, Parks did not ensure that DCAS did so.
- Parks did not receive competitive responses for four of nine solicitations that provided shorter response times than required. One of these four solicitations was a City-wide solicitation which covered 20 tennis professional concessions. Consequently, Parks should have provided at least the minimum prescribed response time. Since Parks did not do so, 16 concessions yielded no responses, six concessions yielded a single response, and one concession yielded two responses¹¹.
- Parks did not receive any responses for two solicitations that were not advertised.

As a result, Parks may not have received fair offers and high quality services. Moreover, Parks concessions did not operate and generate revenue.

Recommendations:

Parks should:

6. Ensure that it advertises solicitations in at least 10 successive issues of The City Record.

Parks Response: “Parks will ensure that it advertises solicitations in at least 10 successive issues of the City Record.”

¹¹ We reviewed four solicitations that covered 24 concessions. Three solicitations were for a single concession and one solicitation was for 20 concessions.

7. Ensure that it provides bidders and proposers minimum response times of 10 business days and 20 days, respectively.

Parks Response: “Parks will continue to follow the practices authorized under the Concession Rules, fully documenting any decisions it may make concerning shortened response times.”

Auditor Comment: FCRC Rules require minimum bid and proposal response times of only 10 business days and 20 days, respectively. While Parks may make a determination that shorter response times are reasonable, Parks should fully consider and document the advantages and disadvantages, i.e., not receiving competitive responses, fair offers, and high quality services, prior to making such determinations.

Parks Did Not Take Appropriate Action to Increase Competition

Parks did not take appropriate action to address the lack of responses and ensure greater competition for future solicitations. MOCS considers procurements to be competitive when three or more responses are received. Accordingly, when Parks receives less than three bids, FCRC rules state that Parks must “ascertain the reason for a small number of responses and shall initiate corrective action, if appropriate, to increase competition in future solicitations. A written statement of any corrective action taken shall be included in the concession file.” Further, should Parks receive only a single bid or proposal for a significant concession, Parks must ask potential concessionaires why they chose not to respond before an award may be recommended. However, Parks did not take appropriate action as follows:

- Although six of 13 sampled bid solicitations resulted in less than three responses, Parks never examined why it received a limited response, took corrective action, or inquired why it received only a single bid for a significant concession.
- Thirteen of 25 sampled proposal solicitations were not competitive as follows: five solicitations yielded no responsive proposals, five solicitations yielded a single responsive proposal, and three solicitations yielded two responsive proposals. However, for eight of the 13 instances, Parks did not examine why it received a limited response, take corrective action, or inquire why it received no or only single responsive proposals.

As one bid and five proposal solicitations did not result in awards, Parks should have made an effort to determine the reason for this and initiated corrective action. By not doing so, Parks is not ensuring increased competition for future solicitations and, thus, maximizing concession revenues.

Recommendations:

Parks should:

8. Examine why it receives a small number of responses to solicitations and initiate appropriate corrective action to increase competition for future solicitations.

Parks Response: “Parks has a comprehensive understanding of the market for its concessions and already follows these practices.”

Auditor Comment: Parks did not follow these practices. Most notably, Parks did not conduct examinations and initiate corrective action for five proposal solicitations, with estimated minimum annual contract values of \$865,000, that yielded no responsive proposals. Therefore, we reiterate that Parks should examine why it receives a small number of responses to solicitations and initiate appropriate corrective action to increase competition for future solicitations.

9. Maintain written statements of corrective action taken in concession files.

Parks Response: “Pursuant to the Concession Rules, when corrective actions regarding competition are taken, Parks will fully document them in the concession files.”

Parks Did Not Maintain Critical Documentation to Support that Concessions Were Awarded to the Highest Rated Bidders and Proposers

We conducted a comprehensive review of Parks’ concession files. On February 11, 2011, we initially requested to review concession files. Parks provided us access to hard-copy concession files on various dates over a three-month period (from February 17, 2011 to May 5, 2011). On April 1, 2011, we also asked that Parks provide us any “electronic files that contain information not included in hard copy concession files.” However, Parks took nearly two and a half months to produce electronic records that should have been readily available. (Parks provided us this information on June 10, 2011.) On June 30, 2011, we formally communicated to Parks that critical documentation was not maintained in concession files including:

- *Bids, Proposals, and Best and Final Offers (BAFOs)* received in response to the 13 sampled bid and 25 sampled proposal solicitations were not retained within concession files as follows:

Table III

Analysis of Bids, Proposals, and BAFOs Received and Retained

	Responses Received	Responses Retained	Responses Not Retained	% Not Retained
Bids	47	38	9	19.2
Proposals	68	45	23	33.8
BAFOs	21	16	5	23.8

These documents are the foundation for the evaluation and award process and are required by FCRC rules to be part of the concession file.

- *Initial and Amended Rating Sheets* were not retained for two of 20¹² concessions. As these concessions had combined contract values of nearly \$18 million, Parks should have retained these documents. Additionally, when amended rating sheets were available, Committee members did not sufficiently explain rating changes.
- *Selection Committee Discussion, Interviews, and Negotiations* were not documented by the Parks Concession Manager and retained in concession files as required.
- *Selection Committee Reports* summarizing the evaluation process and documenting the Committee’s recommendation for award were never maintained and retained in concession files as required.

Parks Response: “The Report erroneously claims that selection committee discussions, negotiations and reports were not properly maintained. However, these matters are fully documented in the format prescribed by the City Chief Procurement Officer in the Recommendation for Award (“RFA”) that was included in the concession files reviewed by auditors. The RFA submission is used to document Parks’ compliance during the registration process, and in fact, the concession agreements complained about by the Report were registered by the Comptroller based on those submissions.”

Auditor Comment: The Recommendation for Award does not document Selection Committee discussion or negotiations. It merely states whether they were conducted. Additionally, the Recommendation for Award does not serve as the Selection Committee Report. The Recommendation for Award serves as an overview of the solicitation and award process, whereas the Selection Committee Report is a comprehensive record of the evaluation process. This report details the basis for and all evidence to support the Selection Committee recommendation as prescribed by FCRC rules:

¹² As noted, five of 25 sampled proposal solicitations yielded no responsive proposals. Therefore, Parks should have completed and retained rating sheets for 20 of the 25 concessions.

“Once the Selection Committee has made its recommendation, the chairperson must document the recommendation in a report to be submitted to the concession manager. This report must identify the RFP being considered, the number of proposals received, whether the planned evaluation process and schedule for award was followed and the reasons for deviations, if any, and the proposal recommended. It must include all best and final proposals, the basis for the recommendation, all original rating sheets, any other relevant evaluation material used by the Selection Committee, the recommendation of each of the members, their names and titles, and the signature of the chairperson. If any Selection Committee member prepared a document outlining a disagreement with the recommendation, it must be attached to the report. The concession manager shall file the report in the concession file folder.”

We detailed the files reviewed and the types of documents that were missing and informed Parks that any additional information should be provided immediately. At our exit conference on August 31, 2011, Parks officials said that they were not aware that specific documentation was missing and subsequently provided us nearly all missing bids, proposals, and BAFOs, and all ratings sheets. However, this occurred seven months after the initial request and two months after the final request. Consequently, we can only place limited reliance on this documentation. We are puzzled why it took so long for Parks to provide us with the requested documentation. Additionally, to date, Parks still does not have any documentation of Selection Committee discussions, interviews, and negotiations, or Selection Committee Reports. Due to the problems with key documentation, we are not reasonably assured that Parks properly evaluated bids and proposals and recommended that concessions be awarded to the highest bidders and highest-rated proposals.

Recommendations:

Parks should:

10. Maintain and retain in concession files all documentation supporting and evidencing bid and proposal ratings.

Parks Response: “Parks already follows these practices.”

Auditor Comment: As Parks subsequently acknowledges, “there were certain files that did not contain all of the documentation that the auditors expected to find.” Auditors expectations about what should be found in the file are based on FCRC rules and therefore Parks is required to comply with these practices. These requirements ensure transparency and accountability. Therefore, we reiterate that Parks should maintain and retain in concession files all documentation supporting and evidencing bid and proposal ratings.

11. Ensure that Committee members sufficiently explain rating changes and attach explanations to amended rating sheets.

Parks Response: “Parks already follows these practices.”

Auditor Comment: Based on our review, Parks does not ensure that Committee members sufficiently explain rating changes and attach explanations to amended rating sheets. MOCS also found that Parks does not follow these practices. For example, a MOCS review of Parks documentation supporting and evidencing Flushing Meadows Corona Park Ice Rink proposal ratings

“... discovered that documentation evidencing the basis for one evaluator’s decision to change her score from between the 5th and 6th rounds was missing. Because this change affected the apparent highest rated proposal in a competition characterized by very close scores, and because of personnel changes at Parks, an additional BAFO round...was undertaken with a Selection Committee comprised of three (3) entirely new evaluators.”

Therefore, we reiterate that Parks should ensure that Committee members sufficiently explain rating changes and attach explanations to amended rating sheets.

Parks Did Not Maintain Documentation to Support that Bids and Proposals Were Received by Submission Deadlines

Parks did not maintain critical documentation to support that concessions were awarded to responsive bidders and proposers. FCRC rules dictate that “The award of concessions shall be made only to bids/proposals received that are responsive.” The submission of bids and proposals by the time and date specified is a key factor affecting responsiveness. However, Parks did not maintain or retain documentation evidencing that bids and proposals were received by submission deadlines including:

- *Records of Bids* that were received by submission deadlines and publicly opened. Parks officials responsible for conducting bid openings are required to record bids received and retain this information in concession files. However, Parks did not maintain Records of Bids for nine of 13 sampled bids.
- *Proposal Receipt Registers* that record proposals received by submission deadlines, and opened under the supervision of responsible officials and in the presence of appropriate witnesses. Parks did not designate responsible officials and appropriate witnesses and did not complete registers for 24 of 25 sampled proposals as required. At our exit conference held on August 31, 2011, Parks provided us proposal deposit logs which it maintained were Proposal Receipt Registers. However, these logs merely record the receipt of required proposal deposits by Parks Revenue Division and do not document that proposals were received by submission deadlines.

- *Log Book* of bids and proposals that were received. Parks maintained a log book that recorded bidder and proposer names, submission time and date, assigned log number, and solicitation number. However, during the course of our audit, Parks lost the log book covering up to December 2010. (Prior to Parks losing the log book, we were able to review entries for the period July 1, 2008, through September 11, 2009.)
- *Bid and Proposal Envelopes* that evidence time and date stamps and assigned log numbers. Parks personnel did not consistently indicate assigned log numbers on envelopes and time and date stamp envelopes. Further, Parks did not maintain envelopes for 69 of 115 bids and proposals received in response to the 13 sampled bid and 25 sampled proposal solicitations within the concession file. At our exit conference held on August 31, 2011, Parks maintained that it was not aware that specific documentation was missing and subsequently provided us 33 of 69 missing bid and proposal envelopes. However, as previously detailed, we can only place limited reliance on this documentation.

In the absence of this documentation, we are not reasonably assured that bids and proposals that were considered and awarded were received within submission deadlines and thus, were responsive. Further, Parks did not make written determinations of responsiveness and retain them in concession files as required. Consequently, we are not reasonably assured that Parks awarded concessions to responsive bidders.

Conversely, Parks may have overlooked from consideration at least one bid received within the submission deadline. Parks documentation evidences that five bids were received by the prescribed deadline. However, both Parks Executive Summary (which details bids considered as well as the net present value of bid fee offers) dated September 18, 2009, and Parks Recommendation for Award dated December 15, 2009, evidence that Parks considered only four bids. Since Parks did not retain the related bid sheet, we are not reasonably assured that Parks awarded this concession to the highest rated bidder. Additionally, in the absence of documentation evidencing receipt, Parks may have overlooked additional bids and proposals from consideration and, thus, improperly awarded concessions.

After our exit conference held on August 31, 2011, Parks informed us that “the fee information for one bidder...was inadvertently transposed to a different location....However, this in no way affected...consideration or the result of the concession award. The bid was considered...but was in 4th place.” In support of this, Parks subsequently provided us this bid sheet. However, as previously detailed, we can only place limited reliance on this documentation.

Recommendations:

Parks should:

12. Maintain and retain in concession files all documentation evidencing that bids and proposals were received within submission deadlines.

13. Ensure that Parks' personnel responsible for receiving bids and proposals consistently record receipt in the log book, indicate assigned log numbers on envelopes, and time and date stamp envelopes.

Parks Response: "Parks substantially follows the practices set forth in Nos. 12 and 13, and will — although this practice is not required by the Concession Rules — additionally retain the envelopes."

Auditor Comment: Parks did not consistently record information and maintain documentation evidencing that bids and proposals were received within submission deadlines. Most notably, Parks lost the log book during the course of the audit. Consequently, we cannot determine whether 39 of 115 bids and proposals—33.9 percent—were received within submission deadlines. Thus, we cannot determine whether 8 of 28 concessions—28.6 percent—were properly awarded. Therefore, we reiterate that Parks should maintain and retain in concession files all documentation evidencing that bids and proposals were received within submission deadlines, and ensure that Parks personnel responsible for receiving bids and proposals consistently record receipt in the log book, indicate assigned log numbers on envelopes, and time and date stamp envelopes.

14. Consider all and only those bids and proposals received by submission deadlines.

Parks Response: "The Report fails to cite a substantively example of a case where a timely bid or proposal was not considered or a late one was erroneously considered. We note, as well, that No. 14 incorrectly fails to take account of the process authorized in the Concession Rules for accepting late bids or proposals in certain instances."

Auditor Comment: Parks overlooked from consideration at least one bid received within the submission deadline. Parks documentation consistently evidences that Parks considered only four of five bids received by the prescribed deadline. This includes Parks Recommendation for Award, which serves as the document of record of the solicitation and award process. Parks certifies the accuracy of information contained in the Recommendation for Award—including the number of responsive bidders, and submits this document to both MOCS and the Comptroller's Office. Consequently, we do not see how Parks can maintain that it considered all bids received within the submission deadlines. Additionally, in the absence of substantial documentation evidencing receipt, we are not reasonably assured that Parks considered all responsive bidders and proposers (and only such vendors) and, thus, properly awarded concessions.

We do acknowledge that FCRC Rules allow late bids and proposals to be considered under certain circumstances and within specified timeframes. Specifically, a late bid may only be considered if it is received within 48 hours of the bid opening and is the only bid received. And a late proposal may only be considered if it is received before the proposal opening and the Concession Manager determines it is in the City's best

interest. The Concession Manager may hold open the receipt of proposals by no more than three hours during which time no other competing proposal may be opened. Therefore, to clarify our recommendation, Parks should consider all (and only those) bids and proposals received by the RFB/RFP submission deadlines or when allowable, within FCRC stipulated deadlines for late submissions. If Parks considers late bids or proposals, Parks Concession Manager should document the circumstances in writing and maintain such documentation as part of the concession file, as required.

Parks Did Not Maintain Conflict of Interest Certifications for Committee Members

Parks did not maintain Evaluator Affidavits attesting that Committee members responsible for evaluating proposals and recommending concession awards were free from bias and potential or actual conflicts of interest. Committee members must sign affidavits when completing proposal rating sheets. However, our review noted that Parks was missing affidavits for 15 of 20 sampled proposal solicitations. In the absence of this documentation, we are not reasonably assured that Committee members were free from bias and conflict of interest and thus that proposals were evaluated fairly.

Recommendations:

Parks should:

15. Ensure that Committee members sign Evaluator Affidavits when completing proposal rating sheets.
16. Retain Evaluator Affidavits in concession files.

Parks Response: “Parks has implemented these recommendations.”

Parks Did Not Enter Performance or Cautionary Information in VENDEX

Parks did not complete performance evaluations or enter cautionary information in VENDEX. One of the City’s overarching goals is to only do business with responsible vendors. Accordingly, FCRC rules state that “Concessions shall be awarded to responsible prospective concessionaires only.” Concessionaires’ past performance is a key factor affecting responsibility. Therefore, FCRC rules direct agencies to use VENDEX and other records or evaluations of performance to support determinations of responsibility. Because Parks did not enter performance or cautionary information in VENDEX, Parks and other agencies cannot readily make informed responsibility determinations and may award contracts to non-responsible vendors.

Recommendations:

Parks should:

17. Complete VENDEX or other comprehensive performance evaluations.
18. Enter cautionary information in VENDEX.

Parks Response: “Due to infeasibility of implementation, Parks rejects the recommendation to complete VENDEX PEs, but otherwise already follows these practices.”

Auditor Comment: Parks does not complete other comprehensive performance evaluations or enter cautionary information in VENDEX. Most notably, in its response, Parks maintained that it removed some concessionaires and did not award contracts to other concessionaires because Parks deemed them non-responsible based on investigation results or business integrity, financial, and operational issues. However, Parks did not document these issues in comprehensive performance evaluations or enter cautionary information in VENDEX. For example, Parks maintained that it exercised “its duty to ensure that concessionaires are responsible business partners to the City” when Parks “rejected a bid from New York One based on operational and business integrity concerns. ... Parks had documented problems with New York One’s performance, audit discrepancies and failure to pay taxes.” However, to date, Parks did not enter cautionary information in VENDEX. Therefore, we reiterate that Parks should complete VENDEX or other comprehensive performance evaluations, and enter cautionary information in VENDEX so that Parks and other agencies can readily make informed responsibility determinations.

Parks Improperly Granted Sole Source Concessions to Not-for-Profits

Parks did not comply with FCRC rules when awarding numerous sole source concessions to not-for-profits. Specifically, Parks did not obtain FCRC approval for awards and contracts, notify affected Community Boards and Borough Presidents of its intent to award concessions, hold required public hearings, and disclose contracts and contract values on its Agency Annual Concession Plan. Because Parks does not report these concessions on its Agency Annual Concession Plan or other comprehensive registry, we were unable to identify and quantify the total number of improperly awarded concessions and their associated contract values. Nevertheless, our review identified substantial exceptions. For example, Parks granted the Prospect Park Alliance various Prospect Park concessions including:

- *Rental and Event Planning* The Picnic House, Boathouse, Parade Ground, Lefferts Historic House, Audubon Center, and Carousel.
- *Snack bars* The Songbird Café, Timeout Snack Bar, Movable Feast Café, and Pony Express.
- *Recreational Facilities* Carousel

As these facilities generate substantial revenues, Parks should have complied with FCRC rules to ensure that awards are fair, transparent, and in the best interest of the City.

Parks maintained that prior to granting Parks properties to not-for-profits, Parks consulted the Law Department as to whether such grants constitute a concession. However, we question Parks' and the Law Department's determinations. The FCRC defines a concession as "a grant made by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs." In each of the above examples, Parks granted the Prospect Park Alliance the private use of City-owned property and the City was compensated in return. In lieu of fees, the Prospect Park Alliance provided services such as maintenance, repairs, programming, and landscaping. Since Parks did not consider these grants concessions, Parks did not comply with FCRC rules as reported. Additionally, Parks did not register contracts with the Comptroller's Office. Consequently, these awards, agreements, and associated revenues lack transparency and accountability.

Recommendations:

Parks should:

19. Comply with FCRC rules when granting sole source concessions to not-for-profits.
20. Register all concession and other contracts as required by § 375 and § 328 of the New York City Charter.

Parks Response: "Parks already complies with all applicable rules and Charter provisions...."

"Parks complies with the Concession Rules when granting sole source concession to not-for-profits, and declines to follow the apparent directive that it should register certain other agreements...."

"The Prospect Park Carousel has been operated by the Prospect Park Alliance (PPA) through a sole source concession agreement authorized by the FCRC since 1990, and Parks is in the process of obtaining FCRC authorization to award a new agreement to PPA for this operation...."

"Parks does not believe there is any basis to treat the Lefferts Historical House as a concession since there is no private use involved in the agreement and the City does not receive any compensation in connection with the PPA's use of this facility...."

"The Law Department has determined that the predominate purpose of the agreement between the City the PPA to manage the Picnic House and the Boathouse/Audobon Center is not a concession....However, Parks will, in consultation with the Law Department, review the activity taking place at these facilities in order to determine whether any portion of such activity should be treated as a concession, and will take appropriate action if necessary to comply with all applicable Concession Rules."

“Parks is currently working on a concession agreement with PPA which will include the café at the Parade Ground and if necessary, the cafes at the Picnic House and the Boathouse.”

Auditor Comment: Section 328 of the New York City Charter stipulates that “No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing.” Therefore, we reiterate that Parks should register all concession and other contracts. Both the Lefferts Historical House and the Parade Ground ballfields (which Parks did not address in its response) are improperly granted sole source concessions. The Prospect Park Alliance rents both of these facilities for private events, and the City is compensated in return. In lieu of fees, the Prospect Park Alliance provides services, such as maintenance, repairs, programming, and landscaping. Therefore, we reiterate that Park should comply with FCRC Rules when granting sole source concessions to not-for-profits.

Parks Did Not Institute Written Policies and Procedures

Parks did not institute written policies and procedures for the solicitation and award of concessions. Sound internal controls dictate that Parks should institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for the solicitation and award process. Further, Parks should monitor to ensure compliance with policies and procedures. Because Parks lacked these controls, Parks employees did not perform their jobs properly or consistently. This contributed to Parks’ failure to effectively manage the solicitation process and maximize concession revenue. Additionally, Parks employees did not comply with FCRC rules, maintain critical documentation evidencing that concessions were awarded to the highest rated, responsive and responsible bidders and proposers, and improperly rejected bids and proposals and granted concessions.

Recommendation:

Parks should:

21. Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for the solicitation, advertisement, receipt, safeguarding, opening, and evaluation of bids and proposals and the award and registration of contracts.

Parks Response: “Parks already complies with this practice, through its use of the Concession Rules as its guiding document for compliance, as well as the policies and procedures documented in the memorandum earlier supplied to the auditors.”

Auditor Comment: Neither FCRC Rules nor Parks’ informal policies adequately and specifically address the duties and responsibilities of key employees and detail the work processes that are to be conducted or followed. Moreover, Parks informal

policies were not prepared for or distributed to Parks employees. Rather, they were prepared for the benefit of the Comptroller's Office. Specifically, Parks stated

“To help provide more information on the specifics of these processes, next week we will send you an additional supplemental document summarizing the solicitation and award process for RFPs, RFBs, Sole Sources and Negotiated Concessions.”

Therefore, we reiterate that Parks should institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for the solicitation, advertisement, receipt, safeguarding, opening, and evaluation of bids and proposals and the award and registration of contracts.

Parks Lacked Adequate Controls over Concession Files

Parks lacked adequate access controls over concession files because they are stored in unlocked cabinets in a conference room to which all Parks employees have access. FCRC rules require Parks to maintain files for each concession under consideration for renewal, resolicitation, or initial award and specify documents that must be retained in files. Concession files include trade secrets and other proprietary and sensitive information which must be safeguarded. FCRC rules specify that “once opened, proposals should be made available only to those City personnel...who have a direct role in the award of the RFP.” Because Parks did not appropriately restrict access to, establish accountability for custody, and clearly assign responsibility for who should maintain concession files, required documents were not retained in concession files.

Recommendation:

Parks should:

22. Appropriately restrict access to and establish accountability for custody of concession files.

Parks Response: “Parks is creating digital files in an effort to reduce the amount of space needed for hard copy files.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of our audit was Fiscal Years 2009 and 2010. We conducted additional tests subsequent and prior to this period to evaluate current controls and to expand on the effects of certain audit findings. To assess Parks' controls over and gain an understanding of the solicitation and award process, we: reviewed Chapter 14 of the New York City Charter and FCRC rules; met with Parks, MOCS, and Law Department officials; and requested relevant Parks policies and procedures. Although Parks did not institute written policies and procedures, Parks provided us a write-up of its informal policies. We also reviewed the *New York City Comptroller's Internal Control and Accountability Directives*, Directives #1, "Principles of Internal Controls," #11, "Cash Accountability and Control," and # 26, "Registration of Franchises, Concessions, and Revocable Consents." These directives were used as criteria in evaluating the adequacy and effectiveness of Parks' internal controls.

To assess whether Parks executed concession contracts in a timely manner and ensured that concessions operated continuously, we reviewed Parks' concession lists generated by its Yardi property management system. To test the accuracy of Yardi reports, we randomly selected 50 concession files and traced them to Yardi reports. We then compared existing contract expiration dates to newly awarded concession start dates for Fiscal Years 2008 through 2010. We considered Parks to be timely if the gap between existing concession contract expiration dates and newly awarded concession contract start dates was less than one month. For all 380 contracts expiring in Fiscal Years 2008 through 2010, we identified and quantified instances in which Parks did not execute contracts in a timely manner. To determine resulting foregone revenue, we reviewed Parks' concessionaire ledgers and calculated revenue that was not charged under contracts based on newly proposed or contractual payment terms. We then offset all fees charged under expired contracts or TUAs. To ascertain why new contracts were not executed in a timely manner, we compared actual contract cycle times—amount of time elapsed between solicitation approval and new contract start dates—to the amount of time Parks allowed for this process—the amount elapsed between solicitation approval and anticipated contract start dates.

For all competitive sealed bid and proposal solicitations issued in Fiscal Years 2009 and 2010, we reviewed: The City Record On-line database to determine whether Parks advertised solicitations in at least 10 successive issues; Parks Agency Annual Plan and concession files to determine whether Parks appropriately notified affected Community Boards and Borough Presidents of Parks intent to solicit concessions; and Parks solicitations to determine whether Parks provided bidders and proposers prescribed response times or made determinations that a shorter period was reasonable. When Parks did not properly advertise solicitations or provided

shorter response times, we reviewed Parks Executive Summaries and Recommendations for Award to determine whether Parks received competitive responses to solicitations and whether solicitations resulted in an award. For those solicitations that did not result in concession awards, we calculated foregone revenue based on Parks estimated minimum revenue reported in Concession Agreement Pre-Solicitation Review memoranda.

In Fiscal Years 2009 and 2010, Parks issued 22 (16 non City-wide and six City-wide) bid solicitations and 45 (four City-wide and 41 non City-wide) proposal solicitations. We selected a sample of 13 bids and 25 proposals as follows:

- For each of the six City-wide bid solicitations, we judgmentally selected the awarded concession with the highest anticipated revenue. For non-Citywide bid solicitations, we judgmentally selected solicited concessions with the highest anticipated annual revenue for each concession type (e.g., food and souvenir carts). We sampled six City-wide bids and seven non-City-wide bids.
- For each of the four City-wide proposal solicitations, we judgmentally selected the awarded concession with the highest anticipated revenue. As one solicitation did not result in any awards, we sampled three City-wide proposal solicitations. For non-Citywide proposal solicitations, we judgmentally selected solicited concessions with the highest anticipated revenue for each concession type (e.g., restaurants, golf courses, and tennis courts). We sampled three City-wide proposals and 22 non City-wide proposals.

For sampled bids and proposals, we conducted tests to determine whether Parks complied with FCRC rules and awarded concessions to the highest rated, responsive, and responsible bidders and proposers as detailed below.

We reviewed Parks Executive Summaries and Recommendations for Award to see whether Parks received competitive responses to solicitations and whether solicitations resulted in an award. When Parks did not, we determined whether Parks examined why it received a small number of responses and initiated corrective action to increase competition for future solicitations. For those solicitations that did not result in awards, we calculated annual minimum contract values based on bidder and proposer minimum offers or Parks' estimated minimum revenue reported in Concession Agreement Pre-Solicitation Review memoranda.

We observed the receipt, safeguarding, and opening of bids and proposals to assess Parks' controls over these processes. We then checked that Parks applied these controls and maintained and retained documentation evidencing that bids and proposals were received by submission deadlines including: Records of Bids, Proposal Receipt Registers, log book, and bid and proposal envelopes. To determine whether Parks considered all and only those bids and proposals received by submission deadlines, we first identified all timely bid and proposal submissions by reviewing: the log book; bid and proposal security deposit forms; Records of Bids; Proposal Receipt Registers; and bid and proposal envelopes. We then identified those bids and proposals that were considered by Parks by reviewing Executive Summaries and rating sheets. For each solicitation, we compared bids and proposals submitted to those considered and

identified discrepancies. When we found discrepancies, we looked for evidence that Parks appropriately excluded bids and proposals from consideration because they were not responsive.

We identified instances in which Parks rejected all bids and proposals and determined whether Parks maintained approved determinations and other support justifying that an award was not in the City's best interest. When Parks did not maintain such documentation, we calculated foregone revenue based on proposed payment terms. (These tests were conducted for the 13 sampled bids and the 25 sampled proposals. We identified three instances in which Parks rejected all bids and proposals. Additionally, we identified eight instances as a result of our analysis of the timeliness of contract awards.)

To assess whether Committees were properly formed and independent, we verified that Committees consisted of at least three members, at least one of whom was not in a reporting relationship with other members, and that Parks maintained Evaluator Affidavits for Committee members certifying that they were free from bias and conflict of interest. To ascertain whether Committee members properly evaluated proposals, we compared rating criteria and weights applied on initial and amended rating sheets to those set forth in solicitations.

We reviewed Parks' concession files to determine whether Parks maintained and retained required documentation supporting and evidencing bid and proposal ratings. Additionally, we checked that Parks made responsiveness and responsibility determinations, conducted Department of Investigation background checks, and obtained VENDEX questionnaires prior to awarding concessions. We also determined whether Parks registered contracts.

Parks awarded two concessions through negotiated processes and eight concessions through other processes. For all concessions we reviewed, we determined whether Parks complied with FCRC rules. Specifically, we checked that Parks maintained required documentation evidencing that Parks properly notified affected Community Boards and Borough Presidents, obtained approval for methods and contracts, and held public hearings.

**FOREGONE REVENUE RESULTING FROM CONTRACTS
THAT WERE NOT EXECUTED IN A TIMELY MANNER**

PARK	LOCATION	TYPE	FOREGONE REVENUE
MANHATTAN			
CENTRAL PARK	CENTRAL PARK WEST AND 67TH STREET	R	\$ 2,165,214
BATTERY PARK	EIGHT LOCATIONS WITHIN BATTERY PARK	C	351,404
CENTRAL PARK	BETHESDA UPPER TERRACE, ALONG 72ND STREET TRANSVERSE	C	205,951
CENTRAL PARK	NEAR CHILDREN'S ZOO, EAST OF 65TH STREET	C	169,152
CENTRAL PARK	EAST SIDE OF WEST DRIVE AND WEST 67TH STREET	C	152,394
CENTRAL PARK	FRIEDSAM MEMORIAL CAROUSEL	CL	151,375
CENTRAL PARK	EAST 79TH STREET AND 5TH AVENUE	C	144,526
CENTRAL PARK	MINERAL SPRINGS SNACK BAR	SB	137,500
CENTRAL PARK	WEST DRIVE AND WEST 96TH STREET	IT	129,200
CENTRAL PARK	CENTRAL PARK SOUTH AND AVENUE OF THE AMERICAS	C	128,952
CENTRAL PARK	MALL AREA, SOUTHWEST OF BANDSHELL	C	92,062
CENTRAL PARK	WEST 81ST STREET PATH TO DELACORTE THEATER	C	88,866
CENTRAL PARK - GRAND ARMY PLAZA	5TH AVENUE AND 60TH STREET	C	84,033
UNION SQUARE PARK	UNION SQUARE WEST AND EAST 16TH STREET	NS	82,100
CENTRAL PARK	NEAR ZOO ENTRANCE AT EAST 62ND STREET	C	77,104
BATTERY PARK	GANGWAY 6	O	71,250
CENTRAL PARK	CENTRAL PARK MALL AREA, WESTERN AREA NEAR DEAD ROAD	C	66,987
CENTRAL PARK	79TH STREET PATH ENTRANCE TO THE GREAT LAWN	C	62,610
THEODORE ROOSEVELT PARK	COLUMBUS AVENUE AND WEST 77TH STREET	C	61,300
CENTRAL PARK	NORTHEAST CORNER OF HECKSCHER BALLFIELDS	C	53,950
CENTRAL PARK	NORTHSIDE OF 72ND STREET TRAVERSE AT CHERRY HILL	C	50,000

PARK	LOCATION	TYPE	FOREGONE REVENUE
CENTRAL PARK	CENTRAL PARK WEST AND WEST 85TH STREET	C	48,000
RANDALLS ISLAND PARK	DRIVING RANGE AT GOLF COURSE	DR	45,833
CENTRAL PARK	EAST 100TH STREET AND 5TH AVENUE	C	41,936
RIVERSIDE PARK	CAFÉ AT ROTUNDA WEST 79TH STREET BOAT BASIN	R	38,060
CENTRAL PARK	HECKSHER PLAYGROUND, NEAR WEST 63RD STREET	C	35,803
CENTRAL PARK	HECKSHER PLAYGROUND, NEAR WEST 63RD STREET	C	35,738
CENTRAL PARK	PATH LEADING TO CHERRY HILL, NEAR BOW BRIDGE	C	35,186
CENTRAL PARK	WEST 72ND STREET PATH, WEST OF THE DANIEL WEBSTER MONUMENT	C	34,110
CENTRAL PARK	PATH ENTRANCE TO POND, EAST DRIVE AND 61ST STREET	C	31,315
CENTRAL PARK	BETWEEN 72ND AND 75TH STREETS, EAST SIDE OF CENTRAL PARK	SB	31,250
RIVERSIDE PARK	NEAR ENTRANCE TO WEST 91 STREET PLAYGROUND	C	28,000
CENTRAL PARK	72ND STREET AND EAST DRIVE	C	26,591
CENTRAL PARK	EAST 76TH STREET AND 5TH AVENUE	C	25,288
WEST 3 RD ST. NEWSSTAND	AVENUE OF THE AMERICAS AND WEST 3RD STREET	NS	22,167
CENTRAL PARK	LITERARY WALK, ACROSS FROM THE ROBERT BURNS STATUE	C	21,592
CENTRAL PARK	59TH STREET AND 7TH AVENUE	C	21,422
WASHINGTON MARKET PARK	GREENWICH AND READE STREETS	MT	20,844
CENTRAL PARK	EAST 95TH STREET AND 5TH AVENUE	C	19,315
CENTRAL PARK	WEST DRIVE AND WEST 86TH STREET	C	18,749
RIVERSIDE PARK	WEST 83RD STREET AND RIVERSIDE DRIVE	C	18,345
CENTRAL PARK	EAST 84TH STREET, THE PEDESTRIAN PATH, WEST SIDE OF EAST DRIVE	C	17,753
CENTRAL PARK	5TH AVENUE BET. EAST 60TH STREET AND 61TH STREET	BK	16,667
CENTRAL PARK	EAST 67TH STREET AND 5TH AVENUE	C	15,973

PARK	LOCATION	TYPE	FOREGONE REVENUE
CENTRAL PARK	CENTRAL PARK MALL, NORTHWEST SIDE OF THE BANDSHELL	C	15,799
CENTRAL PARK	5TH AVENUE, BETWEEN EAST 85TH AND 86TH STREETS	C	13,151
RICHARD TUCKER PARK	BROADWAY BETWEEN WEST 65TH AND WEST 66TH STREETS	C	11,913
CENTRAL PARK	CENTRAL PARK WEST AND WEST 96TH STREET	C	9,197
MADISON SQUARE PARK	5TH AVENUE AND EAST 26TH STREET	C	8,613
CENTRAL PARK	CENTRAL PARK WEST AND WEST 93RD STREET	C	7,842
CENTRAL PARK	EAST SIDE OF SHEEP MEADOW NEAR EAST 66TH STREET	C	7,650
FORT TRYON PARK	CABRINI BOULEVARD AND FORT WASHINGTON AVENUE	MT	6,588
RICHARD TUCKER PARK	BROADWAY AND WEST 66TH STREET	NC	4,734
CENTRAL PARK	WEST 110TH STREET AND CENTRAL PARK WEST	C	4,581
CENTRAL PARK	EAST 104TH STREET AND 5TH AVENUE	C	4,340
FORT TRYON PARK	CABRINI BOULEVARD AND FORT WASHINGTON AVENUE	C	4,241
CENTRAL PARK	WEST DRIVE AT ABOUT WEST 96TH STREET	C	4,110
CENTRAL PARK	NORTH MEADOW RECREATIONAL CENTER	SB	3,688
CENTRAL PARK	WEST DRIVE BETWEEN WEST 74TH AND 75TH STREETS	C	3,600
RIVERSIDE PARK	BETWEEN NORTH AND SOUTH PARKING LOTS NEAR WEST 150TH STREET	C	3,384
RIVERSIDE PARK	WEST 119 STREET	TP	2,860
P.S. 192 PLAYGROUND	AMSTERDAM AND WEST 138TH STREET	C	2,767
PARK AVE CENTER PLOTS	PARK AVENUE AND EAST 68TH STREET	C	2,134
FREDERICK JOHNSON PARK	7TH AVENUE AND WEST 151 STREET	TP	2,000
CENTRAL PARK	WEST 100TH STREET AND CENTRAL PARK WEST	C	1,989
PS 199 PLAYGROUND	70TH STREET BETWEEN WEST END AND AMSTERDAM AVENUE	MT	1,734

PARK	LOCATION	TYPE	FOREGONE REVENUE
THOMAS JEFFERSON PARK	1ST AVENUE, BET. EAST 112TH AND 114TH STREETS	C	1,381
FRED SAMUEL PLAYGROUND	LENOX AVENUE, WEST 139TH STREET TO WEST 140TH STREET	MT	1,116
INWOOD HILL PARK	SEAMAN AVENUE AND WEST 204TH STREET	MT	1,092
CARL SHURZ PARK	EAST 84TH AVENUE AND EAST END AVENUE	C	976
HIGHBRIDGE PARK	AMSTERDAM AVENUE AND WEST 172ND STREET	MT	794
AUDUBON PLAYGROUND	WEST 170TH STREET, BETWEEN AUDOBON AND SAINT NICOLAS AVENUES	MT	564
HIGHBRIDGE PARK	AMSTERDAM AVENUE AND WEST 173RD STREET	MT	564
HIGHBRIDGE PARK	AMSTERDAM AVENUE AND WEST 177TH STREET	MT	564
HIGHBRIDGE PARK	AMSTERDAM AVENUE AND WEST 180TH STREET	MT	564
EAST RIVER PARK	DELANCY STREET	TP	341
ANIBAL AVILES PLAYGROUND	WEST 107 TO WEST 108TH STREETS, AMSTERDAM-COLUMBUS	MT	251
RIVERSIDE PARK	BETWEEN THE BALLFIELD AND THE WEST 101ST STREET SOCCER FIELD PATH	C	232
TOTAL FOR MANHATTAN			\$ 5,311,215

QUEENS

CLEARVIEW CAFE	201-10 CROSS ISLAND PARKWAY BAYSIDE	R	\$ 379,167
FLUSHING MEADOWS CORONA PARK	ICE SKATING RINK AT FLUSHING MEADOW PARK	IS	\$ 119,667
FLUSHING MEADOWS CORONA PARK	ALONG THE OUTER PATHWAY OF MEADOW LAKE	MT	20,000
CUNNINGHAM PARK	FRANCIS LEWIS BOULEVARD, UNION TURNPIKE, AND 193RD STREET	MT	17,100
CUNNINGHAM GAS STATION	CUNNINGHAM GAS STATION	GS	14,777
GRAND CENTRAL PARKWAY	GRAND CENTRAL PARKWAY GAS STATION	GS	12,444
GRAND CENTRAL PARKWAY	GRAND CENTRAL PARKWAY GAS STATION	GS	12,444
FLUSHING MEADOWS CORONA PARK	PIER ONE WORLD'S FAIR MARINA	O	11,800

PARK	LOCATION	TYPE	FOREGONE REVENUE
FLUSHING MEADOWS CORONA PARK	NEAR THE UNISPHERE, ALONG THE PATHWAY	MT	10,977
ASTORIA PARK	19TH STREET AND 23RD TERRACE	C	7,563
ASTORIA PARK	ASTORIA POOL AT 19TH STREET AND 23RD DRIVE	SV	10,555
FLUSHING MEADOWS CORONA PARK	INSIDE PARK NEAR THE HALL OF SCIENCE	MT	9,550
FLUSHING MEADOWS CORONA PARK	INSIDE PARK NEAR FOUNTAIN OF PLANETS, FACING THE PROMENADE	MT	8,645
TRIANGLE 90	ROOSEVELT AVENUE AND 90TH STREET	C	7,800
FLUSHING MEADOWS CORONA PARK	NEAR SOUTH BRIDGE CLOSE TO THE BALLFIELDS BY THE QUEENS WILDLIFE PRESERVATION CENTER	MT	6,885
JUNIPER VALLEY PARK	DRY HARBOR ROAD TO 70TH STREET	MT	6,000
ASTORIA PARK	SHORE BOULEVARD, HOYT AVENUE AND DITMARS BOULEVARD	MT	5,333
KISSENA PARK	164TH STREET AND BOOTH MEMORIAL AVENUE	TP	4,974
CROCHERON PARK	215 PLACE AND 33 AVENUE	TP	4,499
ASTORIA PARK	ASTORIA PARK SOUTH AND 21ST STREET	TP	3,876
ATHENS SQUARE PARK	30TH STREET AND 30TH AVENUE	MT	3,875
BOWNE PARK	BAYSIDE AVENUE BETWEEN 155TH STREET TO 159TH STREET	MT	3,000
WINDMULLER PARK	52ND STREET AND 39TH ROAD	C	3,000
FLUSHING MEADOWS CORONA PARK	ROOSEVELT AVENUE AT WILLETS POINT STATION, SHEA STADIUM SOUTH PARKING LOT	C	2,938
VARIOUS VENDING MACHINES	VARIOUS CITYWIDE LOCATIONS	VM	2,765
GORMAN PLAYGROUND	84TH STREET BETWEEN 25TH AVENUE AND 30TH AVENUE	MT	2,700
REV. G. HINTON PARK	113TH STREET AND 114TH STREET	MT	2,667
KISSENA PARK	164TH STREET AND BOOTH	MT	2,533
COURT SQUARE PARK	JACKSON AVENUE, THOMPSON AVENUE, AND COURT SQUARE	C	2,500
FLUSHING MEMORIAL PARK	FLUSHING FIELDS - 149TH STREET AND 29TH AVENUE	TP	2,166
FLUSHING MEADOWS CORONA PARK	OUTER PATHWAY NEAR THE UNISPHERE	C	1,750

PARK	LOCATION	TYPE	FOREGONE REVENUE
FRANK O'CONNOR PARK	BROADWAY, BETWEEN 78TH AND 79TH STREET	C	1,525
FLUSHING MEADOWS CORONA PARK	DESIGNATED VOLLEYBALL AREA LOCATION	C	1,446
FLUSHING MEADOWS CORONA PARK	DESIGNATED VOLLEYBALL AREA LOCATION	C	1,410
LITTLE BAY PARK	PARKING LOT BY LITTLE BAY, CROSS ISLAND EXPRESSWAY, AND UTOPIA PARKWAY	MT	1,240
JUNIPER VALLEY PARK	JUNIPER VALLEY TENNIS COURTS	TP	1,180
LINDEN PARK	INSIDE THE PARK, 103RD STREET SIDE	C	1,175
KISSENA CORRIDOR PARK	UTOPIA PARKWAY NEAR LONG ISLAND EXPRESSWAY AND UNDERHILL	MT	1,093
FLUSHING MEADOWS CORONA PARK	DESIGNATED VOLLEYBALL AREA LOCATION	C	1,058
FLUSHING MEADOWS CORONA PARK	DESIGNATED VOLLEYBALL AREA LOCATION	C	1,058
LOUIS C. MOSER PARK	25TH AVENUE AND 76TH STREET	MT	1,050
CROCHERON PARK	PERIMETER OF PARK BETWEEN 33RD AND 35TH AVENUES	MT	1,031
GEORGE TORSNEY PLAYGROUND	SKILLMAN AVENUE AND 43RD STREET	MT	1,000
PS 173 PLAYGROUND	67TH AVENUE AND 173RD STREET	MT	950
GROVER CLEVELAND PARK	STANHOPE STREET AND GRANDVIEW AVENUE	MT	918
P.S. 22 PLAYGROUND	MURRAY STREET AND SANFORD AVENUE	MT	902
ASTORIA PARK	SOUTH ENTRANCE, NEXT TO THE BASKETBALL COURTS	C	900
VLEIGH PLACE PLAYGROUND	VLEIGH PLACE AND 141TH STREET	MT	733
MCNEIL PARK	POPENHUSEN AVENUE AND COLLEGE PLACE	MT	644
CUNNINGHAM PARK	73RD AVENUE, FRANCIS LEWIS BOULEVARD, AND 210TH STREET	MT	625
COLDEN PLAYGROUND	UNION STREET AND 31ST ROAD OR 31ST DRIVE	MT	600
JHS 93 RIDGEWOOD PLAYGROUND	WOODWARD AVENUE, WOODBINE STREET, AND FAIRVIEW AVENUE	MT	600
P.S. 143 ARMSTRONG PLAYGROUND	37TH AVENUE BETWEEN 112TH AND 113TH STREETS	C	600
ASTORIA PARK	AT THE PARKING LOT AT HOYT AVENUE	MT	600

PARK	LOCATION	TYPE	FOREGONE REVENUE
BROOKVILLE PARK	DERECK DILWORTH-BROOKVILLE BOULEVARD AND SOUTHERN PARKWAY	TP	500
JOSEPH F. MAFERA PARK	65TH PLACE AND 68TH AVENUE	MT	500
EDWARD BYRNE PARK	135TH AVENUE BETWEEN 131ST AND 132ND STREETS	MT	450
ASTORIA PARK	NEXT TO THE FIELD HOUSE	C	371
MARIE CURIE PARK	PERIMETER OF PARK, BY 211TH STREET AND 46TH AVENUE	MT	250
TOTAL FOR QUEENS			\$ 728,358

BRONX			
PELHAM BAY PARK	ORCHARD BEACH NEAR SATELLITE BUILDING SECTION 7	SB	\$ 271,045
ORCHARD BEACH/PELHAM BAY PARK	TEN MOBILE FOOD UNITS ALONG THE BEACH PROMENADE	C	45,850
PELHAM BAY PARK	ORCHARD BEACH NEAR SATELLITE BUILDING SECTION 10	SB	35,443
MAJOR DEEGAN NORTH	MAJOR DEEGAN NORTH GAS STATION	GS	20,611
MAJOR DEEGAN SOUTH	MAJOR DEEGAN SOUTH GAS STATION	GS	19,611
PELHAM BAY PARK	ORCHARD BEACH NEAR SATELLITE BUILDING SECTION 5	SB	17,934
PELHAM BAY PARK	RICE STADIUM PARKING LOT	MT	15,000
ROSE HILL PARK	ON EAST FORDHAM ROAD, WEST OF FORDHAM STATION	NS	12,120
ALFRED LORETO PARK	VAN NEST AVENUE BETWEEN TOMLISON AND HAIGHT STREETS	MT	6,480
PELHAM BAY PARK	OUTSIDE PLAYGROUND# 1, AT MIDDLETON ROAD	C	5,726
FERRY POINT PARK	EAST ROAD, NEAR SOCCER FIELDS# 1, #3, AND #4 - PROCESSING CART	C	5,000
VAN CORTLANDT PARK	ON BROADWAY BETWEEN WEST 240TH AND WEST 263 STREETS, ALONG VAN CORTLANDT SOUTH	MT	5,000
FLORENCE COLUCCI PLAYGROUND	WILKENS ON AND MAYFLOWER AVENUES	MT	3,750
CRAMES SQUARE	HUNTS POINT AVENUE, EAST 163RD STREET, BRUCKNER BOULEVARD	C	3,667
SETON PARK	FROM WEST 235TH TO WEST 236TH STREET, BETWEEN DOUGLASS AND INDEPENDENCE STREETS	MT	3,000

PARK	LOCATION	TYPE	FOREGONE REVENUE
FERRY POINT PARK	WEST ROAD, NEAR SOCCER FIELD #2 AND SOFTBALL FIELDS #1 AND #2	C	2,750
CROTONA PARK	CROTONA AVENUE AND EAST 173RD STREET	TP	2,749
AQUEDUCT LANDS PARK	UNIVERSITY AVENUE SOUTH OF 181ST STREET	MT	2,443
VAN CORTLANDT PARK	NEAR THE PADDLE BALL AND TENNIS COURTS AT BROADWAY AND WEST 241ST STREET	C	2,000
VAN CORTLANDT PARK	BROADWAY BETWEEN WEST 240TH AND WEST 263 STREETS, BY THE SWIMMING POOL ENTRANCE	C	2,000
VAN CORTLANDT PARK	VAN CORTLANDT PARK SOUTH AND BROADWAY	C	2,000
WILLIAMSBRIDGE OVAL PLAYGROUND	NEAR THE SOUTHEAST SIDE OF THE ATHLETIC TRACK	C	1,955
VINMONT VETERAN PARK	254TH TO 256TH STREET AND MOSHOLU AVENUE TO RIVERDALE AVENUE	MT	1,834
MOSHOLU PARKWAY KOSSUTH PLAYGROUND	KOSSUTH AVENUE AND VAN CORTLANDT AVENUE EAST	C	1,803
PELHAM BAY PARK	NEXT TO BASEBALL FIELD LOCATED ALONG MIDDLETOWN ROAD	MT	1,716
GUN HILL HOUSES PLAYGROUND	MAGENTA STREET AND HOLLAND AVENUE	MT	1,664
WEST FARMS PARK	EAST 180TH STREET AND DALY AVENUE	MT	1,596
MAURICE MULLER PARK	CRESTON AVENUE AND EAST 190TH STREET	C	1,500
WATERBURY PARK	BRADFORD, EDISON, LA SALLE, WATERBURY AVENUES	MT	1,458
VAN CORTLANDT PARK	OFF MANSION ROAD	C	1,375
WILLIAMSBRIDGE OVAL PLAYGROUND	VAN CORTLANDT AVENUE EAST AND RESERVOIR OVAL EAST	C	1,350
ARCILLA PLAYGROUND	TELLER AVENUE AND 164TH STREET	MT	1,334
SOUND VIEW PARK	METCALF AND LAFAYETTE AVENUES	MT	1,175
HAFFEN PARK	OUTSIDE POOL AREA, ELY AND BURKE AVENUES	MT	1,040
SOUND VIEW PARK	MORRISON AND LAFAYETTE AVENUES	MT	990

PARK	LOCATION	TYPE	FOREGONE REVENUE
DEVOE PARK	WEST FORDHAM ROAD AND UNIVERSITY AVENUE	MT	911
CLAREMONT PARK	MOUNT EDEN PARKWAY, MORRIS AND EASTBURN AVENUES	MT	800
SETON PARK	WEST 232ND STREET AND INDEPENDENCE AVENUE	TP	757
BRONX PARK	BETWEEN GUNN HILL ROAD AND WARING AVENUE	MT	750
CROTONA PARK	HILL AND DALE PLAYGROUND AT EAST 173RD STREET	MT	700
CROTONA PARK	NORTH FROM PROSPECT STREET TO CLINTON STREET	MT	700
CROTONA PARK	CROTONA PARK POOL AT EAST 173RD STREET AND FULTON AVENUE	MT	700
BRONX RIVER HOUSES PLAYGROUND	EAST 174TH STREET, BRONX RIVER AVENUE	MT	600
L. ZIMMERMAN PLAYGROUND	3 PLAYGROUNDS ON OLINVILLE AVENUE	MT	525
BRONX PARK	BETWEEN BRADY AND LYDIG AVENUES	MT	500
PELHAM BAY PARK	BRUCHNER BOULEVARD AND HUTCHINSON RIVER PARKWAY	MT	458
P.S. 106 PLAYGROUND	ST. RAYMOND AVENUE BETWEEN O'DELL AND PURDY STREETS	MT	405
VAN CORTLANDT PARK	MOSHOLU PARKWAY SOUTH AND NORTH BETWEEN VAN CORTLANDT PARK SOUTH AND WEBSTER AVENUE	MT	400
CROTONA PARK	BOROUGH HALL PLAYGROUND ENTRANCE	MT	350
MAPES AVENUE BALLFIELDS	PROSPECT AVENUE, EAST 181ST STREET	MT	350
PELHAM BAY PARK	SERVICE ROAD BETWEEN THE BALLFIELDS	C	324
PELHAM BAY PARK	BEHIND VETERAN'S MEMORIAL	C	292
TOTAL FOR BRONX			\$ 514,491

BROOKLYN			
PROSPECT PARK PARADE GROUNDS	GRAND ARMY PLAZA ACROSS FROM THE LIBRARY	C	36,200
PROSPECT PARK PARADE GROUNDS	AT THE 9TH STREET ENTRANCE	C	36,200
PROSPECT PARK PARADE GROUNDS	AT THE 3RD STREET ENTRANCE	C	26,200

PARK	LOCATION	TYPE	FOREGONE REVENUE
CONEY ISLAND BEACH	BRIGHTON 2ND STREET AND THE BOARDWALK	MT	25,500
SETH LOW PARK	BETWEEN BAY PARKWAY AND AVENUE P	MT	22,000
MARINE PARK	BETWEEN MADISON AND FILMORE AVENUES	MT	19,315
SHORE PARKWAY GAS STATION	SHORE PARKWAY GAS STATION	GS	16,779
PROPECT PARK - GRAND ARMY PLAZA	FLATBUSH AVENUE AND PLAZA STREET	NS	15,835
WILLIAM E. KELLY PARK	AVENUE S BETWEEN EAST 14TH AND 16TH STREETS	MT	10,500
COLONEL MARKUS PLAYGROUND	EAST 5TH STREET ENTRANCE OFF OF AVENUE P	MT	8,500
CALLAHAN-KELLY PLAYGROUND	FULTON STREET AND VAN SINDEREN AVENUE	BC	6,422
OCEAN PARKWAY MALLS	IN FRONT OF CONEY ISLAND HOSPITAL	C	6,410
CONEY ISLAND BOARDWALK	CONEY ISLAND AVENUE AT BRIGHTWATER COURT	MT	6,407
MANHATTAN BEACH PARK	ORIENTAL BOULEVARD AT MACKENZIE STREET	TP	3,672
ASSER LEVY PARK	SURF AVENUE, EAST OF WEST 5TH STREET	C	3,113
FORT GREENE PARK	DEKALB AND SOUTH PORTLAND AVENUES	TP	3,000
MC CARREN PARK	LORIMER AND BAYARD STREETS AND UNION AVENUE	C	2,791
MARINE PARK	PLUMB BEACH PARKING AREA	MT	2,295
DYKER BEACH PARK	BAY 8 STREET AND CROPSY AVE	TP	2,172
SHORE ROAD PARK	MCCAY TO 82ND STREET	MT	2,108
MARINE PARK	AVENUE S PARKING LOT AND THE OVAL	C	2,065
MC CARREN PARK	DRIGGS AVENUE AND NORTH 12TH STREET	C	2,015
LINCOLN TERRACE PARK/ SOMERS	PARK PATH CONNECTING LINCOLN TERRACE AND ROCHESTER AVENUES	C	1,791
MARINE PARK	AVENUE S AND EAST 32ND STREET	TP	1,768
WILLIAM E. KELLY MEMORIAL PARK	BETWEEN EAST 14TH AND 15TH STREETS	TP	1,713
MCKINLEY PARK	7TH AVENUE, BAY RIDGE PARKWAY AND FORT HAMILTON PARKWAY	TP	1,687

PARK	LOCATION	TYPE	FOREGONE REVENUE
KAISER PARK	NEPTUNE AVENUE AND 28TH STREET	TP	1,494
MARINE PARK	AVENUE U PARKING LOT AND THE OVAL	C	1,262
MCKINLEY PARK	BAY RIDGE PARKWAY AND FORT HAMILTON PARKWAY	C	667
LINCOLN TERRACE PARK	BUFFALO AVENUE AND EAST NEW YORK AVENUE	TP	622
JOE GALAPO PLAYGROUND	AVENUE V, GRAVESEND NECK ROAD, AND BEDFORD AVENUE	MT	600
PS 52 PLAYGROUND	AVENUE Z, NOSTRAND AVENUE, AND EAST 29TH STREET	MT	600
SUNSET PARK	41ST STREET BETWEEN 6TH AND 7TH AVENUES AND 44TH STREET BETWEEN 5TH AND 6TH AVENUES	C	579
BERGEN BEACH PLAYGROUND	EAST 71ST STREET, BETWEEN AVENUES N AND T	MT	492
FOX PLAYGROUND	AVENUE H AND AVENUE I BETWEEN EAST 54TH AND 55TH STREETS	MT	444
J.J BYRNE MEMORIAL PARK	4TH AVENUE TO 5TH AVENUE BETWEEN 3RD AND 5TH STREETS	MT	356
MARIA HERNANDEZ PARK	ALONG IRVING AVENUE BETWEEN STAR AND SUYDAM STREETS	C	347
CANARSIE PARK	NEAR FIELDHOUSE BETWEEN EAST 88TH STREET AND EAST 89TH STREET	C	331
PAERDEGAT PARK	FOSTER AVENUE, ALBANY AVENUE, AND FARRAGUT ROAD	MT	277
JACKIE ROBINSON PARK	MALCOLM X BOULEVARD, CHAUNCEY AND MARION STREETS	TP	157
TOTAL FOR BROOKLYN			\$ 274,688

STATEN ISLAND

SCHMIDTS LANE	215 SCHMIDTS LANE	BA	\$ 10,250
WOLFE'S POND PARK	WESTERN PORTION OF PARKING LOT	MT	3,400
MIDLAND-SOUTH BEACH	PARKING LOT BY THE FISHING PIER	MT	3,300
JOSEPH H. LYONS POOL	BAY STREET, VICTORY BOULEVARD, HANNAH STREET.	MT	2,475
CLOVE LAKES PARK	PARK ENTRANCE NEAR PLAYGROUND AND BALLFIELDS	C	2,219
MIDLAND-SOUTH BEACH	PARKING LOT #2, SOUTH OF HOCKEY RINK	MT	1,800

PARK	LOCATION	TYPE	FOREGONE REVENUE
GREAT KILLS PLAYGROUND	HILLCREST AVENUE, NORTH OF HIGHMOUNT ROAD	MT	1,783
BLOOMINGDALE PARK	BLOOMINGDALE ROAD AND LENEVAR AVENUE	MT	1,596
SCHMUL PLAYGROUND	MELVIN AVENUE, WILD AVENUE, AND PEARSON STREET	MT	1,125
MIDLAND-SOUTH BEACH	FATHER CAPODANNO BOULEVARD AND JEFFERSON AVENUE	MT	905
CLOVE LAKES PARK	NEAR THE PLAYGROUND AND BALLFIELDS OFF PARK ENTRANCE	MT	900
GREENCROFT (PS 53) PLAYGROUND	REDGRAVE AVENUE AND GREENCROFT AVENUE	MT	725
GEN. D. MACARTHUR PARK	JEFFERSON STREET AND DONGAN HILLS AVENUE	MT	700
MIDLAND-SOUTH BEACH	PARKING LOT #2, NEAR THE PICNIC AREA BETWEEN MIDLAND AND LINCOLN	MT	670
P.S 52 MASON PLAYGROUND	MASON AND BUELL AVENUE, DONGAN HILLS ROAD	MT	407
STAPLETON (P.S. 14) PLAYGROUND	TOMPKINS AVENUE, BROAD AND HILL STREETS	MT	268
TOTAL FOR STATEN ISLAND			\$ 32,523

GRAND TOTAL**\$ 6,861,274**

LEGEND	
AS - ART SHOW	MT - MOBILE TRUCK
BA - GO CARTS	NC - NUT CART
BC - BREAKFAST CART	NS - NEWS STAND
BK - BOOK STALL	O - OTHER
C - CART	PL - PARKING LOT
CL - CAROUSEL	R - RESTAURANT
DR - DRIVING RANGE	SB - SNACK BAR
GC - GOLF COURSE	SV - SOUVENIR CART
GS - GAS STATION	TP - TENNIS PROFESSIONAL
IS - ICE SKATING RINK	VM - VENDING MACHINES
IT - INDOOR TENNIS	

**FOREGONE REVENUE RESULTING FROM
IMPROPERLY REJECTED BIDS AND PROPOSALS**

PARK	LOCATION	TYPE	BORO	FOREGONE REVENUE
CENTRAL PARK THEODORE ROOSEVELT PARK	NINE LOCATIONS IN CENTRAL PARK AND ONE LOCATION IN THEODORE ROOSEVELT PARK	TS	M	\$ 643,222
CENTRAL PARK	WEST 81ST STREET AND CENTRAL PARK WEST	C	M	231,375
CENTRAL PARK	EAST DRIVE NEAR EAST 70TH STREET	C	M	221,376
CENTRAL PARK	5TH AVENUE AND EAST 90TH STREET	C	M	221,376
CENTRAL PARK	NORTH END OF GREAT LAWN NEAR WEST 85TH STREET	C	M	211,380
CENTRAL PARK	END OF THE GREAT LAWN, NEAR EAST 82ND STREET	C	M	141,375
CENTRAL PARK	WEST DRIVE BETWEEN WEST 85TH AND 86TH STREETS	C	M	98,880
CENTRAL PARK	CENTRAL PARK WEST AND WEST 86TH STREET	C	M	61,380
CENTRAL PARK	5TH AVENUE BETWEEN EAST 97TH AND 98TH STREET	C	M	48,870
THEODORE ROOSEVELT PARK	COLUMBUS AVENUE AND WEST 77TH STREET	C	M	31,380
FERRY POINT PARK	EAST ROAD, NEAR SOCCER FIELDS# 1, #3, AND #4 - MOBILE FOOD UNIT)	C	B	4,000

GRAND TOTAL

\$ 1,914,614**LEGEND:**

B - BRONX

C - CART

M - MANHATTAN

TS - T-SHIRT

DETAILED DISCUSSION OF PARKS RESPONSE

In its response, Parks strongly objected to our methodology and the tone of the report. We have added this Appendix to record additional issues raised in the Parks response and our comments. (For the full text of Parks response, see the Addendum to this report.)

Parks Did Not Ensure that Concessions Continuously Operated, Resulting in Foregone Revenue of \$6.9 Million

Re: Valentino's / Clearview Cafe – purported \$379,167 in “foregone revenue”

Parks Response: The “gap” in revenue alleged in the Report occurred *solely* because Parks acted to remove an incumbent concessionaire that was being investigated for ties to organized crime, and because Parks complied with a court injunction, while awaiting the result of litigation with that incumbent. Parks eventually regained control of the facility and selected a concessionaire so that the necessary interior renovation work, originally estimated as a capital investment of \$850,000, could proceed. By the time that this work, along with unanticipated exterior and ADA compliance work, was completed, the new concessionaire had invested over \$2.5 million in this publicly-owned facility.”

Auditor Comment: Parks’ removal of the incumbent concessionaire and compliance with a court injunction did not impact Parks’ ability to execute a contract and commence operations in a timely manner. Essentially, this concession failed to operate and generate revenue because Parks improperly extended the newly awarded concessionaire’s capital construction period and, thus, the commencement date by 11 months—from July 30, 2009, to June 30, 2010. Parks initially allowed this concessionaire four months to complete construction. (When calculating foregone revenue, we took this into consideration and did not cite Parks for this period.) Further, Parks stipulated that construction be completed in this timeframe

“... unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty.”

Although there were no such extenuating circumstances, Parks granted this concessionaire two extensions. Parks first granted the concessionaire an eight month extension maintaining that the concessionaire was unable to obtain Public Design Commission (PDC) approval and then granted an additional three month extension on the basis that the concessionaire identified pre-existing structural deficiencies. However, Parks did not provide us any documentation to support its claim of pre-existing structural deficiencies or any explanation as to why it took the concessionaire eight months to obtain PDC approval. This information was not provided by Parks, despite numerous opportunities to do so.

Re: Mineral Springs – purported \$137,500 in “foregone” revenue

Parks Response: “Parks deliberately used a temporary closure to enhance the park experience with an improved concession generating much higher revenue....That increase could not have been achieved without the capital investments, which could not have been made without the closure.”

Auditor Comment: We agree that, in some circumstances, capital construction necessitates the “temporary” closure of Parks concessions. Again, when calculating foregone revenue, we took this into consideration and did not cite Parks for allowable capital construction periods. However, Parks did not execute the Mineral Springs contract in a timely manner and therefore, *both* capital construction and operations were substantially delayed. Although the Mineral Springs existing contract expired in March 2009, construction did not start until March 2010 because Parks failed to issue this solicitation in a timely manner. Parks issued a solicitation on February 3, 2009, for which proposals were due by March 24, 2009—just one week prior to the existing contract’s expiration date. Clearly, this made contracting in a timely manner impossible. Therefore, we reiterate that Parks did not effectively manage the solicitation and award process and as a result, lost concession revenue of \$137,500.

Re: Central Park Tennis – purported \$129,200 in “foregone” revenue

Parks Response: “Parks exercised proper management to ensure that its concessionaires are responsible business partners, while also ensuring continuous service. At the time that this seasonal concession was due to expire (11/07), Parks chose to extend the agreement for an additional year to await the results of an ongoing Comptroller audit of the incumbent....Parks had no legal basis to require this concessionaire – or any other concessionaire operating in a similar post-expiration capacity – to pay increased fees during an extension term, without any commitment that it will be awarded a new term. Parks acted appropriately in continuing the prior concession until the results of the audit made it possible to proceed with a new award at a higher fee.”

Auditor Comment: Parks lost Central Park Tennis revenues in part because it failed to issue this solicitation in a timely manner. Parks allowed itself just four and one-half months to solicit and award this concession. However, Parks actually took nearly a year and four months to complete this process. This process was substantially delayed because Parks did not properly administer the evaluation process. In June 2008, MOCS and the Law Department determined that Parks rated proposals “using inconsistent documentation on financial capability.” Consequently, upon MOCS advice, Parks repeated the submission and evaluation process. Parks asked proposers to submit additional financial information and formed a new Selection Committee to evaluate submissions. These new submissions were due on September 2, 2008—nearly eight months after the initial submission deadline of January 4, 2008. Clearly, Parks’ failures to initiate the solicitation process far enough in advance and to properly administer the process rendered Parks unable to execute this contract in a timely manner. Therefore, we

reiterate that Parks did not effectively manage the solicitation and award process and, as a result, lost concession revenue of \$129,200.

Additionally, Parks is erroneous in its assertions that it acted appropriately in extending the incumbent concession contract for one year and that it could not charge the concessionaire increased fees during this “extension term”. In fact, this extension constitutes an improper concession award and violates FCRC Rules. Parks should have negotiated an interim agreement, in accordance with FCRC rules, that provided current market rate fees.

Re: Flushing Meadows Corona Park Ice Rink – purported \$119,667 in “foregone” revenue

Parks Response: “In this finding, the Report appears to have confused two concessions (at two different locations), mistakenly treating them as one. The ice rink originally available in this park, under a concession that was to expire in September 2009, was closed when the structure was taken over by the Queens Museum. The City built a new facility across the street, via processes unconnected to the concession award. The new concession opened at the new location precisely when that new rink was ready (February 2009).”

Auditor Comment: There is in fact one concession to operate an ice skating rink in Flushing Meadows Corona Park. While the facility location changed, the concession operation remained the same. As noted in Parks RFP,

“The existing skating rink...is scheduled to close once the new facility opens....The new ice rink will replace the rink that will be demolished.”

The new facility was scheduled to be completed by Fall 2007, in conjunction with the expiration of the existing contract expiration date of September 30, 2007. However, Parks did not have a new contract executed by this time and therefore lost concession revenue. Parks failed to issue this solicitation in a timely manner because it allowed itself only about five months to solicit and award this concession. However, Parks actually took a year and one half to complete this process. Again, this process was substantially delayed because Parks did not properly administer the evaluation process. Over a two month period from July 19, 2007, to September 17, 2007, Parks evaluated proposers based on initial and revised proposals, individual proposer meetings, and initial and revised BAFOs. Based on these evaluations, Parks recommended a proposer for award. However, when MOCS subsequently reviewed this process, it

“Discovered that documentation evidencing the basis for one evaluator’s decision to change her score from between the 5th and 6th rounds was missing. Because this change affected the apparent highest rated proposal in a competition characterized by very close scores, and because of personnel changes at Parks, an additional BAFO round ...was undertaken with a Selection Committee comprised of three (3) entirely new evaluators.”

Parks conducted this final evaluation on March 26, 2008, and did not recommend an award until August 6, 2008. Again, Parks failures to initiate the solicitation process far enough in advance and to properly administer the process rendered Parks unable to execute this contract in a timely manner.

In the interim, Parks extended the incumbent concessionaire's contract to September 30, 2008. However, the incumbent's fees were less than those offered for that period by the prospective concessionaire. Consequently, we reiterate that Parks did not effectively manage the solicitation and award process and as a result, lost concession revenue of \$119,667.

Re: Gas Stations – purported \$95,665 in “foregone” revenue

Parks Response: “Parks appropriately extended the Exxon Mobil concession for two months, so as to transition this facility from an incumbent operator to the new operator who had won the award in a competition, while also ensuring continuous service to the public. The new agreement pays the City an average of over \$600,000 more per year than the Exxon concession, and over the 15 year term will generate roughly \$9 million more in concession revenue. These amounts could not have been extracted from Exxon for the extension period. Exxon knew it had not been awarded the new concession and had no obligation to remain in place, much less increase its fees.”

Auditor Comment: Parks lost gas station revenues because it failed to issue this solicitation in a timely manner and, once solicited, Parks did not track the solicitation and award process to ensure it progressed in a timely manner. Parks allowed itself nine months to solicit and award this concession. However, Parks actually took 11 months to complete this process. In the interim, Parks extended the incumbent concessionaire's contract for two months. However, as Parks points out, the incumbent's fees were far less than those offered for that same period by the prospective concessionaire. Consequently, we reiterate that Parks did not effectively manage the solicitation and award process and, as a result, lost concession revenue of \$95,665.

Additionally, we do not, as Parks suggests, recommend that Parks extract higher fees from its incumbent concessionaires. Rather, we recommend that Parks execute its contracts timely so that it can capitalize on current market rate fees offered by prospective concessionaires. If this is not possible due to extenuating circumstances, such as early contract termination, then we recommend that Parks negotiate interim agreements, in accordance with FCRC rules, that provide current market rate fees.

Re: 79th Street Boat Basin Café –purported \$38,060 in “foregone” revenue

Parks Response: “Much like the Central Park Tennis example above, Parks exercised proper management to ensure that it had a responsible business partner, while ensuring a continuous service that was important for park users' experience. At the time that this seasonal concession was due to expire in early 2009, Parks extended the agreement for

several months, to determine the status of an affiliate with significant outstanding tax liens. Parks has no legal basis to require a concessionaire to pay increased fees during an extension term, based on anticipated fees under an agreement the concessionaire hasn't been awarded (and may not be awarded, pending the outcome of the responsibility review). Parks had no legal basis to require the concessionaire to pay increased fees during an extension term, without any commitment that it would be awarded a new term. Parks acted appropriately in continuing the prior concession until the tax issues were resolved and it could proceed with a new award at a higher fee."

Auditor Comment: Parks lost 79th Street Boat Basin Café revenues in part because Parks allowed itself only six months to solicit and award this concession. More importantly, once solicited, Parks did not track the process to ensure that it progressed in a timely manner. In fact, Parks took more than 14 months to evaluate a single round of proposals, vet the prospective concession, and recommend an award. In the interim, Parks extended the incumbent concessionaire's contract for the full 2009 operating season. However, these fees were less than those offered for that same period under the prospective contract. Consequently, we reiterate that Parks did not effectively manage the solicitation and award process and, as a result, lost concession revenue of \$38,060.

Again, Parks is erroneous in its assertions that it acted appropriately in extending the incumbent concession contract for the full 2009 operating season and that it could not charge the concessionaire increased fees during this "extension term". In fact, this extension constitutes an improper concession award and violates FCRC Rules. Parks should have negotiated an interim agreement, in accordance with FCRC rules, that provided current market rate fees.



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November 2, 2011

H. Tina Kim
Deputy Comptroller for Audit
City of New York Office of the Comptroller
One Centre Street
New York, NY 10007-2341

**Re: Comptroller's Draft Audit Report, FK10-129A,
Department of Parks & Recreation's Controls over the Awarding of Contracts**

Dear Deputy Comptroller Kim,

This letter, together with the attached outline, provides the response by the Department of Parks & Recreation ("Parks") to the findings and recommendations ("Recommendations") contained in the New York City Comptroller's Draft Audit Report ("Report"), dated October 6, 2011.

Regrettably, Parks must convey its substantial disagreement with most aspects of this Report. In our view, the recommendations and conclusions in the Report show a serious lack of understanding of the required elements of the concession award process, particularly regarding the need for a determination that a prospective concessionaire will be a responsible business partner, with the integrity and financial wherewithal to serve the public, and meet its financial obligations.

Furthermore, the Report appears to recommend that Parks, in managing a portfolio of over 400 concessions, not respond to clear business and legal circumstances that necessitate a course of action that may delay the commencement of new license agreements. These delays are the result of decisions made in the best interest of the City. Taken together, the recommendations in this report, if followed, would have Parks pursue concession revenue above all other considerations; as the guardian of important City assets, we simply cannot ignore legal obligations and ongoing court proceedings to maintain a revenue stream, nor would we forego opportunities to obtain large scale, long-term capital investments that, while they may temporarily delay the collection of a revenue stream, will permanently increase the value of that stream for the future.

We are particularly concerned by the presentation of the findings and recommendations in this report because Parks has cooperated in full with this audit, and repeatedly provided explanations for many of the findings presented here that render most of the conclusions totally unsupported. But that information has not changed the content and presentation of this report. Moreover, Parks has had a longstanding, cooperative relationship with the Comptroller's office, and has always acknowledged where improvements to existing processes could be made. Given that track record, the misleading, and in many instances, unfounded conclusions presented here are a surprise, and extremely disappointing.

Parks recognizes the key role it plays as a revenue-generating agency, and indeed, leads the City in the amount of concession revenue garnered. Parks concessions generated over \$42 million for the City's

challenging economic environment that has greatly affected the small business owners who operate the majority of Parks' concessions. We are proud that we have attained these much-needed revenues while achieving our primary mission of careful stewardship over the priceless array of green spaces that provide active and passive recreation opportunities for all New Yorkers. From the Recommendations of this Report, we conclude that the Comptroller would have Parks pursue revenue opportunities without regard to the impact those uses would have on the public purpose of our parks, and would have us do so without regard to whether the potential concessionaires were bankrupt, corrupt, delinquent in tax payments or otherwise fail to demonstrate that they can be responsible business partners. From the Recommendations, we would even have to conclude that the Comptroller expects Parks to ignore legal obligations and ongoing court proceedings in order to produce revenue. For the reasons detailed below, Parks rejects many of the findings of this Report, particularly the Report's notions of "foregone revenue."

The Report's specific findings of "foregone revenue" ignore deliberate legal, policy and business decisions and requirements made in the best interest of the City. In fact, the Report unfairly criticizes Parks for actions that produced new concessions *generating millions of dollars more revenue to the City than their predecessors* and that required operators to *spend millions of dollars making capital improvements to publicly owned facilities*. The value of the capital improvements made by Parks concessionaires to its various facilities during the audit period – all of which is ignored by the Report – was approximately \$46 million. To obtain those investments in many instances, as a matter of sound management (not to mention public safety protection), Parks allowed temporary closures of the facilities undergoing renovation, trading such short-term revenue gaps for long-term value enhancement.

The audit purports to review Parks' entire system of controls over the concession award process, yet contrary to recognized auditing principles the Report fails to state its "evidence and findings *without omission of significant relevant information related to the audit objectives*." (Emphasis added. Rule A.8.02 (c), U.S. Government Accountability Office, Government Auditing Standards, July 2007.)

Most notably, this Report presents a handful of findings concerning minor procedural errors (several of which we assert are belied by the facts), coupling those findings with a mistaken notion of "foregone revenue," as the sum total of Parks' track record for compliance in its concession award process. But any fair examination of the Concession Rules, and of Parks' files, demonstrates that this is not a complete or accurate picture of Parks' internal controls over the concession award process. Parks' compliance record under the applicable rules is exemplary for such key provisions as: responsibility determinations [Rule 1-07]; annual concession plan [Rule 1-10(b)(1)]; major concession and significant concession notices to Community Boards [Rules 1-12(a)(2) and (3), and 1-13(a)(2) and (3)]; required content of bid and proposal solicitation notices [Rules 1-12(b)(1) and 1-13(b)(1)]; mailing lists establishment/maintenance [Rules 1-12(c)(1) and 1-13(d)]; pre-bid conferences [Rules 1-12(d) and 1-13(e)]; issuance of addenda [Rules 1-12(e) and 1-13(f)]; different procedure Community Board notices [Rule 1-16(b)(4)]; and documentation for Comptroller registration [Rules 1-17(c)]. Indeed, all of the concessions that the Report singles out for criticism were registered by the Comptroller. Virtually all of the information relied upon by this Report was in fact included in the registration submissions made at the time.

It is abundantly clear that Parks has overwhelmingly complied with the Concession Rules. The auditors were supplied with ample evidence that the highly regimented award process is rigorously adhered to, has extensive checks and balances and is supported by all appropriate documentation. The Report does not present one example of any action or omission by Parks that in any way compromised the integrity of the solicitation/award process. It does not present a substantive example of a bidder or proposer that was

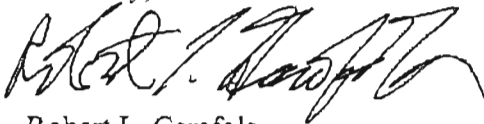
improperly excluded from the process. It does not offer a single example of a concession that was not awarded to the appropriate bidder or proposer, nor does it provide any example of how an action or omission by Parks could have exposed the City to liability. Rather, it appears to suggest that Parks ought to have been *less vigilant* in its enforcement of the rules, allowing non-responsible concessionaires to continue to operate so long as some revenue continued to come in.

The Report erroneously suggests that by failing to pursue revenue in such questionable circumstances, the City's fiscal condition has suffered and New Yorkers may have lost jobs. Nothing could be a more unfair characterization of Parks' track record. Our concessions create thousands of jobs and provide business opportunities to hundreds of New Yorkers who may not otherwise have an opportunity to own their own business. Indeed, our concessions play a key role in the City's strategic initiative for economic development.

Parks is justifiably proud of the concessions we offer the public, and we strive continually to improve and refine those amenities. In the past few years we have added a number of exciting new concessions, including a state-of-the-art indoor tennis facility at one of our newest parks, Mill Pond Park in the Bronx; a new year-round ice skating rink in Flushing Meadows Corona Park; a beautifully renovated café adjacent to Central Park's Sheep Meadow; more than 30 specialty carts; and a hop-on, hop-off bicycle rental service in Central, Riverside and Highbridge Parks. And we have done this at a time of economic duress. During the period covered by the Report, Parks generated over \$230 million in revenue for the City's General Fund. Putting aside the erroneous nature of all of the calculations of "foregone" revenue, the amounts identified would constitute less than 3% of the revenue we generated during the audit period. We believe that maintaining a stable stream of revenue, while awarding new and desirable concessions during an uncertain economic time, represents an extraordinary achievement. We are chagrined that the Comptroller's Office appears to suggest that we ought to have accepted revenue from non-responsible concessionaires.

We strongly believe that this Report does a disservice to Parks, and to the public, and that its conclusions are misleading and unfounded. Our detailed responses to specific findings are appended to this letter. Parks fully cooperated in this audit, and provided extensive documentation of its award process. We remain confident in the integrity of Parks' internal controls over the concession award process, and we look forward to continuing to provide Parks users with a diverse choice of first class amenities while generating revenue for the City.

Sincerely,



Robert L. Garafola

SUMMARY OF OBJECTIONS TO THE REPORT'S FINDINGS AND RECOMMENDATIONS

Report Finding 1 – Purported “Foregone Revenue” of \$6.9 Million

The Report incorrectly states that Parks did not initiate the solicitation process far enough in advance, and calculates that Parks allows only 2.6 months to solicit and award concessions. (The pre-solicitation review memorandum cited by the Report is not an accurate measure for when the solicitation process begins; drafting and legal review of solicitations takes place far in advance of the date the PSR is signed.) In fact, Parks consistently initiates the solicitation process 12 months in advance, and on certain occasions even more time is allotted. For example, the solicitation processes for Tavern on the Green, Valentino's/Clearview Café and the Flushing Meadows Corona Park ice were all initiated more than 12 months in advance and in fact the timing of concession awards in the stated examples in the Report had nothing whatsoever to do with the starting point of the preparation process. Further, the Report incorrectly (and without foundation) posits that the Concession Rules and/or “internal controls” somehow require continuous operation of any operating concession indefinitely into the future, and/or the collection of a steady stream of revenue. But the Rules are entirely silent on this issue, and “internal controls” is not so elastic a term that it can be used to encompass an *ad hoc* policy determination by the Comptroller's Office that “good management” of the concession portfolio must result in continuous operations regardless of other considerations.

Parks structures its license agreements not only to obtain revenue, but to incentivize concessionaires to make capital improvements to better service the public and to generate more revenue over the longer term of the license agreement. Capital improvements represent real value in terms of compensation to the City. They are funded by the concessionaire, and yet, at the City's option, become the property of the City upon installation, often greatly enhancing the revenue-generating potential of the facility.

Parks is vigilant in requiring concessionaires to cease operations for reasons such as default, potential criminal activity, and other legal circumstances. Such actions in fact reflect sound management. The Report's characterization of these decisions as examples of “foregone revenue” apparently indicates that the Comptroller's Office would have Parks choose to ignore criminal activity in favor of continued revenue streams, and/or to engage in extra-legal means to regain control of our facilities, rather than allowing litigation to take its course. Parks rejects those conclusions in their entirety.

Detailed below are several examples of “foregone revenue” findings from the Report. Each example documents the Report's fundamentally flawed analysis, and none represents any failure of good practice or proper internal controls by Parks.

Tavern on the Green – purported \$2,165,214 in “foregone” revenue

The factual history of the RFP for Tavern on the Green does not substantiate it as an example of “foregone revenue”. The Report suggests that Parks could ensure steady revenue streams by soliciting and awarding its concessions earlier in the process. But the facts of this concession make clear this is not the case. Parks solicited for this concession well in advance of the expiration of the prior term. Parks aggressively marketed the opportunity, which garnered significant interest.

The incumbent concessionaire, already deeply in arrears to Parks for unpaid concession fees, declared bankruptcy prior to the end of its term. At no time could Parks have determined that incumbent to be a responsible concessionaire for a new award. Meanwhile, the facility was in tremendous need of renovation

and the Bankruptcy Court allowed the incumbent to remove and sell most of the fixtures and equipment, further diminishing the premises' status as an ongoing operation. The bankruptcy litigation forced the extension of the concession term to February 2010, but left Parks unable to collect any of the fees due for the extension period or the prior debts because the incumbent was insolvent. Parks' claims will be addressed (eventually) in the bankruptcy case, if any assets are recovered for distribution to creditors. The City successfully litigated ownership of the "Tavern on the Green" name, which remains an asset that (valued at several million dollars) that Parks may one day be able to capitalize on again.

While the highest scored proposer was ultimately unsuccessful in negotiating a concession agreement, even if it had succeeded, the capital improvements required to reopen this City asset were sufficiently substantial to make continuous operation impractical, if not impossible. Contrary to the Recommendations, Parks could not have awarded to either of the other proposers, both of which scored significantly lower, including the bankrupt incumbent. To claim as the Report does that Parks "lost" revenue opportunities implies that Parks could and should have awarded a new concession to a bankrupt, non-responsible incumbent. Moreover, it strains credulity to imagine that the bankrupt incumbent would pay *higher* concession fees since it had proven itself unable to keep its payments current even at the significantly lower fee under the prior agreement.

Valentino's / Clearview Cafe – purported \$379,167 in "foregone revenue"

The "gap" in revenue alleged in the Report occurred *solely* because Parks acted to remove an incumbent concessionaire that was being investigated for ties to organized crime, and because Parks complied with a court injunction, while awaiting the result of litigation with that incumbent. Parks eventually regained control of the facility and selected a concessionaire so that the necessary interior renovation work, originally estimated as a capital investment of \$850,000, could proceed. By the time that this work, along with unanticipated exterior and ADA compliance work, was completed, the new concessionaire had invested over \$2.5 million in this publicly-owned facility. The Report's claims fail to recognize this substantial added compensation to the City. More importantly, Parks cannot concur in a finding of foregone revenue, when there simply was no set of facts – short of ignoring an injunction – that could have allowed Parks to collect that revenue.

Mineral Springs – purported \$137,500 in "foregone" revenue

Parks deliberately used a temporary closure to enhance the park experience with an improved concession generating much higher revenue and a very substantial capital investment. Parks' strategy with this concession converted a seasonal operation to a year-round, greatly enhanced facility. The new operator spent nearly \$1 million on capital renovations, which directly resulted in that operator being able to pay the City nearly *three times* as much per year compared to the prior concession. That increase could not have been achieved without the capital investments, which could not have been made without the closure. Over the 12 year term, the City will receive millions more in additional revenue than it did under the prior concessionaire.

Central Park Tennis – purported \$129,200 in "foregone" revenue

Parks exercised proper management to ensure that its concessionaires are responsible business partners, while also ensuring continuous service. At the time that this seasonal concession was due to expire (11/07), Parks chose to extend the agreement for an additional year to await the results of an ongoing Comptroller audit of the incumbent. It did so in consultation with the Comptroller's Office, which supported this approach at that time. Since the incumbent was the highest-rated proposer, it was important to fully address the Comptroller's findings in any new award. Parks documented its process in the award recommendation

for the concession agreement, which the Comptroller registered. There was no break in service to the public. Parks had no legal basis to require this concessionaire – or any other concessionaire operating in a similar post-expiration capacity – to pay increased fees during an extension term, without any commitment that it will be awarded a new term. Parks acted appropriately in continuing the prior concession until the results of the audit made it possible to proceed with a new award at a higher fee.

Flushing Meadows Corona Park Ice Rink – purported \$119,667 in “foregone” revenue

In this finding, the Report appears to have confused two concessions (at two different locations), mistakenly treating them as one. The ice rink originally available in this park, under a concession that was to expire in September 2009, was closed when the structure was taken over by the Queens Museum. The City built a new facility across the street, via processes unconnected to the concession award. The new concession opened at the new location precisely when that new rink was ready (February 2009) and pays an annual fee more than twice that of the old rink and invested nearly \$1.5 million in capital improvements.

Gas Stations – purported \$95,665 in “foregone” revenue

Parks appropriately extended the Exxon Mobil concession for two months, so as to transition this facility from an incumbent operator to the new operator who had won the award in a competition, while also ensuring continuous service to the public. The new agreement pays the City an average of over \$600,000 more per year than the Exxon concession, and over the 15 year term will generate roughly \$9 million more in concession revenue. These amounts could not have been extracted from Exxon for the extension period. Exxon knew it had not been awarded the new concession and had no obligation to remain in place, much less increase its fees.

Marine Park Golf (MPG) – purported \$40,625 in “foregone” revenue

The Report alleges a “gap” in revenue *solely attributable to* the removal of concession operators based on investigation results. Pursuant to Concession Rule 1-14(b)(2), Parks used a fast-track negotiated concession agreement to bring in American Golf to operate this course for the 2008 season, following the early termination of East Coast Golf’s concession contract in late 2007, an early termination that resulted from a serious investigation. Revenue was not the primary basis for the negotiated award to American Golf; rather, Parks made a policy judgment that continuous service by an interim operator was important for park users’ experience. The course was then closed for the winter off-season (early 2009), which Parks determined was a reasonable plan, in light of the circumstances of the East Coast Golf termination and of American Golf’s limited commitment to the interim operation. Rather than award this potentially lucrative concession for a lengthy term based on that fast-track interim award process, Parks issued a new, fully-competitive solicitation in early 2008, awarding the concession in a timely manner. Parks authorized a two month period of construction for the new operator to perform maintenance, repair and equipment installation at the property. The facility was not open during this time period, which was reasonable in light of the reasons for the disruption in service, but the new concession opened in May of 2009, very early in the golf season. Short of leaving a questionable incumbent in place, there was simply nothing Parks could have done to have effected this transition without a gap in revenue.

79th Street Boat Basin Café –purported \$38,060 in “foregone” revenue

Much like the Central Park Tennis example above, Parks exercised proper management to ensure that it had a responsible business partner, while ensuring a continuous service that was important for park users’ experience. At the time that this seasonal concession was due to expire in early 2009, Parks extended the agreement for several months, to determine the status of an affiliate with significant outstanding tax liens. Parks has no legal basis to require a concessionaire to pay increased fees during an extension term, based on

anticipated fees under an agreement the concessionaire hasn't been awarded (and may not be awarded, pending the outcome of the responsibility review). Parks had no legal basis to require the concessionaire to pay increased fees during an extension term, without any commitment that it would be awarded a new term. Parks acted appropriately in continuing the prior concession until the tax issues were resolved and it could proceed with a new award at a higher fee.

Pushcarts and Mobile Food Units – purported “foregone revenue” of \$3 million

We agree that our solicitations for mobile food units should have been awarded in a more time effective manner. During the last year, we engaged in a comprehensive review of our solicitation and award process and have identified several strategies for reducing the amount of time necessary to award these concession types. The Revenue division manages over four hundred concession businesses. Approximately half of our businesses are mobile food concessions, i.e., pushcarts and mobile food trucks. The sheer volume of this portfolio requires that we regularly issue solicitations for the operation of mobile food concessions. Parks manages these concessions as a portfolio, not on a site-by-site basis. We look to maintain the overall revenue-generating prospects of each park area, not the specific revenues for a specific cart – and we adjust our concession operations to account for changes in park users' tastes and interests, and other market factors.

Parks' Request for Bids (RFBs) for mobile food (pushcarts and mobile trucks) *anticipates* breaks in service. Our RFBs state that the first operating year commences with issuance of a notice to proceed and prorates the first year's fee to account for normal start-up delays. We try to schedule such breaks in service during the winter, as most mobile units operate seasonally. Once Parks makes its awards to the highest responsive and responsible bidders, there are numerous steps that Parks and the concessionaires must take before those concessions can commence. Most of our mobile vendors are small-scale entrepreneurs who are often entering the business community for the first time, so Parks works closely with them to navigate the required steps to start their businesses. Again, Parks has identified several methods we believe will result in reducing the amount of time necessary to award mobile food concessions.

Recommendations Linked to Finding 1:

1. Consider the actual time it takes to solicit and award concessions and issue solicitations accordingly to preclude the loss of concession revenue.
2. Track the solicitation and award process to ensure that it progresses in a timely manner.
3. Charge concessionaires operating under expired contracts or TUAs fees that are commensurate with anticipated new contract terms.
4. Immediately recommend an award for Tavern on the Green or re-solicit this concession.

Parks already follows the practices set forth in Nos. 1 and 2, and for the reasons explained above, those recommendations have nothing to do with the gaps in revenue complained about in the Report. As described above, Parks has no legal basis to require concessionaires to follow No. 3. As for No. 4, Parks cannot award the concession without regard to concessionaire responsibility. Parks will release an RFP later this year for Tavern on the Green, which will take into account the substantial alterations to the facility.

Report Finding 2 – Purported “Foregone Revenue” of \$1.9 Million

The Report erroneously concludes that Parks “lost” concession revenue of more than \$1.9 million when it “improperly” rejected bids for two separate solicitations. However, the two cited rejections in fact document Parks' exercise of its duty to ensure that concessionaires are responsible business partners for the City.

Parks rejected a bid from New York One for a pushcart operation in Central Park based on operational and business integrity concerns. The Report states that Parks rejected these bids "...without required written justification." This is incorrect. Parks correctly documented its decision to reject these bids. Indeed, in accordance with article 1-12(n)(2) the Concession Rules, Parks concession files' include memos signed by the agency's Concession Manager and Agency Head authorizing rejection of these bids. The auditors were given these memos yet the Report makes no mention of them. Parks had documented problems with New York One's performance, audit discrepancies and failure to pay taxes, and accordingly rejected the bids for these locations in the best interests of the City. As noted in the prior section, there is no "internal control" standard that obligates Parks to continually locate food carts at any specific locations. At the time of this rejection, there were plenty of other carts available to service park users.

Parks also rejected bids for t-shirt sales, determining that it was in the City's best interests to do so because the operators could not, in fact, succeed at the location identified in the bid. The high bid offered the same amount that the prior concessionaire had been obligated to pay. But that incumbent had defaulted, as a result of competition from disabled veteran vendors selling at nearby locations. These circumstances made the collection of the new bidder's projected revenue highly unlikely. Again, there is no "internal control" standard that obligates Parks to operate a t-shirt concession at any specific location, much less any standard that dictates that Parks must allow a small business to open an operation, recognizing that it would inevitably default.

Recommendation Linked to Finding 2:

5. Make and retain approved written determinations to reject all bids or proposals that detail why an award is not in the City's best interest.

Parks already follows this practice.

Report Finding 3 – Supposed Advertising Irregularities

The Report claims that Parks did not receive competitive responses for several of its solicitations because they were not "properly advertised." In particular, the Report states that Parks did not receive competitive bids for 216 of 240 pushcarts for solicitation CWB 2009A because the concessions were advertised in the City Record for only one day. It is clear from the documents supplied to the auditors that Parks correctly requested that this solicitation be advertised for 11 business days, and that Parks also advertised this solicitation in the *New York Post*, *New York Times*, *Crain's*, *Westside Spirit*, *Bronx Times Reporter*, *Queens Tribune*, *Staten Island Advance*, *Minority Commerce*, *India Abroad*, *Jewish Week*, *Hoy*, *Novoye Russkoye Slovo*, *Segye Times*, *America Oggi*, *Catholic NY*, *Caribbean News* and the *Greek National Herald*. The Report incorrectly identifies solicitation M10-IT as having been insufficiently advertised, when that is not the case, and also claims that solicitation X39-SBS did not allow for proper response time after advertisement in the City Record. The Report ignores the fact that the Concession Rules expressly permit shorter time frames for response where the concession manager makes a written determination that such a practice is reasonable, which occurred in this case. The shorter response time is documented in the memoranda submitted for approval and registration of this concession, and is included in the concession file. The Report states that "...16 solicitations yielded no responses, six concessions yielded a single response and one concession yielded two responses." However, the 16 "no responses" and 4 of the "single responses" were from CWTP2009 (tennis pros). That type of concession is generally a very small business, which generates the most modest of revenues. The service is provided strictly as an amenity to park users and never generates a large volume of responses to these solicitations.

Recommendations Linked to Finding 3:

6. Ensure that it advertises solicitations in at least 10 successive issues of The City Record.
7. Ensure that it provides bidders and proposers minimum response times of 10 business days and 20 days, respectively.

With regard to No. 6, Parks will ensure that it advertises solicitations in at least 10 successive issues of The City Record. With regard to No. 7, Parks will continue to follow the practices authorized under the Concession Rules, fully documenting any decisions it may make concerning shortened response times.

Report Finding 4 – Purported Failure to Increase Competition

In making this finding, the Report ignores Parks' significant outreach program to generate responses to our solicitations:

- Parks sends out Notices of Solicitation to an extensive mailing list. For example, a recent Notice of Solicitation for mobile food operators went to approximately 2,000 contacts.
- Parks advertises all concession opportunities on its website, which receives approximately 300,000 visits per month.
- Parks advertises concession opportunities in various neighborhood papers throughout the City, as well as business journals (e.g., *Crain's New York Business*) and citywide papers (e.g. the *Daily News*, *New York Post*). Project Managers also "cold call" relevant businesses that we find through market research.
- For concessions such as specialty carts, cafes and snack bars, Parks sends "tips" with a link to the RFP to an extensive list of food-oriented blogs.
- Parks also undertakes door-to-door outreach, and has identified several current concessionaires through this method. For example, operators for the snack bar at Mineral Springs (now operated by Le Pain Quotidien) in Central Park and the snack bar on First Avenue and First Street (now operated by S'Mac) were identified in such visits.

Recommendations Linked to Finding 4:

8. Examine why it receives a small number of responses to solicitations and initiate appropriate corrective action to increase competition for future solicitations.
9. Maintain written statement of corrective action taken in concession files.

Parks has a comprehensive understanding of the market for its concessions and already follows these practices. Pursuant to the Concession Rules, when corrective actions regarding competition are taken, Parks will fully document them in the concession files.

Report Finding 5 – Absence of Supposedly Critical Documentation on the Award Process

Parks in fact provided virtually all of the documentation the Report claims to be missing. The Report actually acknowledges on page 11 that "Parks ... subsequently provided us nearly all missing bids, proposals,

BAFOs, and all rating sheets” but goes on to assert that Parks took too long to locate some of the records. However, Parks provided the auditors with the requested documentation within days of being informed as to what *specific* documents they believed to be missing.

The Report erroneously claims that selection committee discussions, negotiations and reports were not properly maintained. However, these matters are fully documented in the format prescribed by the City Chief Procurement Officer in the Recommendation for Award (“RFA”) that was included in the concession files reviewed by the auditors. The RFA submission is used to document Parks’ compliance during the registration process, and in fact, the concession agreements complained about by the Report were registered by the Comptroller based on those submissions.

Parks’ files include all of the critical documents required as part of that registration process, such as: the license agreement; Concession Pre-Solicitation Review (“CPSR”) cover and memorandum; Recommendation for Award (RFA) cover and memorandum; notification to the affected community boards and borough presidents; substitute W9 form; rating summary sheet; RFB or RFP and addenda; bid tabulation sheet; copies of 2 highest rated proposals, including revisions and/or BAFOs; executive summary; copies of any related determinations and reports required by the FCRC; insurance certificates; Tax Affirmation form, responsibility determination and Vendor Name Check memorandum (if VENDEX is required).

Recommendations Linked to Finding 5:

10. Maintain and retain in concession files all documentation supporting and evidencing bid and proposal ratings.
11. Ensure the Committee members sufficiently explain rating changes and attach explanations to amend rating sheets.

Parks already follows these practices.

Report Finding 6 – Purported Missing Documentation on Timely Receipt of Bids and Proposals

Section 1-13(i) of the Concession Rules states that “All proposals received by the submission deadline, including letters of declination, are to be opened under the supervision of the responsible official and in the presence of at least one appropriate agency witness. The responsible official must then complete a Proposal Receipt Register.” Proposals are *always* opened under the supervision of a Parks Revenue accountant, who is the official responsible for completing the Proposal Receipt Register. The register lists the proposals received and certifies whether the proposal included the required proposal deposit. In addition to the accountant, the project manager and either the Director of Concessions, Deputy Director of Concessions, or the Assistant Director of Concessions is present at the proposal opening. The records provided to the auditors clearly document this practice, and indeed, the audit team observed a proposal opening.

Recommendations Linked to Finding 6:

12. Maintain and retain in concession files all documentation evidencing that bids and proposals were received within submission deadlines.
13. Ensure that Parks’ personnel responsible for receiving bids and proposals consistently record receipt in the log book, indicate assigned log numbers on envelopes, and time and date stamp envelopes.
14. Consider all and only those bids and proposals received by submission deadlines.

Parks substantially follows the practices set forth in Nos. 12 and 13, and will – although this practice is not required by the Concession Rules – additionally retain the envelopes. With regard to No. 14, the Report fails to cite a substantively example of a case where a timely bid or proposal was not considered or a late one was erroneously considered. We note, as well, that No. 14 incorrectly fails to take account of the process authorized in the Concession Rules for accepting late bids or proposals in certain instances.

Report Finding 7 – Conflict of Interest Certifications for Committee Members

The Concession Rules require members of selection committees to sign an Evaluator Affidavit. Parks ensures that all its selection committee members are free from any potential conflicts of interest. We meet with potential raters and explain what is required in order to be part of a selection committee, including the understanding that they must be free from any potential conflicts of interests. We have undertaken a comprehensive raters training program to ensure potential raters understand the process of evaluating concession proposals. In addition, Parks regularly provides Conflict of Interest training to all employees.

Recommendations Linked to Finding 7:

15. Ensure that Committee members sign Evaluator Affidavits when completing proposal rating sheets.
16. Retain Evaluator Affidavits in concession files.

Parks has implemented these recommendations.

Report Finding 8 – Absence of Performance and Cautionary Information in VENDEX

The Report found that Parks did not complete Performance Evaluations (PEs) on VENDEX. However, the Report's finding on this point is legally incorrect. The Concession Rules do not require Parks to complete Performance Evaluations (PEs). PEs are a requirement for procurement contracts, not concession agreements. The VENDEX system is not set up to accept PEs for concession agreements. Rule 1-07(e)(1)(i) requires concessionaires to complete VENDEX questionnaires if they meet the dollar thresholds, and Parks faithfully enforces this requirement. But Rule 1-07(e)(2) clearly and explicitly *does not* require the use of VENDEX PEs: "The concession manager should use the following sources of information to support determinations of responsibility or non-responsibility: . . . (ii) VENDEX or other records of evaluation of performance, if available, as well as verifiable knowledge of agency personnel." Parks in fact considers all of its available information concerning concessionaire performance, most notably the extensive body of knowledge of its project managers. The Report is also factually incorrect in its contention that cautions are not generated when appropriate to do so. For those concessions covered by the VENDEX filing requirements, cautions are automatically generated by the answers to the questions pertaining to such matters as past debarments, investigations and misdemeanor or felony convictions.

Recommendations Linked to Finding 8:

17. Complete VENDEX or other comprehensive performance evaluations.
18. Enter information in VENDEX.

Due to infeasibility of implementation, Parks rejects the recommendation to complete VENDEX PEs, but otherwise already follows these practices.

Report Finding 9 – Purportedly Improper Sole Source Concessions for Not-for-Profits

Parks complies with the Concession Rules when granting sole source concession to not-for-profits, and declines to follow the apparent directive that it should register certain other agreements. Parks obtains FCRC approval before entering into a sole source license agreement with not-for-profits that are deemed by counsel to be concessions, and thereafter *always* registers such concessions. Other agreements are not subject to the same rules.

The Prospect Park Carousel has been operated by the Prospect Park Alliance (PPA) through a sole source concession agreement authorized by the FCRC since 1990, and Parks is in the process of obtaining FCRC authorization to award a new agreement to PPA for this operation. Parks received FCRC authorization to negotiate with PPA for the operation of the carousel and will go back to the FCRC shortly to obtain approval of the sole source agreement. Similarly, in numerous other instances where counsel has advised that a particular arrangement fell within the definition of a concession, Parks has awarded sole source concessions to nonprofits, in accordance with the Concession Rules and FCRC approvals. These include: Battery Conservancy (operation of a snack bar at Peter Minuit Plaza), Central Park Conservancy (sale of souvenirs at Tavern on the Green, the Dairy and other facilities in Central Park), City Parks Foundation (sale of food and merchandise related to SummerStage at the Rumsey Playfield in Central Park), Randall's Island Sports Foundation (Cirque du Soleil performances), Greenbelt Conservancy (operation of the Carousel for All Children in Willowbrook Park) and Friends of the High Line (the operation and maintenance of food and beverage and/or merchandise concessions at various locations on and/or under the High Line). All of the above license agreements have been duly approved by the FCRC and registered by the Comptroller.

In other cases cited by the Report, Parks correctly relied upon the advice of its counsel, including the City's Law Department, in determining that concession agreements (and registration) are not required for particular agreements with certain non-profits, such as the Prospect Park Alliance, for the use of certain facilities.

Parks does not believe there is any basis to treat the Lefferts Historical House as a concession since there is no private use involved in the agreement and the City does not receive any compensation in connection with the PPA's use of this facility.

The Report seems to suggest that the Boathouse and Audubon Center are separate sites when this is one site. The Law Department has determined that the predominate purpose of the agreement between the City the PPA to manage the Picnic House and the Boathouse/Audubon Center is not a concession (the agreements between Parks and PPA for the management of the Picnic House and the Boathouse were provided to the auditors). However, Parks will, in consultation with the Law Department, review the activity taking place at these facilities in order to determine whether any portion of such activity should be treated as a concession, and will take appropriate action if necessary to comply with all applicable Concession Rules.

Parks is currently working on a concession agreement with PPA which will include the café at the Parade Ground and if necessary, the cafes at the Picnic House and the Boathouse.

Recommendations Linked to Finding 9:

19. Comply with FCRC rules when granting sole source concessions to not-for-profits.
20. Register all concession and other contracts as required by Section 375 and Section 328 of the New York City Charter.

Parks already complies with all applicable rules and Charter provisions.

Report Finding 10 – Supposed Absence of Written Policies and Procedures

Although the Concessions Rules do not require written internal policies and procedures, Parks provided the auditors with a 28-page document which lists in great detail the procedures and steps used by our project managers to solicit and award concessions.

Recommendation Linked to Finding 10:

21. Institute written policies and procedures that adequately and specifically address the duties and procedures to be followed by key employees responsible for the solicitation, advertisement, receipt, safeguarding, opening, and evaluation of bids and proposals and the award and registration of contracts.

Parks already complies with this practice, through its use of the Concession Rules as its guiding document for compliance, as well as the policies and procedures documented in the memorandum earlier supplied to the auditors.

Report Finding 11 – Supposed Lack of Controls Over Concession Files

Parks acknowledges that there were certain files that did not contain all of the documentation the auditors expected to find, and we agree that Parks should create a system that is easier for external users to navigate. While only authorized personnel have access to the project files, the room in which they are held also serves as a meeting space and on occasion, as a workspace. With limited space, Parks must have dual purpose rooms in order to accommodate the needs of its staff.

Recommendation Linked to Finding 11:

22. Appropriately restrict access to and establish accountability for custody of concession files.

Parks is creating digital files in an effort to reduce the amount of space needed for hard copy files.