

Metropolitan Nashville Airport Authority

MEMORANDUM

TO: Raul Regalado, President and CEO

CC: Monty Burgess, Executive Vice President and COO
Stan Van Ostran, Vice President and CFO
John Howard, Asst. Vice President of Properties and Business Development
Amber Gooding, Director of Business Diversity Development
Tom Bibb, Director of Properties
Rebecca Ramsey, Assistant Director of Properties

FROM: Julie Zwicknagel, Internal Auditor

DATE: May 5, 2011

SUBJ: Delaware North Companies Travel Hospitality Services, Inc. Audit Report

Background

On June 27, 1986, CA One Services, Inc (“CA One”) entered into the original Concession Agreement with the Metropolitan Nashville Airport Authority (“Authority”). The Agreement granted CA One the exclusive right, privilege, and obligation to operate all food and beverage services within the Nashville International Airport. The term of the Agreement was for a period of fifteen (15) years.

On January 1, 2005, the Agreement was amended to extend the term of CA One’s Concession Agreement on a month-to-month basis, due to the Terminal Renovation.

On September 13, 2005, CA One changed its name to Delaware North Companies Travel Hospitality Services, Inc. (“DNC”). The modification was a change of name only, and the ownership, management and former employees of the former CA One remained unchanged.

After completion of a formal request for proposal process, DNC entered into a Master Lease and Concession Agreement with the Authority for the operation of Package 1 of the Food and Beverage Concession at the Nashville International Airport, effective October 17, 2006. The term of the Agreement commenced on January 31, 2009, the beginning of the Operational Phase and would continue for eight (8) full lease years (6/30/2017) with two one-year renewal options. The Authority would have the right to exercise the renewal options by providing the Concessionaire with notice of the Authority’s election to renew and extend the Operational Phase not less than one hundred eighty (180) days prior to the expiration of the Agreement.

Concession Package No. 1 consists of the following restaurants, categories of operations, concession locations, and square footage:

Restaurant	Category of Operation	Concession Location	Location within Terminal	Square Footage
Manchu Wok, Villa Pizza & Wendy's	Fast Food	AB-1	Concourse A/B Apex	2,247 sq. ft.
La Hacienda	Locally Themed Cafe/Lounge	A-2	Concourse A	1,620 sq. ft.
Swett's/Whitt's/Tootsie's	Locally Themed Cafe/Lounge	C-3	Concourse C	3,819 sq. ft.
O'Charley's	Casual Dining Restaurant and Lounge	C-7	Concourse C	4,567 sq. ft.
Tootsie's	Locally Themed Cafe/Lounge	PS-1	Pre Security	641 sq. ft.
Total Square Footage of Concession Package No. 1				12,894 sq. ft.

DNC agreed to pay to the Authority the greater of a minimum annual guarantee (“MAG”) of One Million One Hundred Seventy Five Thousand and No/100 Dollars (\$1,175,000) or an amount equal to the applicable percentage of gross receipts from Concession Operations from each concession location. The applicable percentages of gross receipts are as follows:

1. Twelve percent (12%) of Gross Receipts derived from the sale of Food & Non-Alcoholic Beverages at Fast Food shops and Locally Themed Café/Lounges;
2. Fifteen percent (15%) of Gross Receipts derived from the sale of Alcoholic Beverages at Fast Food and Locally Themed Café/Lounges;
3. Ten percent (10%) of Gross Receipts derived from the sale of Food & Non-Alcoholic Beverages at the Casual Dining Restaurant and Lounge;
4. Fifteen percent (15%) of Gross Receipts derived from the sale of Alcoholic Beverages at the Casual Dining Restaurant and Lounge; and
5. Fifteen percent (15%) of Gross Receipts derived from the sale of Related Merchandise at all locations.

Within sixty (60) days after the end of each Lease Year, Concessionaire would provide to the Authority an annual report along with a reconciliation and payment to Authority (if any is due) as follows: (A) a comparison of the MAG for such preceding Lease Year and the percentage of Gross Receipts due to Authority for such Lease Year to determine the total amount owed to Authority by Concessionaire for such preceding Lease Year; and (B) payment of any additional amount owed as Rent for such preceding Lease Year under the terms of the Agreement. In the event that such Annual Report reflects an overpayment by Concessionaire of Periodic Rent for such preceding Lease Year, Concessionaire would receive a credit by Authority for the overpayment with respect to subsequent Periodic Rent due to Authority or a refund, as Authority may determine. However, in no event would the Concessionaire take a credit against any subsequent Periodic Rent owed to Authority for any such overpayment without the prior written approval of Authority.

The Agreement stated that DNC would prepare monthly, quarterly and annual reports of Gross Receipts derived from the Concession Program and separately listing Gross Receipts by Concession Operator, Concession Location and type of Concession Operations. Annually, within ninety (90) days after the end of each Lease Year, Concessionaire would furnish

Authority with audited statements of Gross Receipts derived from the Concession Program certified to by an independent public accounting firm.

DNC agreed to contribute to the Joint Marketing Fund, on a monthly basis, an amount not to exceed three quarters of one percent (0.75%) of all gross receipts derived from Concession Operations within the Premises, effective January 31, 2009. The types of expenses that Authority may pay out of the Joint Marketing Fund include the following:

1. Direct costs associated with marketing and promotional activities (including, without limitation, costs incurred for the purchase of marketing program creative material, costs for special events and/or paid media);
2. Costs associated with marketing program development and the day-to-day coordination of the marketing program;
3. Costs for development and provision of shopping bags to promote Concession Operations;
4. Secret shopping and other inspection programs with respect to Concession Operations;
5. Directory signage within the Terminal relating to the Concession Locations;
6. The preparation of a full-color catalog featuring the Concession Operations, the Concession Locations and the products and services offered by Concession Operators, which may include coupons, and
7. Other programs, such as brochures, common shopping bags, graphics, media promotions, pamphlets and public events, to promote sales through the Concession Program.

Additionally, DNC would pay to the Authority, on a monthly basis, Common Area Maintenance (“CAM”) Charges in an amount equal to one and twenty-five one-hundredths (1.25%) of the gross receipts from Concession Operations. The CAM charges assessed would be used to reimburse the Authority for expenses incurred to provide general maintenance and upkeep of the Common Areas including cleaning, repair, refurbishment, equipping, furnishing, and replacement of furnishings.

The Disadvantaged Business Enterprise (“DBE”) participation goal for the Agreement was established at fifteen and seven tenths percent (15.7%) or more of total gross receipts from Concession Operations that are attributable to the participation of Authority-certified DBEs in the Concession Program. DNC achieves DBE participation through a sublease agreement with Bridgeman Foods (“Wendy’s”), their DBE partner.

On January 1, 2008, DNC entered into a Space Lease Agreement with the Authority. The Agreement provided for DNC to lease from the Authority the following 3,947 square feet of support space:

1. First floor level of the Passenger Terminal Building - 1,319 sq ft;
2. Ramp storage space in the “C” Triangle storage area - 1,668 sq ft; and
3. A/B Apex storage area – 960 sq ft.

DNC agreed to pay the Authority annual rental of One Hundred Forty Two Thousand and Ninety Two and 00/100 Dollars (\$142,092), payable in equal monthly installments, based

upon \$36 per square foot per annum. The Agreement would automatically renew on a month-to-month basis unless otherwise terminated by either party by giving a thirty (30) day advance written notice.

The First Amendment to the Space Lease Agreement, effective April 1, 2009, provided for: (i) the addition of support space, room T0032 (4,222 sq ft) located on Level I of the main terminal space and S1175 (278 sq ft) located in the "C" Triangle Storage area of the main terminal and (ii) deletion of support space rooms S1175 (1,390 sq ft), N1056E1 (183 sq ft), N1056E3 (103 sq ft), T0035A (125 sq ft), and T0035 (262 sq ft). Delaware North agreed to pay the Authority annual rental of Forty Five Thousand and 00/100 Dollars (\$45,000), payable in equal monthly installments, based upon \$10 per square foot per annum.

The following are the gross revenues for DNC per the Schedule of Gross Revenues, Joint Marketing Fees, and CAM Charges for the Year Ended December 31, 2009, provided by Tronconi Segarra & Associates LLP:

Schedule of Gross Revenues and Related Rents:

2009	Alcoholic Beverages	Food & Vending	All Other Retail	O'Charleys Food & Beverage	O'Charleys Alcoholic Beverages	Wendy's Food & Vending	Total
January	\$107,898	\$295,922	\$1,156	\$141,933	\$42,853	\$82,942	\$672,704
February	111,511	273,375	1,446	140,243	45,242	73,321	\$645,138
March	135,137	327,472	2,016	174,607	55,091	87,413	\$781,736
April	131,353	320,807	1,825	166,279	54,340	85,492	\$760,096
May	137,381	329,908	2,049	168,769	56,235	91,644	\$785,986
June	136,907	361,011	1,900	185,729	55,831	106,166	\$847,544
July	129,179	346,464	1,704	184,943	55,123	109,206	\$826,619
August	118,426	312,263	1,675	168,399	51,427	93,651	\$745,841
September	121,590	303,359	1,543	163,805	52,852	88,267	\$731,416
October	139,126	349,147	2,407	182,806	60,251	99,225	\$832,962
November	122,778	324,143	2,369	164,908	51,617	93,073	\$758,888
December	125,643	324,905	1,884	167,161	53,415	99,868	\$772,876
Total Gross Revenue	\$1,516,929	\$3,868,776	\$21,974	\$2,009,582	\$634,277	\$1,110,268	\$9,161,806
Contractual Percentage Rate	15%	12%	15%	10%	15%	12%	
Calculated Percentage Rent	\$227,539	\$464,253	\$3,296	\$200,958	\$95,142	\$133,232	\$1,124,420
Minimum Annual Guarantee							\$1,123,141
Rent Paid by Delaware North							\$1,180,498
(Under)/Over Payment							\$56,077

Schedule of Gross Revenues and Joint Marketing Fees:

2009	Gross Revenues	%	Joint Marketing Fees
January	\$0	0.75%	\$0.00
February	\$645,138	0.75%	4,839
March	781,736	0.75%	5,863
April	760,096	0.75%	5,701
May	785,986	0.75%	5,895
June	847,544	0.75%	6,357
July	826,619	0.75%	6,200
August	745,841	0.75%	5,594
September	731,416	0.75%	5,486
October	832,962	0.75%	6,247
November	758,888	0.75%	5,692
December	772,876	0.75%	5,797
TOTALS	<u>\$8,489,102</u>		<u>\$63,668</u>
Total Joint Marketing Fees Due			<u>\$63,668</u>
Joint Marketing Fees Paid by Delaware North			<u>\$64,194</u>
(Under)/Over Payment of Joint Marketing Fees			<u>\$526</u>

Schedule of Gross Revenues and CAM Charges:

2009	Gross Revenues	%	CAM Charges
January	\$672,704	1.25%	\$8,409
February	\$645,138	1.25%	8,064
March	781,736	1.25%	9,772
April	760,096	1.25%	9,501
May	785,986	1.25%	9,825
June	847,544	1.25%	10,594
July	826,619	1.25%	10,333
August	745,841	1.25%	9,323
September	731,416	1.25%	9,143
October	832,962	1.25%	10,412

November	758,888	1.25%	9,486
December	<u>772,876</u>	1.25%	<u>9,661</u>
TOTALS	<u>\$9,161,806</u>		<u>\$114,523</u>
Total CAM Charges Due			<u>\$114,523</u>
CAM Charges Paid by Delaware North			<u>\$115,383</u>
(Under)/Over Payment of CAM Charges			<u>\$860</u>

According to the terms of the Master Lease and Concession Agreement, the Authority is due various percentages of revenues reported i.e., food and vending 12%, O’Charleys food and beverage 10%, alcoholic beverages 15%, and retail 15%. DNC’s percentage payments from gross revenues were \$1,124,420. Thus, the percentage payment paid to the Authority was greater than the minimum annual guarantee. The amount paid by DNC to the Authority for the Year Ended December 31, 2009, was \$1,180,498; therefore DNC had an overpayment of rent to the Authority in the amount of \$56,077. Accordingly, DNC was due a refund for the overpayment of rent.

The Joint Marketing fees are a calculation based on 0.75% of total gross revenues. DNC’s gross revenues from February – December 2009 were \$8,489,102. Thus, the amount due to the Authority was \$63,668 and DNC paid \$64,194 to the Authority for Joint Marketing fees. Therefore, DNC had an overpayment of Joint Marketing fees in the amount of \$526. Accordingly, DNC was due a refund for the overpayment of fees.

The CAM charges are a calculation based on 1.25% of total gross revenues. DNC’s gross revenues for the Year Ended December 31, 2009 were \$9,161,806. Thus, the amount due to the Authority was \$114,523 and DNC paid \$115,383 to the Authority for CAM charges. Therefore, DNC had an overpayment of CAM charges in the amount of \$860. Accordingly, DNC was due a refund for the overpayment of charges.

The Authority’s Finance Department determined on February 15, 2011, that DNC had an aggregate overpayment of rent to the Authority in the amount of \$57,463 and issued DNC a credit memo (CRM#0001947). Finance based the determination upon the minimum annual guarantee, percentage payment provisions, and the total rent paid by DNC to the Authority for the Year Ended December 31, 2009.

Objectives

The objectives of the audit were as follows:

1. Determine the validity of gross revenue amounts reported and fees paid to the Authority;
2. Determine compliance with contract terms and operational requirements; and
3. Document and evaluate existing internal controls.

Testing

In order to satisfy the audit objectives, the following tests were performed:

1. Selected 3 months for detailed testing (June, October 2009, and March 2010). For each month selected, performed the following:
 - a. Obtained the monthly fixed rent invoices from Authority's Accounts Receivable and verified that the invoiced amount agreed to the schedule of rental fees and charges in the Master Lease and Concession Agreements.
 - b. Obtained monthly revenue report and performed the following:
 - i. Reviewed report for mathematical accuracy.
 - ii. Tied amounts per report to amounts reported to the Authority.
 - iii. Verified DNC had properly calculated the percentage of gross revenue requirements.
 - iv. Verified monthly CAM charges were equal to 1.25% of the gross receipts from concession operations.
 - v. Determined DNC was contributing 0.75% of monthly gross receipts to the Joint Marketing Fund.
 1. Verified the Authority was maintaining the Joint Marketing Fund in a separate account and not commingled with any other funds.
 - c. Obtained a copy of the Tennessee Sales and Use Tax and Alcoholic Beverage and Beer Tax forms.
 - i. Reviewed tax returns for reasonableness and determined taxes were properly remitted to the State.
2. Selected 3 months for detailed testing (June, October 2009, and March 2010) of a specific concession location (Tootsie's). For each month selected, performed the following:
 - a. Obtained a copy of Tootsie's general ledger and performed the following:
 - i. Reviewed report for mathematical accuracy.
 - ii. Verified that the revenue amounts reported per the general ledger were consistent with the revenue amounts reported to the Authority.
 - iii. Verified Tootsie's had properly calculated the percentage of gross revenue requirements.
 - iv. Sub selected a week each month and performed the following:
 1. Obtained the Daily Revenue Report for the week selected.

2. Verified the daily revenue amount agreed to the monthly general ledger report.
3. Determined that the revenue was properly stated by noting sales receipts per the Daily Revenue Reports contained appropriate information (e.g., sales date, total, method of payment, etc.)
4. Reviewed the Daily Revenue Reports for any unusual activity.
3. Determined that DNC has not satisfied their obligations for not meeting their initial capital improvement costs.
4. Determined DNC was meeting operational requirements.
 - a. Determined through observations that the Concessionaire's premises was maintained in a First Class Manner.
 - b. Verified Concessionaire was meeting operational hours and staffing requirements.
 - c. Determined Concessionaire was submitting a quarterly update regarding recent trends or developments in food and beverage concession operations.
 - d. Verified Concessionaire was conducting formal performance audits on a bi-monthly basis.
 - e. Determined DNC was meeting annual reporting requirements.
 - f. Determined Concessionaire was submitting pricing reports to ensure reasonable pricing was being maintained.
5. Determined DNC has a customer service training program in place.
6. Verified Concessionaire has not met the DBE participation percentage requirements established in the contract.
7. Determined DNC maintained adequate insurance coverage.
 - a. Obtained a copy of the current certificate of insurance on file.
 - b. Verified that the commercial general liability, property, automobile, and worker's compensation insurance coverage met or exceeded the amounts specified in the contract.
 - c. Verified that the certificate of insurance was current and adhered to all other contract terms.
8. Determined DNC maintained an Irrevocable Letter of Credit ("LOC").
 - a. Obtained a copy of the current LOC.
 - b. Verified that the LOC coverage met or exceeded the amount specified in the contract.
 - c. Verified that the LOC was not current and adhered to all other contract terms.
9. Determined Concessionaire's Sublease tenant was meeting contract requirements.
10. Through inquiry and observations, reviewed the existing internal controls in place.

Conclusion

Based upon the audit, the following was determined with respect to the stated objectives:

1. DNC has not satisfied their obligations for not meeting their initial capital improvement costs, as noted in finding #1.
2. DNC is not achieving the DBE participation goal of 15.7% established in the Master Lease and Concession Agreement, as noted in finding #2.
3. DNC's letter of credit ("LOC") on file was expired, as noted in finding #3.

Finding #1

Observation

DNC has not satisfied their obligations for not meeting their initial capital improvement costs.

Background

According to Section 10.2, Initial Capital Improvements, of the Master Lease and Concession Agreement, "The Initial Capital Improvements to be constructed, equipped and installed in each Concession Location shall require an expenditure by Concessionaire and/or the applicable Concession Operator of not less than Four Hundred Twenty One Dollars (\$421) in Eligible Costs per square foot of such Concession Locations.

DNC's concession locations as specified in the Master Lease and Concession Agreement are identified below:

Restaurant	Category of Operation	Concession Location	Location within Terminal	Square Footage
Manchu Wok, Villa Pizza & Wendy's	Fast Food	AB-1	Concourse A/B Apex	2,247 sq. ft.
La Hacienda	Locally Themed Cafe/Lounge	A-2	Concourse A	1,620 sq. ft.
Swett's/Whitt's/Tootsie's	Locally Themed Cafe/Lounge	C-3	Concourse C	3,819 sq. ft.
O'Charley's	Casual Dining Restaurant and Lounge	C-7	Concourse C	4,567 sq. ft.
Tootsie's	Locally Themed Cafe/Lounge	PS-1	Pre Security	641 sq. ft.
Total Square Footage of Concession Package No. 1				12,894 sq. ft.

DNC provided the Authority with certified receipts and lien release for the capital improvements expenditures by concession location, which are detailed below:

Concession Location	Concession Location	Concession		Required Expenditure	Actual Expenditure	Amount Over/(Under) Required	Actual Expenditure / sq ft	Amount /sq ft Over/(Under) required
		Required Amount/sq ft	Location sq ft					
AB-1	Manchu Wok	\$421	666	\$280,386	\$478,903	\$198,517	\$719.07	\$298.07
AB-1	Villa Pizza	421	797	335,537	494,120	158,583	619.98	198.98
AB-1	Wendy's	421	784	330,064	361,395	31,331	460.96	39.96
	Total	\$421	2,247	\$945,987	\$1,334,419	\$388,432	\$593.87	\$172.87
A-2	La Hacienda	421	1,620	682,020	888,002	205,982	548.15	127.15
C-3	Swett's/Whitt's/Tootsie's	421	3,819	1,607,799	1,660,302	52,503	434.75	13.75
PS-1	Tootsies's PS1	421	641	269,861	412,590	142,729	643.67	222.67
C-7	O'Charley's	421	4,567	1,922,707	1,440,067	(482,640)	315.32	(105.68)
Total Capital Improvements		\$421	12,894	\$5,428,374	\$5,735,380	\$307,006	\$444.81	\$23.81

As noted above, DNC met their initial capital investment requirements in total; however, the Agreement required DNC to expend \$421 per sq ft for each concession location and the O'Charley's concession location did not meet their capital requirements.

According to Section 10.4, Certification of Construction Expenditure, of the Master Lease and Concession Agreement, "Concessionaire shall provide Authority with certified receipts and lien releases for the Initial Capital Improvements and Midterm Renovations to a Concession Location required hereunder within ninety (90) days after the completion thereof in detail acceptable to Authority to enable Authority to verify compliance with the requirements of this Agreement. In the event that such certified receipts indicate that Eligible Costs incurred with respect to the Initial Capital Improvements or Midterm Renovations required hereunder are less than required under the terms and provisions of this Agreement, Concessionaire shall pay to Authority one hundred ten percent (110%) of the difference between the amount required to be spent and the Eligible Costs actually incurred by Concessionaire and/or Concession Operator as indicated by such certified receipts.

Accordingly, DNC owed the Authority \$530,904 which is 110% of the difference between the amounts required to be spent for the O'Charley's concession location and the eligible costs actually incurred by DNC, as calculated below:

Location	Required Amount/sq ft	Concession Location sq ft	Required Expenditure	Actual Expenditure	Amount Over/(Under) Required	Actual Expenditure / sq ft	Amount /sq ft Over/(Under) required	Amount due to Authority (110%)
O'Charley's	\$421	4,567	\$1,922,707	\$1,440,067	(\$482,640)	\$315.32	(\$105.68)	(\$530,904)

Furthermore, it should be noted that this finding was identified in the Delaware North audit report dated December 29, 2009. Internal Audit made the following recommendation:

Prior Recommendation

Properties should request the Finance Department to invoice DNC for not meeting their capital improvements obligations for the O'Charley's concession location in the amount of \$530,904.

Properties responded to the recommendation as noted below.

Prior Management Response

Properties staff has recommended that, because DNC exceeded the overall proposed capital expenditures, the funds identified in this finding be spent as additional capital expenditures to re-concept the Manchu Wok location. The Authority's President and CEO was consulted with regard to this recommendation and agreed to the proposed resolution to this finding, provided that DNC is in compliance with all other aspects of their contract requirements.

An objective of the audit was to determine that DNC had satisfied their obligations for not meeting their initial capital improvements costs. Through audit testing, it was determined that DNC has proposed for the Manchu Wok and Villa Pizza locations to be re-concepted into a Popeye's Chicken. However, the re-concepting had not been approved by the Board of Commissioners, as of February 17, 2011.

Recommendation

Properties should ensure that DNC proceeds with the re-concepting of Manchu Wok and Villa Pizza locations in order to satisfy their obligations for not meeting their initial capital improvement requirements.

Management Response

Properties has been coordinating a successful conclusion to the negotiations between DNC and their future subtenant Transfare to re-concept the Manchu Wok and Villa Pizza locations in order to satisfy their obligations for not meeting their initial capital improvement requirements. An executed sublease and plan to proceed with construction are expected on or about June 2011.

Finding #2

Observation

DNC is not achieving the DBE participation goal of 15.7% established in the Master Lease and Concession Agreement.

Background

According to Section 7.2, DBE Participation Goals, of the Master Lease and Concession Agreement, "To provide a fair opportunity for DBE participation in the Concession Program, Authority requires that Concessionaire make good faith efforts, as described in 49 C.F.R. Section 23.95(i), to provide for a level of Authority-certified DBE participation in the Concession Program that results in the generation of fifteen and seven tenths percent (15.7%) or more of total Gross Receipts from Concession Operations that are attributable to the participation of Authority-certified DBEs in the Concession Program; provided, however, that Gross Receipts derived from in-flight Catering Services shall not be included in Gross Receipts for purposes of calculating the percentage of DBE participation in the Concession Program."

An objective of the audit was to verify DNC was meeting the DBE Program requirements established in the Master Lease and Concession Agreement. DNC's DBE participation goal was 15.7% of total gross receipts and DNC achieves DBE participation through a sublease agreement with Wendy's, their DBE partner. Through audit testing it was determined for the period of January 1, 2009 through December 31, 2009; DNC achieved a DBE participation level of 12.12%, which is detailed below.

Wendy's Total Gross Receipts	DNC Total Gross Receipts	DBE %
\$1,110,268	\$9,161,806	12.12%

Additionally, DNC purchases coffee from a DBE certified firm, Kijiji Coffee, which represented approximately .30% of total revenues for 2008; however, DNC had not provided the Authority with purchasing information for 2009, as of February 10, 2010. Therefore, the DBE participation percentages are not included in the aforementioned calculation.

Through the course of the audit, DNC provided Internal Audit and the Authority's Director of Business Diversity Development ("BDD") with the 2009 and 2010 Kijiji purchasing information, which is detailed below.

Period	Kijiji Coffee Purchased
January - December 2009	\$20,687
January - December 2010	\$14,837

Recommendation

BDD should ensure DNC is continuing to make good faith efforts toward achieving the DBE contract participation goal of 15.7%.

On an annual basis, DNC should submit to the Authority's BDD Department the DBE participation information from purchasing coffee from Kijiji Coffee for proper tracking of DBE participation percentages.

BDD should update DNC's 2009 and 2010 DBE participation percentages with the Kijiji Coffee information to ensure proper tracking and reporting of DBE participation percentages.

Management Response

BDD agrees and has updated Kijiji purchases. BDD also agrees that it is the responsibility of DNC to report all ACDBE/DBE activity in order to receive full credit towards their contract goals.

BDD is also aware that DNC has been working diligently in addressing the ACDBE deficit by bringing in a new ACDBE firm in a sublease arrangement to operate a new food concept. This concept will replace two existing ones and increase the ACDBE participation achievement for DNC. It is anticipated that all agreements and approvals will be complete by June 2011.

Finding #3

Observation

DNC's letter of credit ("LOC") on file was expired.

Background

According to Section 19.1 of the Concession Agreement, "As security for Concessionaires full, faithful and prompt performance of and compliance with all covenants, terms and conditions of this Agreement on the part of Concessionaire, Concessionaire hereby agrees to deposit with Authority, at all times from and after the Effective Date, a stand-by, irrevocable letter of credit (the Letter of Credit) for the benefit of Authority, in the form of Exhibit I hereto, in a stated principle amount that is not less than fifty percent (50%) of the MAG hereunder for the then current Lease Year (or, for the period prior to the Commencement Date, in an amount that is not less than the minimum MAG for the initial full Lease Year), and issued by a national banking association or state chartered bank subject to examination by federal authority of the United States of America, of good standing and having a combined capital and surplus aggregating not less than Five Hundred Million and No/100 Dollars

(\$500,000.00). Concessionaire shall provide to Authority, not less than thirty (30) days prior to the expiration date of such Letter of Credit, a replacement Letter of Credit which meets the requirements of this Section 19.1. A Letter of Credit shall remain on deposit with Authority throughout the Term."

An objective of the audit was to verify that the LOC was current and adhered to all other contract terms. Through audit testing, it was determined that the LOC coverage met the amount specified in the contract; however, the LOC on file with the Authority expired on November 21, 2010. Through the course of the audit, a current LOC with an expiration date of December 31, 2011, was obtained from DNC.

Recommendation

Properties should ensure that LOC's on file are current.

Management Response

Properties will ensure that LOC's on file are current by updating the current Lease Management System as well as preparing a running spreadsheet to act as a check and balance for compliance monitoring..