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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 19, 2003

Gretchen Dykstra
Commissioner
New York City Department of Consumer Affairs
42 Broadway
New York, New York 10004

Re: Licensing of Mobile Food Vendors
Report 2003-N-10

Dear Ms. Dykstra:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III of the General Municipal Law, we audited the practices and procedures of the New York City Department of Consumer Affairs for processing applications for mobile food vendor licenses and permits. Our audit covered the period July 1, 1999 through August 31, 2002.

A. Background

The New York City Department of Consumer Affairs (DCA) licenses more than 60,000 businesses in 55 categories. DCA also inspects certain types of businesses, enforces consumer protection laws, mediates consumer complaints, and advocates for consumers.

Vendors in New York City who sell food from vehicles, pushcarts, stands or other mobile units must be licensed by the New York City Department of Health and Mental Hygiene (DOHMH). In addition, a separate permit must be obtained for each mobile unit used by the vendor. Applications for these licenses and permits are processed by DCA in accordance with a 1996 Memorandum of Understanding between DCA and DOHMH. DCA is responsible for processing all applications and issuing all licenses and permits, while DOHMH oversees the processes. DOHMH is responsible for establishing the policies, guidelines and operating procedures relevant to the issuance of licenses and permits, and for ensuring compliance with these policies, guidelines and procedures. All license and permit transactions are entered by DCA on the automated City Agencies Management Information System (CAMIS).

B. Audit Scope, Objective and Methodology

We audited the practices and procedures of DCA for processing applications for mobile food vendor licenses and permits for the period July 1, 1999 through August 31, 2002. The objective of our performance audit was to determine whether the licenses and permits were issued in accordance with requirements. To accomplish our objective, we interviewed DCA and DOHMH officials, and reviewed records maintained by DCA and DOHMH. In a related audit report (Report 2002-N-7), we examined DOHMH's oversight of mobile food vendors.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In the representation letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the agency has complied with all laws, rules and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors.

However, officials of the Mayor's Office of Operations have informed us, that as a matter of policy, Mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from DCA officials that all relevant information was provided to us during this audit. We consider this absence of a representation letter to be a scope limitation on our audit. Therefore, readers of this report should consider the potential effect of this scope limitation on the findings and conclusions presented in this report.

Except as discussed in the preceding paragraphs, we conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of DCA that are included in our audit scope. Further, these standards require that we understand DCA's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

C. Results of Audit

We found that DCA's processing of applications for mobile food vending licenses and permits is not always adequately documented. As a result, licenses and permits may be issued to individuals who (1) are not authorized to act as mobile food vendors or (2) have not paid certain business taxes or fines for vending violations. We recommend that controls be improved so that licenses and permits cannot be issued unless it is documented that all requirements have been met.

In order to obtain or renew a license or permit for a mobile food vending activity, an individual must complete an application and present certain documents to DCA. These documents are generally intended to provide some assurance that the applicant (a) is in fact the person he or she claims to be, (b) is authorized to engage in mobile food vending activities, and (c) has paid all relevant taxes and any fines for mobile food vending violations. For example, as proof of identity, applicants are required to provide proof of address, proof of social security number, proof of citizenship, and a photo ID; as proof of authorization, permit applicants are required to provide their own mobile food vending license as well as the names of any other licensed individuals who will use the pushcart, vehicle or stand authorized by the permit (these licenses are to be verified by DCA); as proof that taxes and fines have been paid, applicants are required to provide a Certificate of Sales Tax Authority, State and City Tax Clearance documents, and a document indicating that any vending fines have been paid.

The application and supporting documents are reviewed by a DCA counterperson, who rejects or approves the application. If the application is approved, it is reviewed by a DCA supervisor. For permit applications, a pre-operational inspection must be passed before the permit itself can be issued or renewed. This inspection, which is required by law, is performed by DOHMH.

To determine whether licenses and permits were issued and renewed in accordance with requirements, we randomly selected a sample of 50 of the 4,302 permit applications for the two-year period June 19, 2000 through June 18, 2002. We reviewed the applications to determine whether all required documents had been submitted by the applicant and the application itself had been appropriately approved by DCA staff. We also determined whether pre-operational inspections were performed before the actual permits were issued. We then obtained the 48 license applications that related to these 50 permit applications (in two cases, two permits were issued to the same individual), and reviewed the license applications to determine whether they had been processed in accordance with requirements.

We found that the required documents may not always be obtained from the applicants, as follows:

- In three permit applications and five license applications, there was no indication that DCA obtained certain of the documents that were required to confirm the applicant's identity (including proof of address and a photo ID). For an additional license application, a social security card that was required was not signed by the applicant.

- Three permit applications and six license applications lacked the New York City Vendor Tax Clearance Certificate indicating that all relevant City taxes had been paid.
- Nine permit applications and one license application lacked the document indicating that all outstanding fines had been paid. In these cases, the DCA counterperson had not indicated any review for outstanding fines.
- Ten permit applications should have been rejected, because of errors relating to the names of the other licensed individuals (operators) who were designated to use the pushcart, stand or vehicle. For example, in some of the applications, the permit number on the list of designated operators did not match the permit number for the applicant's cart.
- 35 license applications lacked an affirmation from the applicant that all child support obligations were being met (applicants are required to make this affirmation).
- In 15 permit applications, the file lacked any indication that the applicant had a mobile food vending license. However, we were later provided with documentation that in these cases the permit and license applications were simultaneous. Officials advised that such information will now be indicated in the files.

In the absence of these required documents, there is less assurance that the licenses and permits were issued to individuals who (a) were authorized to act as mobile food vendors and (b) had paid all relevant taxes and outstanding fines. As is noted in our audit report 2002-N-7 addressing DOHMH's practices in relation to mobile food vendors, many vendors are allowed by DOHMH to continue operating even though they have repeatedly been cited for serious violations. If such vendors are also allowed to renew their permits and licenses without documenting their outstanding fines have been paid, they will have very little incentive to correct their inappropriate practices.

In addition, for one of the permit applications and three of the license applications, there was no documentation of any kind available to support the most recent permit or license issued to the applicant. In the absence of this documentation, there is no assurance that these renewals were appropriate.

We also found that permit and license applications were not always processed in accordance with procedures, as follows:

- Three permit applications and one license application were not signed by the DCA counterperson who processed the application.
- 13 permit applications and 14 license applications lacked evidence of review and approval by the supervisor.

Without the signature of the counterperson, there is no accountability for who processed the application. When applications have no evidence of oversight review, there is less assurance that the transactions were appropriate.

We also tested the completeness and accuracy of the mobile food vending information on CAMIS. Specifically, we obtained the CAMIS database as of June 18, 2002 and selected a non-statistical sample of 42 applications (22 licenses and 20 permits) from the files and tested whether the database was complete by verifying whether the applications were entered on CAMIS. We then randomly selected 25 applications (permits and licenses together) from CAMIS and tested whether the database was accurate by verifying that source files existed for the records.

We found that all 42 applications were accurately entered on the CAMIS, and 23 of the 25 CAMIS records were supported by the source files. We were unable to verify the accuracy of the remaining two CAMIS records, because DCA officials could not locate the two hardcopy files.

Recommendations

- 1. Ensure that applications for mobile food vending licenses and permits are not approved unless all required documents have been obtained from the applicant.*
- 2. Improve the recordkeeping practices relating to permit and license applications so that application files can be fully accounted for at all times.*
- 3. Ensure that applications for mobile food vending licenses and permits are signed by the counterperson who processed the applications and by the supervisor who approved them.*

We provided draft copies of this report to DCA officials for their review and comments. We considered their comments in preparing this report. DCA officials agreed with the report's recommendations and indicated actions taken or planned to implement them. A complete copy of DCA's response is included as Appendix A.

Within 90 days after final release of this report, we request that the Commissioner of the New York City Department of Consumer Affairs report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Al Kee, Allen Cohen, Stuart Dolgon, Peter Blanchett, Ronald Gerstein, Geraldine Walker and Dana Newhouse.

We wish to thank the management and staff of the New York City Department of Consumer Affairs for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Ms. Anna Bacchia



The New York City
Department of
Consumer Affairs
42 Broadway
New York, NY
10004-1716

Gretchen Dykstra
Commissioner

August 25, 2003

Mr. Kevin M. McClune
Audit Director
Office of the New York State Comptroller
110 State Street
Albany, N. Y. 12236

RE: Draft Audit Report # 2003-N-10
Licensing of Mobile Food Vendors

Dear Mr. McClune,

I am writing in response to your draft report on the above captioned audit.

Thank you for your audit recommendations. The draft report suggests that the Department of Consumer Affairs (DCA) implement three recommendations. Below are the recommendations made in your draft report and our comments:

The Department of Consumer Affairs should:

1. Ensure that applications for mobile food vending licenses and permits are not approved unless all required documents have been obtained from the applicant.

DCA agrees with your recommendation. Licensing management has stressed the importance of ensuring that all applications must have the required documents to all counter staff and Licensing supervisors. This was communicated to all applicable staff via a memo, a copy of which has been attached to our response.

2. Improve the recordkeeping practices relating to permit and license applications so that application files can be fully accounted for at all times.

DCA agrees with your recommendation. DCA is in the process of securing funds to replace old file cabinets without locks. DCA has been able to obtain a few new locked file cabinets. The access to these locked file cabinets is limited, which will lessen the chances for lost / misplaced files.

www.nyc.gov/consumers

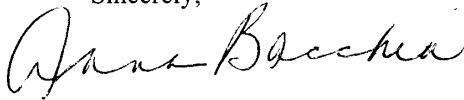
Appendix A

3. Ensure that applications for mobile food vending licenses are signed by the counterperson who processed the application and by the supervisor who approved them.

DCA Licensing management has reminded all counter and supervisory staff that applications must be signed and dated by staff processing the application and by staff reviewing and approving applications. Additionally, the task of reviewing applications has been added to the duties of another employee.

If you have any questions concerning this response, please feel free to call me at (212) 487 – 4240 or you can email me at bacchiaa@DCA.nyc.gov.

Sincerely,




Anna Bacchia, CFE, CGFM
Director of Audit Services

- C:
- G. Dykstra, DCA
 - A. Pico, DCA
 - K. Lasky, DCA
 - A. Goldberg, DOHMH
 - C. Troob, DOHMH
 - S. Linden, DOHMH



MEMORANDUM

TO: Licensing Counter Staff and Licensing Supervisors

FROM: Lori Tarver 

DATE: August 25, 2003

RE: **Accepting Documents for Applications**

A recent audit was conducted on mobile food vendor applications and permits by the New York State Comptroller's Office.

DCA was cited for accepting and processing applications without having received all the documents required.

This memo serves as a reminder to all that if an application calls for a specific document, you **must not** accept any application unless **all** required documents are presented by the applicant.

Thank you for your cooperation.

- C: A. Pico
S. Linden
A. Bacchia