



21-01

# INTERNAL AUDIT REPORT

## Spectra Food Service Agreement

June 2021

City of Sioux Falls Internal Audit Department  
Carnegie Town Hall | 235 West 10th Street  
Sioux Falls, SD 57117-7402  
[siouxfalls.org/council/internal-audit](http://siouxfalls.org/council/internal-audit)



**SPECTRA**

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# Contents

- Contents .....2
- Introduction .....3
- Background.....3
- Objectives .....3
- Scope .....4
- Methodology .....4
- Results .....4
  - Insurance Requirements .....4
    - Finding 1 .....4
    - Finding 2 .....5
  - Record Keeping and Reporting .....5
    - Audits .....5
      - Finding 3 .....5
    - Operating Account.....6
    - Accounting Records .....6
    - Reporting.....6
  - Controls over Contract Compliance by City Administration.....6
    - Finding 4 .....7
  - Controls over Contract Compliance by ASM .....7
    - Finding 5 .....7
- Recommendations and Management Response .....8
- Opportunity for Improvement.....10
- Conclusion .....11
- Authorization.....11
- Audit Standards.....11
- Statement of Independence .....11
- Distribution of Report .....11
- Performed By .....11

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## Introduction

The City Council authorized this audit as part of the 2019 Annual Audit Program. This is the first internal audit of the food and beverage service agreement between the City of Sioux Falls (City) and Ovations Food Services, L/P/ d/b/a Spectra Foods Services & Hospitality (Spectra). The purpose of this audit was to evaluate compliance of Agreement 17-4173 with the City of Sioux Falls.

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## Background

Ovations Food Services, L.P. d/b/a Spectra Food Services & Hospitality (Spectra) is a food service company that provides management services to operate the food, beverage, novelty, and merchandise concession and catering for stadiums, arenas, convention centers, fairgrounds, expo centers, hotels, casinos, racetracks, zoos, performing arts centers, and amphitheatres.

On December 12, 2017, Spectra entered into an agreement with the City of Sioux falls to provide food, beverages, novelty, and merchandise concession services and catering for the Sioux Falls Arena, the Sioux Falls Convention Center, the Orpheum Theater, the Denny Sanford PREMIER Center, and the Sioux Falls Baseball Stadium. Services provided began on January 1, 2018. The term of the agreement will conclude on December 31, 2022. Effective July 1, 2019, services provided to the Orpheum Theater were contracted with Washington Pavilion Management, Inc.

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There were no City events at the Sioux Falls Baseball Stadium in 2019. Therefore, commissions for concession sales were not paid.

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## Objectives

- 1 | Determine if Spectra is compliant with the following major requirements of the food and beverage agreement 17-4173. We specifically focused on the following:
  - a) insurance coverage
  - b) independent audit of gross receipts and commissions
  - c) operating account
  - d) reporting requirements
- 2 | Determine if the City has proper internal controls in place to ensure Spectra is compliant with the Agreement.
- 3 | Determine if ASM has proper internal controls in place to ensure Spectra is compliant with the agreement.

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## Scope

The audit scope included a review of the Spectra agreement and the monitoring and compliance for the 2019 calendar year.

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## Methodology

To complete this audit, we performed the following steps:

- Interviews with Spectra management and staff.
- Interviews with City of Sioux Falls staff involved in the contract monitoring process.
- Interviews with ASM management and staff.
- Documentation and evaluation of current management contract monitoring.
- Review of established City of Sioux Falls ordinances.
- Review of written policies and procedures over Spectra's management monitoring process.
- Review of the 2019 External Audit performed by Eide Bailly.
- Review of the Canaries Stadium Agreement 99-0191.
- Review of the Washington Pavilion management Agreement 19-4114.
- Review of Munis and Tyler Content Management (TCM).

### **Insurance Requirements**

The agreement requires Spectra to carry the following insurance policies: commercial liability to include liquor liability, workers compensation, automobile, fidelity, umbrella, and property insurance. A performance bond is required to be maintained throughout the terms of the agreement. The contract further requires the City and the facility manager are named as additional insured for these insurance policies.

The following audit findings were noted during the review of the insurance requirements:

### **Finding 1**

The agreement states that Spectra will provide the City and facility manager proof of renewal of all insurance policies at least 45 days prior to the expiration of the policies. There was no evidence Spectra provided the City and facility manager proof of insurance renewals at least 45 days prior to the expiration of the policies.

Current policies had to be requested and were not filed within the City or facility manager.

The agreement requires Spectra to maintain automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. The policy requires not less than \$1,500,000 combined single limit each occurrence. Spectra's policy only identifies \$1,000,000 of combined single limit coverage.

**See recommendations 1, 2, 3 & 4 below**

### **Finding 2**

Spectra's liability insurance for general, excess, liquor, automobile, and workers compensation liability references the Orpheum Theater as a location insured. Agreement 19-4114 amends the current agreement and terminates services to this facility. **See recommendations 1 & 2 below**

### **Record Keeping and Reporting**

#### **Audits**

An independent audit of Spectra's gross receipts and commissions by an accounting firm will be submitted to the City no later than May 31 following the end of each agreement year.

### **Finding 3**

The 2019 independent audit of Spectra's gross receipts performed by Eide Bailly was not completed in compliance with the agreement. Eide Bailly completed the report in December 2020, after the May 31 deadline. **See recommendations 1, 3 & 4 below**

Internal audit did verify that Spectra has already signed the letter of engagement for the 2020 audit by Eide Bailly and is projected to be submitted to the City no later than May 31, as the agreement requires.

## **Operating Account**

Spectra is to establish and maintain, in its name, a separate commercial bank account and will deposit all gross receipts collected in these operating accounts. Spectra is in compliance of this requirement established in the agreement.

## **Accounting Records**

Spectra will maintain separate and independent books and records of account for the gross receipts and commissions in accordance with generally accepted accounting principles. We obtained and reviewed the bank statements, gross receipts, and commission statements. Spectra is in compliance and has accounting records that document the deposit of all gross receipts from all sales and other transactions for the food services.

## **Reporting**

The following reports are to be submitted to the facility manager and the City specified in each section of the agreement:

- Projection of Gross Receipts and Commissions
- Gross Receipts and Commissions
- Sales Report
- Area Commission Statement
- Marketing and Catering Sales Program
- Customer Satisfaction Survey
- Annual Report

We obtained and reviewed a sample of the reports to confirm they were provided to the City, the facility manager, or both, when required, in accordance with the agreement.

## **Controls over Contract Compliance by City Administration**

We interviewed management and staff to determine what controls are in place over the contract administration and compliance of the agreement. We reviewed Munis vendors, contracts, and documents to verify they were obtained and in compliance. An analysis of the purchasing manual and contract entry standard operating procedures (SOP) was conducted to ensure policies and procedures are being followed.

The following audit finding was noted during our review of the controls over the contract administration and monitoring of this agreement:

**Finding 4**

- 1) The checklist provided by management was not completed.
- 2) Insurance documents on file were expired.
- 3) Proof of the performance bond was not on file.
- 4) Proof of the property insurance was not on file.
- 5) Contract amendments were not on file.

In addition, neither the policy manual nor the contract SOP provide much guidance on contract administration and monitoring. **See recommendation 3**

**Controls over Contract Compliance by ASM**

We interviewed ASM management and staff to determine if proper controls are in place over the contract administration and compliance of the agreement.

The following audit finding was noted during our review of the controls over the contract monitoring of this agreement:

**Finding 5**

Although ASM met several contract monitoring and oversight requirements related to the Spectra agreement, a lack of thorough documentation in monitoring activities resulted in unmet contract requirements. **See recommendation 3**

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## Recommendations and Management Response

1 | We recommend that Spectra develop and implement procedures to ensure compliance is maintained throughout the terms of the agreement.

*Spectra's Response:*

I have reached out to my company's insurance consultant to ensure that we can get something auto-sent to the city/ASM with the new updated insurance renewal 45 days before it expires. Waiting for a response from her to clarify how that process will be executed.

*Spectra's Representative Responding:* Jared Vander Poel, Regional Finance Director

*Date of Expected Implementation:* 10-1-2021

2 | We recommend that Spectra provide updated insurance documents reflecting the correct location(s) services and procure and maintain the correct amount of business automobile coverage required by the agreement.

*Spectra's Response:*

Have reached out to my company's insurance consultant to make the adjustments requested in the removal of the Orpheum and update proper amounts for Automobile coverage.

*Spectra's Representative Responding:* Jared Vander Poel, Regional Finance Director

*Date of Expected Implementation:* 10-1-2021

3 | We recommend that management develop a citywide written internal policy and procedures to:

- 1) Strengthen current controls over contract compliance.
- 2) Define contract administration and monitoring practices.
- 3) Ensure contract requirements are obtained before execution of work.
- 4) Address contract amendments and renewals.

These written policies and procedures should:

- 1) Provide clear and consistent expectations for staff to follow.
- 2) Describe how and when tasks should be completed, as well as who should complete them.
- 3) Include documentation expectations and requirements.

*City's Response:*

Insurance Certificates: Finance is working to implement MyCOI in 2022 which will provide a third-party managed technology and automated tracking system that will ensure compliance and timeliness of insurance certificates going forward. Additionally, Finance will be working with legal, risk management, and outside insurance professionals to determine whether the requirement to submit insurance renewal documents 45 days prior to insurance expiration is reasonable and practical based on norms in the insurance marketplace, or whether this provision should be amended in future agreements to better reflect market norms.

Spectra Audit: In 2020, due to facility closures and limited revenues resulting from the COVID-19 pandemic, Spectra delayed completion of its 2019 audit and did not inform the City. The most recent 2020 Audit was completed as required on May 27, 2021. Tracking timely performance of audit requirements will be incorporated and monitored in the contract checklist discussed further below.

Checklist: A checklist had been developed to monitor the Spectra contract, with primary responsibility for updating the checklist and contract compliance vested with ASM Global as the City's manager of the Event Center Complex. To enhance compliance and monitoring, Finance will also be reviewing pertinent components of the checklist directly with Spectra on a regular basis.

Contract Compliance: Finance is working on an internal contract management policy for major contract and management agreement compliance, and when appropriate, will include a checklist requirement and an assigned individual responsible for major third party management contracts/agreements. The policy will also address responsibilities for deliverables in the contract/agreement.

*City Representative Responding:* Shawn Pritchett, Director of Finance

*Date of Expected Implementation:* 6/30/2022

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We recommend ASM develop record-keeping standard operating procedures that will strengthen the monitoring process to ensure Spectra's compliance to the agreement.

*ASM's Response:*

ASM put in place a list of 17 items of compliance earlier this year that requires Spectra to report on. This checklist has been submitted to the Auditors blessed to proceed.

*ASM Representative Responding:* Mike Krewson, General Manager

*Date of Expected Implementation:* 02/28/2021

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## Opportunity for Improvement

The following recommendation does not address an audit finding, but rather an opportunity for improvement for the Spectra agreement.

We recommend at the expiration of Agreement 17-4173 a thorough review of the succeeding agreement is imperative to eliminate mistakes and inconsistencies.

- The agreement states Spectra has to maintain 2,500 place settings, but Exhibit B states they need to increase the number of place settings from 2,000 to 3,000.
- A section in the agreement incorrectly states December 31, 2020 as the agreement termination date.

While being relatively small errors, fixing them will help anyone who needs to refer to the agreement to verify Spectra is in compliance.

*City's Response:*

The City will look to incorporate these changes into future updates or agreements with Spectra after the current agreement expires on 12/31/2022.

*City Representative Responding:* Shawn Pritchett, Director of Finance

*Date of Expected Implementation:* 12/31/2022

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## Conclusion

The City has engaged with Spectra to provide foodservices at the Sioux Falls Convention Center, the Sioux Falls Arena, the Orpheum Theater, the Denny Sanford PREMIER Center, and the Sioux Falls Baseball Stadium. The City has also entered into a contract with ASM to manage these facilities. Based on our review, we believe the City and ASM have various procedures in place but have room for improvement to strengthen the current controls to ensure Spectra is compliant with the contract requirements. Our recommendations and opportunity for improvement will provide additional assurance that Spectra will continue to be compliant with the various aspects of the contract. We would like to thank everyone from the City, ASM, and Spectra for their cooperation and assistance during the audit.

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## Authorization

The Sioux Falls City Council approved this audit by resolution in December 2019 as a carryforward audit from the 2019 Annual Audit Plan. The Internal Audit Division operates under the authority of Sections 32.010 through 32.025 of the Sioux Falls Code of Ordinances.

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## Audit Standards

This audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors.

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## Statement of Independence

Internal Audit is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Audit Manager is accountable to an Audit Committee appointed by the City Council per Section 32.022 of the Code of Ordinances of Sioux Falls, SD.

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## Distribution of Report

This report is intended for the information and use of the Mayor and City Council, management, and others within the City of Sioux Falls. However, the report is a matter of public record and its distribution is not limited.

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## Performed By

Shana Nelson  
Internal Audit Manager