

Office of Parks, Recreation and Historic Preservation

Oversight of Construction Management Contracts

Report 2020-S-43 | June 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the Office of Parks, Recreation and Historic Preservation is adequately monitoring construction management contracts to ensure they meet contract terms and requirements. The audit covered the period June 29, 2017 through July 17, 2020.

About the Program

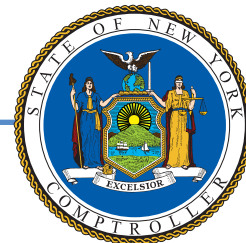
The Office of Parks, Recreation and Historic Preservation (Parks) is responsible for operating and maintaining the State park, recreation, and historic site system to conserve, protect, and enhance the natural, ecological, historic, cultural, and recreational resources of New York State. This system includes 180 State parks with opportunities for hiking, camping, swimming, golfing, and snowmobiling as well as 38 historic sites. Parks oversees a range of capital projects to improve these sites. In an effort to ensure certain capital projects are executed and constructed properly, Parks occasionally contracts with firms that specialize in providing construction management (CM) services. In 2012, Parks entered into a contract with the Dormitory Authority of the State of New York (DASNY) to serve as the construction manager of a \$25 million Niagara Falls State Park revitalization project. After five amendments, this contract has expanded to include additional projects throughout New York and is Parks' largest CM contract. In addition to the DASNY contract, Parks enters into three-year contracts with private firms to serve as the construction manager (term contracts). Parks currently has ten active CM term contracts with private firms that total approximately \$27.9 million for 58 projects.

Key Findings

- Parks has generally established controls to ensure CM term contractors are meeting contract terms and requirements. We identified only limited instances where Parks could not provide documentation showing CM requirements were met and minor overpayments were made, for which Parks has obtained a refund from the contractor.
- We found Parks paid over \$229,000 in fees under the contract with DASNY that could have been avoided if it had used a term contract rather than the DASNY contract. The fees will continue to accrue and be paid by Parks until contract completion. Also, we found Parks officials do not receive detailed support for payments made under the DASNY contracts; therefore, they cannot monitor payments made under this contract as effectively as their other term contracts.

Key Recommendations

- Complete new CM projects using the term contracts in place or under new term contracts, as practicable.
- Develop and implement a process to obtain additional support to adequately monitor vouchers under the DASNY contract for accuracy, support, and project-related expenses.



**Office of the New York State Comptroller
Division of State Government Accountability**

June 24, 2021

Erik Kulleseid
Commissioner
Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12233

Dear Commissioner Kulleseid:

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

Following is a report of our audit entitled *Oversight of Construction Management Contracts*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
CM	Construction management	<i>Key Term</i>
DASNY	Dormitory Authority of the State of New York	<i>Agency</i>
Parks	Office of Parks, Recreation and Historic Preservation	<i>Auditee</i>
Term contracts	Three-year contracts Parks maintains with private firms that serve as the construction managers for projects	<i>Key Term</i>

Background

The Office of Parks, Recreation and Historic Preservation (Parks) is responsible for operating and maintaining the State park, recreation, and historic site system to conserve, protect, and enhance the natural, ecological, historic, cultural, and recreational resources of New York State. This system includes 180 State parks with opportunities for hiking, camping, swimming, golfing, and snowmobiling as well as 38 historic sites. Parks oversees a range of capital projects to improve these sites.

The Capital Programs Bureau within Parks is responsible for oversight of all construction management (CM) contracts, and a Parks project manager oversees all projects. In an effort to ensure certain capital projects are executed and constructed properly, Parks occasionally contracts with firms that specialize in providing CM services. These firms offer a range of services including CM, constructability review, phasing/logistics planning, inspection/quality control, and cost estimating. These services enable Parks to control project scopes, schedules, and budgets.

In 2012, Parks entered into a contract with the Dormitory Authority of the State of New York (DASNY) to serve as the construction manager of a \$25 million Niagara Falls State Park revitalization project. After five amendments, this contract has expanded to include additional projects throughout New York and is Parks' largest CM contract. This contract remains active until March 2021, currently totals \$14 million, and includes 75 projects, of which 60 have been completed and 2 have been canceled.

In addition to the DASNY contract, Parks enters into three-year contracts with private firms to serve as the construction manager (term contracts). Parks currently has ten active CM term contracts with private firms that total approximately \$27.9 million for 58 projects, of which 23 have been completed. Term contracts are set up by regions. Upstate contracts encompass three regions – Saratoga, Taconic, and Palisades; Niagara, Allegany, and Genesee; Central, Finger Lakes, and Thousand Islands – while individual contracts are awarded for New York City and Long Island.

CM contracts outline the duties and responsibilities of the construction manager as well as other applicable terms and conditions that must be met. The contracts require the construction manager to:

- Attend biweekly (or weekly, if needed) progress meetings with Parks and the contractors for the project, and prepare and circulate meeting minutes.
- Prepare and submit daily activity reports to Parks. For term contracts, these reports include information about the weather, number and type of contractor personnel and equipment, daily activities, decisions, observations, and test procedure results.
- Submit vouchers for services rendered to Parks for payment. For term contracts, all applications for payment must be on standard State vouchers and supported by accurate documentation. Each contract contains charts defining the job titles and maximum hourly rates to be paid to staff of the construction manager and subcontractors for work on the contract.

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- Conduct a final inspection with Parks personnel and the designer to prepare a final list of items to be completed or corrected. The construction manager observes whether all listed items have been completed or corrected, and makes recommendations to Parks concerning acceptance and issuance of a Notice of Acceptability of the Work.

All contracts have a maximum compensation amount. If needed, Parks can add supplements to add time and/or compensation to the contract. Individual projects are assigned for each contract on an as-needed basis and completed for a negotiated fee. The fee amount from each individual project combined totals the contract amount. A scope-of-work document that includes the services to be completed is prepared and issued for each project. Parks solicits bids and awards separate construction contracts to contractors to complete the individual projects (e.g., construction, electric). These projects are managed by Parks' project managers, who may be assisted by a project's construction manager or DASNY project manager. Construction managers have no input on the contractors selected for each project.

Audit Findings and Recommendations

Parks has generally established controls to ensure CM term contractors are meeting contract terms and requirements. We identified only limited instances where Parks could not provide documentation showing CM requirements were met and minor overpayments were made, for which Parks has obtained a refund from the contractor. However, we found Parks paid over \$229,000 in fees under the contract with DASNY that could have been avoided if they used a term contract rather than the DASNY contract. The fees will continue to accrue and be paid by Parks until contract completion. Also, we found Parks officials do not receive detailed support for payments made under the DASNY contracts; therefore, they cannot monitor payments made under this contract as effectively as their other term contracts.

Term Contracts

We identified only limited instances where Parks could not provide documentation showing CM requirements were met. We reviewed 103 term contract vouchers totaling \$2,997,364 paid for 15 projects. We identified an overpayment totaling \$1,013 for one project we reviewed. The overpayment generally occurred due to errors in the number of employee hours and rates charged to the project. Parks officials agreed with our finding and have obtained a refund from the contractor. For the remaining 14 projects, supporting documentation was provided for all expenses, only appropriate job titles listed in the contract were claimed, all labor rates paid were at or below the maximum rates in the contract, and travel expenses complied with State travel guidelines (where applicable). Further, biweekly meetings were conducted as required for the applicable projects in our sample.

Lastly, daily reports and close-out documentation were generally completed and maintained for each project. Approximately 94 percent (2,665 of 2,849) of the daily reports required for the projects in our sample were completed. The remaining daily reports were not provided by Parks and thus we could not verify completion. The majority of these reports applied to one project, for which the construction manager was unable to locate the daily reports covering four months. The construction manager stated that, during this time, it appears limited or sporadic work was conducted; however, no documentation has been provided to support these statements. For 76 percent (13 of 17 projects) of the applicable completed projects, Parks was able to provide adequate completion documentation. For the remaining four projects, Parks provided emails stating the project was complete, but was unable to provide additional documentation.

DASNY Contract

Contract Fees

DASNY bills Parks for various administrative activities such as ensuring the scope of work is appropriate for each project and suitable staff are assigned to each project. DASNY submits vouchers to Parks along with labor reports for fees associated with each project. At the onset of the DASNY contract, DASNY employees provided all CM services. However, in July 2013, DASNY needed employees to work on other

projects, and DASNY suggested Parks use a CM contractor that DASNY had an existing third-party contract with to fulfill the contract requirements. Parks agreed to use this contractor and has continued to use it for more than seven years.

Despite a third-party contractor now serving as the construction manager, DASNY continues to bill Parks for various administrative activities. DASNY submits vouchers and labor reports to Parks for fees associated with each project under the contract. For the period June 2013 through March 18, 2020, these fees totaled over \$229,000 and will continue to accrue and be paid by Parks until contract completion.

Similar fees are not charged for projects completed under term contracts with private CM firms, including contracts Parks holds with the same contractor utilized under this third-party arrangement. Furthermore, for all CM contracts, with the exception of this one, Parks staff complete many of the same administrative activities that DASNY is conducting and billing Parks for under this contract. Parks officials acknowledged that the projects completed under the DASNY contract could be completed under other term contracts, thereby eliminating the fees paid to DASNY.

It is essential that public resources be used as efficiently as possible to serve the State. Doing so allows the State to maximize funding, making opportunities available for other projects or services.

While allowable under the contract, these costs could be avoided and we recommend that Parks complete future projects using term contracts to avoid paying these fees where practicable. Parks agreed with this recommendation, stating that the current DASNY contract expires on March 31, 2021 and Parks does not intend to extend the contract.

Contract Requirements

We found Parks officials do not receive detailed support for payments under the DASNY contract; therefore, they cannot monitor payments made under this contract as effectively as their other term contracts. Rather, Parks relies on DASNY to review the vouchers submitted by third-party contractors and compile the vouchers for payment. DASNY provides labor invoices containing a labor breakdown for DASNY employees based on their time sheets and approved rates from the contract and project status reports identifying the amount paid to date for other services (e.g., services provided by third-party contractors). No other documentation is provided to support the accuracy of the vouchers, as is generally provided with other term contracts, and Parks officials do not generally request any additional documentation.

We reviewed 36 vouchers, totaling \$767,144, for five projects under the DASNY contract. We found adequate supporting documentation was provided for all expenses, only job titles listed in the contract were claimed, all labor rates paid were at or below the maximum rates in the contract, and travel expenses complied with State travel guidelines (where applicable). While we did not find discrepancies in the vouchers we reviewed, additional controls should be put into place to allow Parks to sufficiently monitor contract spending and decrease the risk of overpayments. Parks

agreed and stated that, moving forward, it will ensure that all vouchers submitted for the DASNY contract have the requisite supporting documentation and are reviewed appropriately. Additionally, Parks intends to document its processes regarding the administration of term contracts to ensure consistency.

Recommendations

- 1.** Complete new CM projects using the term contracts in place or under new term contracts, as practicable.
- 2.** Develop and implement a process to obtain additional support to adequately monitor vouchers under the DASNY contract for accuracy, support, and project-related expenses.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if Parks is adequately monitoring CM contracts to ensure they meet contract terms and requirements. The audit covered the period June 29, 2017 through July 17, 2020.

To accomplish our objective and assess internal controls related to our objective, we interviewed Parks and DASNY officials and reviewed relevant laws, procedures, contracts, and scopes of work. We also became familiar with and assessed Parks' internal controls as they relate to the fulfillment of its responsibilities for monitoring CM contracts to ensure compliance with contract terms and requirements. We selected a judgmental sample of seven CM contracts (six term contracts and Parks' DASNY contract) from the total population of 11 contracts. We applied judgment in selecting contracts with private firms, choosing contracts based on project completion status, contractor, geographic disbursement, and amount of funds spent. Parks' DASNY contract was also selected because it is Parks' largest CM contract. Within these contracts, we selected a judgmental sample of 20 projects (15 term contract projects and 5 DASNY contract projects) with a budgeted amount of approximately \$4.7 million for review, of the 83 projects with a budgeted amount of approximately \$22.5 million that were approved during our scope period. In total, approximately \$3.8 million has been spent on our sampled projects to date. We reviewed selected projects to determine whether biweekly meetings, daily reports, and payment vouchers were completed as required by the contract and whether documentation to show successful completion of the project could be provided. We applied some judgment in selecting projects from each contract based on completion date, total cost, and geographic location. Our sample size ranges from one to five projects for each contract and varies based on the size of the contract and the number of completed projects. One active project was included in our sample due to issues identified during our audit survey. None of the samples selected for our audit testing were projected or intended to be projected across the populations as a whole. In addition to this review, we reviewed all of the DASNY contract vouchers to identify the DASNY fees charged on each voucher.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We requested a representation letter from DASNY management to provide assurance, to the best of their knowledge, concerning the relevance, accuracy, and completeness of information provided as part of the audit. However, officials declined to provide a representation letter in connection with our audit as they were not the auditee for our engagement. As a result, we have less assurance that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of Parks' oversight and administration of CM contracts.

Reporting Requirements

We provided a draft copy of this report to Parks officials for their review and written comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. Parks officials agreed with the report's recommendations and indicated actions they will take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Parks, Recreation and Historic Preservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments



Parks, Recreation and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

March 25, 2021
Ms. Nadine Morrell
Audit Director
Division of State Government Accountability
Office of the State Comptroller
110 State Street – 11th Floor
Albany, NY 12236-0001

Re: Audit Draft Report 2020-S-43

Dear Ms. Morrell,

The Office of Parks, Recreation and Historic Preservation (OPRHP) has reviewed the Office of the State Comptroller's (OSC) draft report 2020-S-43 (Report), titled "Oversight of Construction Management Contracts," which was conducted to determine if OPRHP is adequately monitoring construction management contracts to ensure they meet contract terms and requirements. OPRHP agrees with OSC's recommendations, please see our responses below.

OSC Recommendation 1: Complete new CM projects using the term contracts in place or under new term contracts, as practicable.

Response: OPRHP agrees with this recommendation. The current DASNY contract expires on March 31, 2021, and the statutory authority for DASNY to continue to provide this service has not yet been extended. The Executive included a bill in the proposed 2022 budget to extend DASNY authority, but the outcome will not be known until after April 1, 2021. Should OPRHP intend to extend the contract or enter into a new contract with DASNY, the safeguards noted in our response to the second recommendation will continue to be implemented.

OSC Recommendation 2: Develop and implement a process to obtain additional support to adequately monitor vouchers under the DASNY.

Response: Moving forward, OPRHP will ensure that all vouchers submitted for the DASNY contract have the requisite supporting documentation and are reviewed appropriately. Additionally, OPRHP intends to document its processes regarding the administration of term contracts to ensure consistency across all Districts.

If you have any questions regarding our response, please contact Laura Mason, Acting Internal Audit Director and liaison to external audit agencies. Mrs. Mason can be reached at (518) 474-0449 or via email at Laura.Mason@parks.ny.gov.

Sincerely,

Tom Alworth
Executive Deputy Commissioner
Office of Parks, Recreation and Historic Preservation

New York State Office of Parks, Recreation and Historic Preservation
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