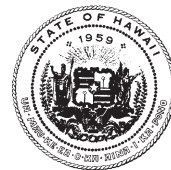

Investigation of the Stadium Authority's Swap Meet Operations

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 12-02
March 2012



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
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8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

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Marion M. Higa
State Auditor
State of Hawai'i

"I doubt that the commercial operations satisfy the deed restrictions and public recreational test."

— *Federal Lands to Parks Program coordinator when asked how current swap meet operations comply with federal deed restrictions.*

Recommendations

Responses

Previous Audits

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<http://www.state.hi.us/auditor>

Investigation of the Stadium Authority's Swap Meet Operations

Report No. 12-02, March 2012

Stadium Authority not providing the leadership to protect and grow important state resource

Swap Meet Operations and Future Development at Risk

The Stadium Authority was established to operate and manage the stadium and facilities for the recreational and entertainment needs of the people of Hawai'i. While the Aloha Stadium is a world-famous venue and a home to many popular sporting events, it is the Aloha Stadium Swap Meet and Marketplace that is the authority's largest revenue source, operating more than 150 days a year and featuring a wide variety of goods from more than 700 local merchants. In FY2009-10, the swap meet generated more than \$4.8 million or 67 percent of the authority's total revenues.

We found that the Stadium Authority is not providing the needed leadership to protect and grow this important state resource. For example, more than half of the Aloha Stadium is former federal surplus property, which was deeded to the City and County of Honolulu in 1967 by the U.S. Department of the Interior with the stipulation that the land be used as a public park or for public recreational use. Three years later, the land, with deed restrictions intact, was transferred to the State of Hawai'i. While concessions are allowed on the land, non-recreational commercial activities are strictly prohibited. The Aloha Stadium opened for business in 1975 with swap meet operations beginning four years later.

However, the Stadium Authority has yet to obtain federal approval to operate its present-day swap meet and marketplace. This violation of the original deed restrictions could lead to the land being reverted to the federal government. While the likelihood of this action may seem remote, it is imperative that the Stadium Authority do everything in its power to ensure that its operations comply with all relevant laws and agreements. Moreover, unless the authority obtains approval from the federal government for future development projects, it will be unable to generate revenue needed to repair and rebuild the stadium and the city may not be able to build a proposed transit station for its rail project.

Swap Meet Contractor and Vendors Operate With Little Oversight

The stadium manager ignored his contract administration responsibilities to ensure that swap meet contractor Centerplate is managing the swap meet operations effectively. He was negligent in monitoring and evaluating Centerplate's performance in 2007 and 2009, failed to tell the evaluation committee in July 2009 that Centerplate had not met the authority's goals and was derelict in its performance, and failed to monitor vendor complaints as required by contract. Centerplate also failed to adequately perform under the terms and conditions of the 2004-2009 contract when it missed its goal to increase the number of vendors and the public attendance. Yet, the stadium manager awarded a new contract to Centerplate without evaluating its past performance.

We also found that Centerplate's failure to consistently enforce its rules enables merchants to operate their businesses illegally. After analyzing the data we provided, the state Department of Taxation confirmed that almost one-third of the top 450 vendors at the Aloha Stadium Swap Meet and Marketplace did not file general excise tax returns for 2007, 2008, and 2009. In addition, a number of vendors underreported their tax obligation by filing a zero (\$0) general excise tax return even though the top 450 vendors paid an average of \$29,500 in rental payments during this period. We found one vendor who paid more than \$31,000 in rent and operated for a whole year at the swap meet before getting a general excise license.

Agency Response

The Stadium Authority responded that it is conducting its operations in full compliance with all deed restrictions, claiming that since 1979 "while the volume of activity has fluctuated over the years, the core swap meet operations remain unchanged." By making this questionable claim, the authority ignores both the reality of present-day swap meet operations and the risks associated with possible noncompliance. This failure to manage proactively is consistent with what we found during our investigation.

We stand by our findings.

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Investigation of the Stadium Authority's Swap Meet Operations

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Governor
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the State of
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Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 12-02
March 2012

Foreword

This is a report on the investigation of the Stadium Authority's swap meet operations, as requested by Section 136, Act 162, Session Laws of Hawai'i 2009. We conducted the investigation pursuant to the Hawai'i State Constitution, Article VII, Section 10, which requires the Auditor to conduct investigations as directed by the Legislature.

We wish to express our appreciation for the cooperation and assistance extended to us by the Stadium Authority board members, stadium management, the Departments of Accounting and General Services, Land and Natural Resources, Taxation, and Transportation, the U.S. Department of the Interior, the City and County of Honolulu, and others whom we contacted during the course of our investigation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

In Act 162, Session Laws of Hawai'i (SLH) 2009, the Legislature requested the State Auditor to conduct an in-depth investigation of the Stadium Authority with respect to procurement and expenditure practices and any impacts of its fiscal and management practices for the fiscal biennium 2007-2009. This request was prompted in part by reports of complaints of unfair dealings alleged by the Aloha Stadium Swap Meet and Marketplace vendors against the company that manages the swap meet operations and the Stadium Authority. The Legislature also asked that we focus our investigation on cash transactions to determine where the Stadium Authority is either losing revenue opportunities, or where more revenues could be generated.

Background

The Aloha Stadium is one of the most widely utilized stadiums in the United States. It hosts more than 250 annual events, including 156 swap meets, and various major spectator events, high school and grade school events, fairs and carnivals, and concerts and shows. The 50,000 seat Aloha Stadium is the state's largest outdoor arena with a parking lot with a capacity for 8,000 cars, 150 buses, and 109 disabled parking spaces.

Exhibit 1.1

Aerial Photo of the Aloha Stadium and Its Parking Facilities



Source: © 2009 Ed. Gross/The Image Group LLC, Honolulu

Officially opened in 1975, Aloha Stadium is situated on 104 acres of land in Hālawā that includes 56 acres of former federal surplus property deeded to the City and County of Honolulu. In 1970, the U.S. Department of the Interior approved the transfer of title from the city to the State of Hawai‘i. Deed restrictions limit use of the land as a public park or for public recreational use in perpetuity according to a program of utilization approved by the U.S. Department of the Interior, National Park Service. Concession agreements may be entered into for the purpose of serving a park and recreational use, but other commercial purposes are prohibited. Should the State use the land for commercial purposes in violation of the deed restrictions, the land may be reverted to the federal government.

Stadium Authority

The 1970 Legislature established the Stadium Authority to operate and manage the stadium and facilities for the recreational and entertainment needs of the people through Act 172, SLH 1970, codified in Chapter 109, Hawai‘i Revised Statutes (HRS). The act also provided an appropriation to build the stadium in Hālawā. Initially attached to the Department of Budget and Finance, the authority was transferred in 1980 to the Department of Accounting and General Services (DAGS), which provides administrative oversight.

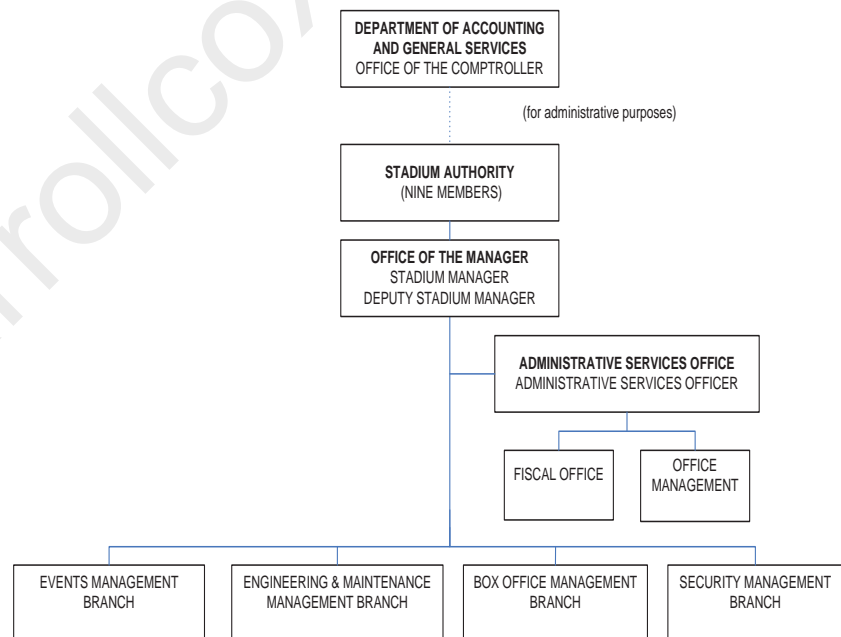
The authority’s powers and duties are to maintain, operate, and manage the Aloha Stadium and the parking lot facilities. Its responsibilities include:

- Maximizing the use of Aloha Stadium and ensuring the stadium remains a first-class facility and premier venue of the Pacific;
- Generating revenues to meet operational expenses;
- Adopting, amending, and repealing in accordance with Chapter 91, HRS, rules for its projects, operations, and facilities;
- Implementing repair and maintenance programs and projects to minimize facility deterioration and ensure conformance with current health, safety, and operational requirements;
- Ensuring the safety of licensees, participants, and spectators;
- Providing events planning and customer services; and
- Conducting an on-going program to promote and maximize the use of Aloha Stadium for large spectator events.

The authority is governed by a nine-member board appointed by the governor. Board members serve without compensation for four-year terms and may not be appointed consecutively to more than two terms. In addition, the president of the University of Hawai‘i and superintendent of education are ex-officio non-voting members.

In 2007, the authority appointed the current stadium manager to administer the affairs of the stadium and related facilities subject to its direction and approval. In addition to the stadium manager, the stadium’s management team consists of the stadium administrative services officer, the deputy stadium manager, the fiscal officer, and the events manager. The authority is organized into the Fiscal Office and various branches, including the Events Management Branch, Engineering and Maintenance Management Branch, Box Office Management Branch, and Security Management Branch. Exhibit 1.2 shows the organization of the Stadium Authority.

**Exhibit 1.2
Stadium Authority Organization Chart**



Source: Stadium Authority, Department of Accounting and General Services

Mission and purpose

The stadium was built to benefit the people. The mission of the authority is:

... to meet the challenge of providing a first class arena where the dreams of our young people can be realized through participation in sporting and other special events; where the spirit of achievement can be nourished by the thrill of competition; where families can gather to share their cultural diversity with pride and a feeling of Aloha.

The stadium is operated for the state's recreational and entertainment needs and provides a place where large gatherings of people may assemble. The objective of Aloha Stadium is to provide people of all ages with the opportunity to enrich their lives through attendance at spectator events and shows.

Stadium Special Fund and operations of the authority

The authority is funded by a Stadium Special Fund established in 1970. According to statute, all revenues collected by the authority are deposited into this special fund. The moneys are used to pay for expenses related to the stadium's operations, maintenance, promotion, management, and the financing of any capital improvement project.

The Legislature periodically determines if the Stadium Special Fund has a balance that is in excess of the requirements of the fund and has authorized the transfer of funds from the authority's special fund to the State's general fund. Authorized transfers include a \$4.1 million transfer in FY2002-03; \$600,000 in FY2004-05; \$1.5 million in FY2008-09; and a total of \$2.5 million in FY2010-11.

The authority generates revenues through providing services in connection with its principal ongoing operations, management, and maintenance of the Aloha Stadium. Exhibit 1.3 summarizes the authority's audited revenues and expenditures for past four fiscal years. Exhibit 1.4 summarizes the authority's audited statement of cash flows for the past four fiscal years.

Exhibit 1.3
Audited Revenues and Expenditures, FY2006-07 Through FY2009-10

	FY2006-07	FY2007-08	FY2008-09	FY2009-10
Operating revenues				
Rentals from attractions	\$5,887,886	\$5,727,344	\$5,138,440	\$4,880,607
Commissions - food and beverage concessionaire	\$1,976,777	\$1,869,828	\$1,424,851	\$1,205,972
Parking	\$742,609	\$710,145	\$664,633	\$556,948
Advertising	\$284,788	\$335,859	\$217,057	\$174,750
Other	\$267,220	\$358,860	\$325,655	\$304,470
Total operating revenues	\$9,159,280	\$9,002,036	\$7,770,636	\$7,122,747
Operating expenses				
Depreciation	\$4,089,512	\$4,066,152	\$4,187,112	\$4,363,519
Personnel services	\$3,495,178	\$4,021,609	\$4,341,496	\$4,123,634
Utilities	\$886,078	\$1,159,487	\$1,176,104	\$1,187,199
Special fund assessments	\$579,259	\$582,936	\$530,504	\$502,328
Repairs and maintenance	\$399,677	\$589,172	\$461,297	\$683,806
Security	\$327,184	\$276,864	\$311,218	\$324,621
Professional services	\$248,834	\$196,616	\$210,921	\$190,997
Other (including supplies)	\$225,872	\$355,447	\$1,967,239	\$602,456
Total operating expenses	\$10,251,594	\$11,248,283	\$13,185,891	\$11,978,560
Operating loss	(\$1,092,314)	(\$2,246,247)	(\$5,415,255)	(\$4,855,813)

Source: Office of the Auditor. Chart prepared from annual audited financial statements.

Exhibit 1.4
Audited Statement of Cash Flows, FY2006-07 Through FY2009-10

Stadium Special Fund Balances	FY2006-07	FY2007-08	FY2008-09	FY2009-10
Cash at beginning of year	\$5,392,147	\$7,879,296	\$10,151,220	\$7,589,813
Net increase/(decrease) in cash that year	\$2,487,149	\$2,271,924	(\$2,561,407)	\$300,883
Cash at end of year	\$7,879,296	\$10,151,220	\$7,589,813	\$7,890,696

Source: Office of the Auditor. Chart prepared from annual audited financial statements.

In addition to the special fund, the authority also receives capital improvement project (CIP) funds for the repairs, alterations, and improvements to the Aloha Stadium and related facilities. Over the past two fiscal bienniums 2007-2009 and 2009-2011, the Legislature has appropriated almost \$65.4 million in CIP funds to Aloha Stadium through general obligation bonds for the repairs, alterations, and improvements to the stadium to meet code, safety, and operational requirements. During this fiscal biennium 2011-13, the Legislature appropriated \$10.3 million

in CIP funds to Aloha Stadium through general obligation bonds for the mitigation and elimination of conditions that may become hazardous to health and safety.

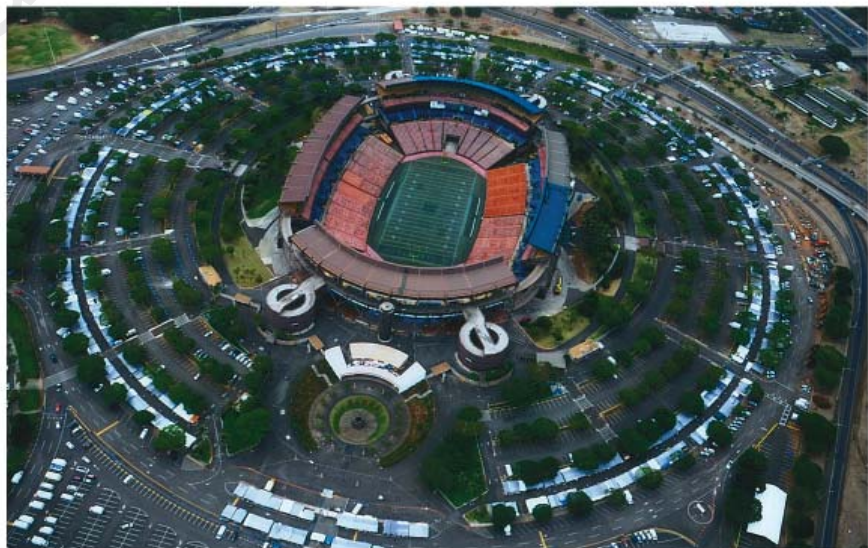
Although the authority reports that it covers its operating costs through its special fund without general fund support, the revenues and expenditure statements for FY2009-10 report an operating loss of almost \$4.9 million due to \$4.4 million in depreciation. The State funded capital improvement projects for repairs, alterations, and improvements at the Aloha Stadium through general obligation bonds, which the Stadium Authority is not required to repay.

Aloha Stadium Swap Meet and Marketplace

The Aloha Stadium Swap Meet and Marketplace touts itself as Hawai‘i’s premier discount warehouse outlet and outdoor market with “endless” rows of over 700 local merchants offering the “best” value on imported merchandise, handmade items, “eclectic” art pieces, “popular” local snacks, and other made-in-Hawai‘i products. Open on Wednesdays, Saturdays, Sundays, and during special promotional periods, the swap meet charges \$1 for admission for customers 12 years and older. Annually, more than 150 swap meet days are held at Aloha Stadium with nearly one million customers attending. Exhibit 1.5 shows an aerial photo of the Aloha Stadium and its swap meet operations. Exhibit 1.6 shows a map of the swap meet layout. Exhibits 1.7 and 1.8 show photos of swap meet vendors.

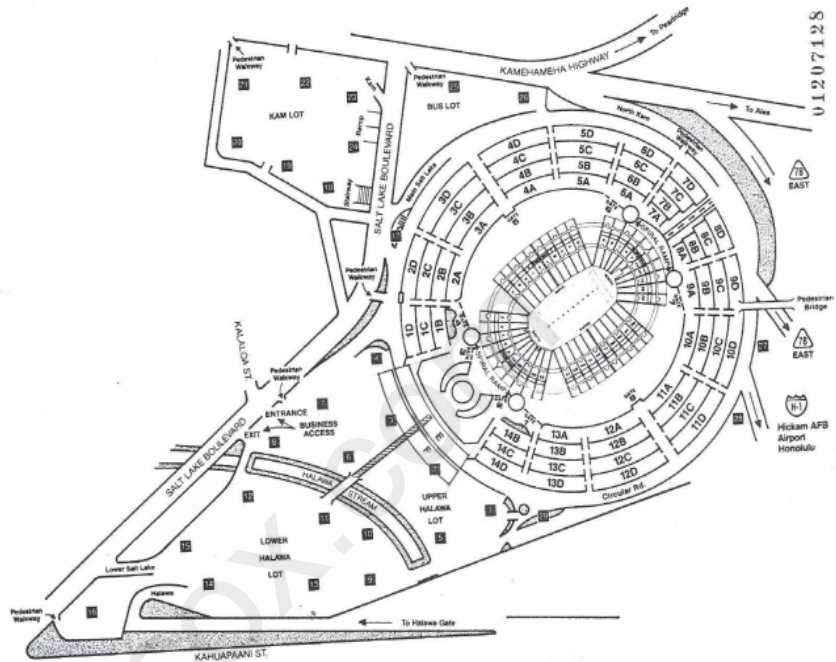
Exhibit 1.5

Aerial Photo of the Aloha Stadium and Its Swap Meet Operations



Source: © 2009 Ed. Gross/The Image Group LLC, Honolulu

Exhibit 1.6
Map of Swap Meet Layout



Source: Stadium Authority

Exhibit 1.7
Photos of Swap Meet Vendors Selling Flea Market Items
Some of the swap meet vendors are selling flea market items.



Swap meet vendor selling flea market items



Swap meet vendor selling flea market items

Source: Office of the Auditor

Exhibit 1.8
Photos of Swap Meet Vendors Selling New Merchandise and Services

Most of the swap meet vendors are commercial operations that set up tents at the swap meet to showcase their new merchandise.



Buyers visiting swap meet vendors



Swap meet vendor selling tourist items



Swap meet vendor selling signs



Swap meet vendor selling t-shirts

Some of the swap meet vendors sell a variety of services.



Swap meet vendor selling tours, dinner cruises, and car rentals



Swap meet vendor selling teeth whitening services

Source: Office of the Auditor

The swap meet began regular operations as the Aloha Flea Market, Inc., in 1979, four years after Aloha Stadium was opened. Over the past 30 years, three separate vendors—one concessionaire and two contractors—have managed swap meet operations. The concessionaire owned the swap meet and paid a rental fee to the Stadium Authority for use of the stadium facilities. Once the Stadium Authority took over ownership of the swap meet, it hired a contractor to manage the swap meet and paid the contractor a management fee.

For the first 20 years, from 1979 to 1999, Aloha Flea Market, Inc. managed the swap meet operations through a concessions agreement. The concessionaire paid an established concession fee to the Stadium Authority as rent on a monthly basis. The fixed fee was \$32,000 for each Saturday and Sunday, and \$25,000 for each Wednesday of the month for the use of the Aloha Stadium parking area.

In 1999, the authority voted not to extend the concession agreement and instead took over ownership of the swap meet and renamed it the Aloha Stadium Swap Meet. The services to manage the swap meet were procured through a request for proposal (RFP), and the contract to manage the swap meet operation changed from a concessions agreement to a management services agreement. That same year, the State awarded a two-year swap meet management contract to Consolidated Amusement Company, Ltd., a company with more than 30 years of swap meet management experience. Consolidated Amusement Company, Ltd. was compensated by a guaranteed monthly fee of \$15,000 or a 12 percent

commission based on the monthly gross swap meet receipts, whichever was greater. The State subsequently extended the contract three times, with the last contract extension ending in August 2004.

In 2004, the State issued an RFP for the swap meet management contract and a three-year services contract was awarded to Volume Services, Inc., dba Centerplate. Under the terms of the management contract, the authority paid Centerplate an 18.95 percent management commission deducted from gross monthly swap meet revenues which were collected through admission and vendor stall rental fees. In addition to the swap meet contract, Centerplate also has a ten-year food and beverage concessions agreement for the stadium. The authority subsequently extended the swap meet contract for two 12-month periods with the last extension ending in August 2009. In 2009, the authority issued an RFP for the swap meet management contract and subsequently signed a new three-year contract with Centerplate.

The Aloha Stadium Swap Meet and Marketplace is the authority's largest revenue source, generating over \$4.8 million or 67 percent of its total revenues for FY2009-10. In FY2009-10, Centerplate's food and beverage contract generated \$1.2 million in revenue for the authority. When combined with the revenue from the swap meet, Centerplate generated a combined \$6 million or 84 percent of the total authority revenues. Exhibit 1.9 summarizes the swap meet and marketplace revenues breakdown as reported to the Legislature.

Exhibit 1.9
Aloha Stadium Swap Meet and Marketplace Revenues, FY2006-07 Through FY2009-10

Swap Meet and Marketplace Revenues	FY2006-07	FY2007-08	FY2008-09	FY2009-10
Revenue from vendor rentals	\$5,615,509	\$5,693,668	\$5,228,752	\$4,971,434
Revenue from buyer admission fees	\$885,704	\$1,016,558	\$955,082	\$954,644
Total swap meet revenues	\$6,501,213	\$6,710,226	\$6,183,834	\$5,926,079
Less: commission to contractor	(\$1,231,980)	(\$1,271,588)	(\$1,171,837)	(\$1,161,471)
Swap meet revenues to authority	<u>\$5,269,233</u>	<u>\$5,438,638</u>	<u>\$5,011,997</u>	\$4,764,607
Net total authority operating revenues	\$9,159,280	\$9,002,036	\$7,770,636	\$7,122,747
Swap meet revenues as a percentage of net total authority operating revenues	58%	60%	64%	67%

Source: Office of the Auditor. Chart prepared from data provided by Stadium Authority.

Centerplate

Centerplate is a nationally recognized provider of concessions, catering, and management services for stadiums, arenas and convention centers, and has been operating in Hawai'i since 1973. Centerplate manages

ten food and beverage operations in Hawai‘i: Aloha Stadium, Neal S. Blaisdell Center, Waikiki Shell, Ala Moana Regional Park, Hanauma Bay, Paradise Cove, Hilo International Airport, Kona International Airport, Kailua Beach Park, and Sea Life Park. The Aloha Stadium Swap Meet is the only swap meet operation that Centerplate manages.

Aloha Swap Meet Vendors Association

The Aloha Swap Meet Vendors Association claims to represent approximately 450 vendors who rent permanent stalls to sell a variety of goods. The sales transactions are substantially in cash. The vendors are required by the Hawai‘i general excise tax (GET) law to have a general excise tax license and must pay the general excise tax imposed on their gross income.

Impetus for investigation

During the 2009 Legislature’s confirmation hearings for Stadium Authority members, Aloha Stadium Swap Meet and Marketplace vendors raised issues related to the authority’s and Centerplate’s management of swap meet operations. Most of the issues raised related to allegations of loss of vendor sales and income including: 1) authority does not support and ignores the vendors; 2) changes to swap meet were detrimental to the vendors; 3) swap meet reconfiguration caused vendors to move to less desirable locations; 4) Centerplate management accepted unauthorized fees from vendors in exchange for special consideration in stall placement or to ignore rules violations; 5) Centerplate had a conflict of interest because it held both the swap meet and food concessions contracts at Aloha Stadium; and 6) Centerplate had performance problems as the swap meet management contractor. In response, the Legislature requested this investigation via Act 162 (SLH 2009).

Previous audits

Report No. 95-33, *A Review of Sports Promotion Activities of the Department of Business, Economic Development and Tourism*, issued in 1995, responded to the Legislature’s request that the State Auditor review whether sports promotion activities being performed by the Department of Business, Economic Development and Tourism (DBEDT) should be transferred to the Stadium Authority. We found that the authority’s main purpose is to operate and maintain Aloha Stadium and its related facilities for the benefit of the community, and that this differs from the predominantly economic and tourism industry orientation of DBEDT. We also concluded that transferring sports promotion activities to the Stadium Authority would not be beneficial and that the authority should continue its focus and promotion of Aloha Stadium.

In addition, annual audits of the Stadium Authority's financial statements conducted by KPMG LLP and Kobayashi, Kanetoku, Doi, Lum & Yasuda CPAs LLP for fiscal years 2007 to 2010 reported that the financial statements fairly presented the financial position of the authority.

Objectives of the Investigation

1. Examine selected cash operations at Aloha Stadium and their potential for generating revenues to achieve goals set by Stadium Authority and the State.
2. Determine the impact of Stadium Authority's land deed on the swap meet operations and other commercial ventures.
3. Make recommendations as appropriate.

Scope and Methodology

The Legislature requested by Act 162, SLH 2009, that the State Auditor conduct an in-depth investigation of selected operations at the Stadium Authority. Based on further discussions with the Legislature, we focused our investigation on the Stadium Authority's revenue opportunities and looked at the stadium swap meet operations and selected cash operations for fiscal years 2007 to 2010. The cash-based parking operations at the stadium were excluded from our investigation because a prior audit found that the authority maintained effective internal control over financial reporting for its parking revenue. Our investigation also considered federal and state law related to the stadium land's deed restrictions and their impact on potential revenue opportunities.

We conducted interviews with legislators, Stadium Authority board members, stadium management, Centerplate management, state Department of Taxation (DoTAX) management, swap meet vendors, and officials with the National Flea Market Association. We analyzed swap meet data obtained from the Stadium Authority and Centerplate, and provided the data to DoTAX for further analysis. We conducted site visits to observe swap meet operations. We observed and tested operations to determine whether the swap meet rules and regulations were adequately enforced.

To determine the impact of the stadium land deed restrictions on the swap meet operations and other commercial ventures, we also interviewed the state comptroller, DAGS public works management, Department of Land and Natural Resources (DLNR) management, City and County of Honolulu Department of Transportation Services management, and officials with the U.S. Department of the Interior,

National Park Service. We reviewed pertinent laws, rules, reports, land deed documents, survey maps, and studies. We reviewed correspondence files and board and committee meeting minutes.

Our investigation was conducted from June 2009 to December 2009 and from July 2011 to October 2011, pursuant to the Hawai'i State Constitution, Article VII, Section 10, which requires the Auditor to conduct investigations as directed by the Legislature. Our work was performed according to the Office of the Auditor's *Manual of Guides* and generally accepted government auditing standards. Those standards require that we plan and perform the investigation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our investigation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our investigation objectives.

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Chapter 2

Stadium Authority Lax on Promises to U.S. Government and in Overseeing Swap Meet Operations

The Stadium Authority has been ineffective in guiding and managing its swap meet operations. We found that the board neglected to notify and seek federal approval of changes to swap meet operations over the years, an obligation it agreed to when it purchased the stadium lands. Much of the land underneath the swap meet operations is federal surplus land with the restriction that it “be used only for public park or public recreational use in perpetuity” and that “commercial purposes are not allowed.” The federal government has indicated its concern that swap meet operations, now a bustling commercial enterprise, may violate federal use restrictions.

Moreover, the board and its stadium manager have surrendered management responsibilities to their swap meet contractor, Centerplate, which operates with little oversight. By failing to provide leadership and guidance and adequate contract administration, authority officials have allowed Centerplate to make unilateral changes to swap meet operations, upsetting vendors. Also, Centerplate’s failure to consistently enforce its rules allowed swap meet vendors to operate illegally and avoid state general excise tax obligations.

Summary of Findings

1. Lack of federal approval for the use of the Aloha Stadium lands puts swap meet operations and future plans at risk.
2. Stadium Authority has surrendered its management responsibilities to a private contractor, which operates with little oversight.

Lack of Federal Approval for the Use of Stadium Lands Puts Swap Meet Operations and Future Plans at Risk

The Stadium Authority has always known that portions of the stadium lands are subject to federal use restrictions. In the 1970s, when the State received title from the City and County of Honolulu, it obtained approval from the federal government to develop the stadium and operate a swap meet concession. Since that time, the authority has not been vigilant in notifying the federal government of changes to the use. As a result, its current swap meet operations have not been approved and may violate a strict bar on commercial use. Moreover, federal approval has not yet been obtained for future projects, such as the development of a transit station the city needs for its rail project.

Swap meet and marketplace activities may violate federal use restrictions

Portions of the stadium swap meet and marketplace operate on lands that are subject to federal use restrictions. These restrictions, which require that the parcel be used for *public park or public recreational use*, prohibit commercial activities unless prior approval is obtained from the federal government. The Stadium Authority, however, did not obtain approval to operate its current swap meet and marketplace. Without it, the authority is in noncompliance with the use restrictions and risks loss of the swap meet and marketplace and its revenue. Noncompliance could lead to reversion of stadium lands to the federal government.

Authority agreed to maintain stadium lands as public recreational area

The stadium lands originally belonged to the federal government. In 1967, the City and County of Honolulu purchased the lands from the federal government for a stadium park, including a stadium structure, its parking facilities, and an adjacent public park for the recreational enjoyment of the residents of the surrounding area. The city promised that the “land [would] be forever used and maintained as public recreational area (public park or historic monument) and for that purpose only.” This intended use—known as a *program of utilization*—was approved by the U.S. Department of the Interior.

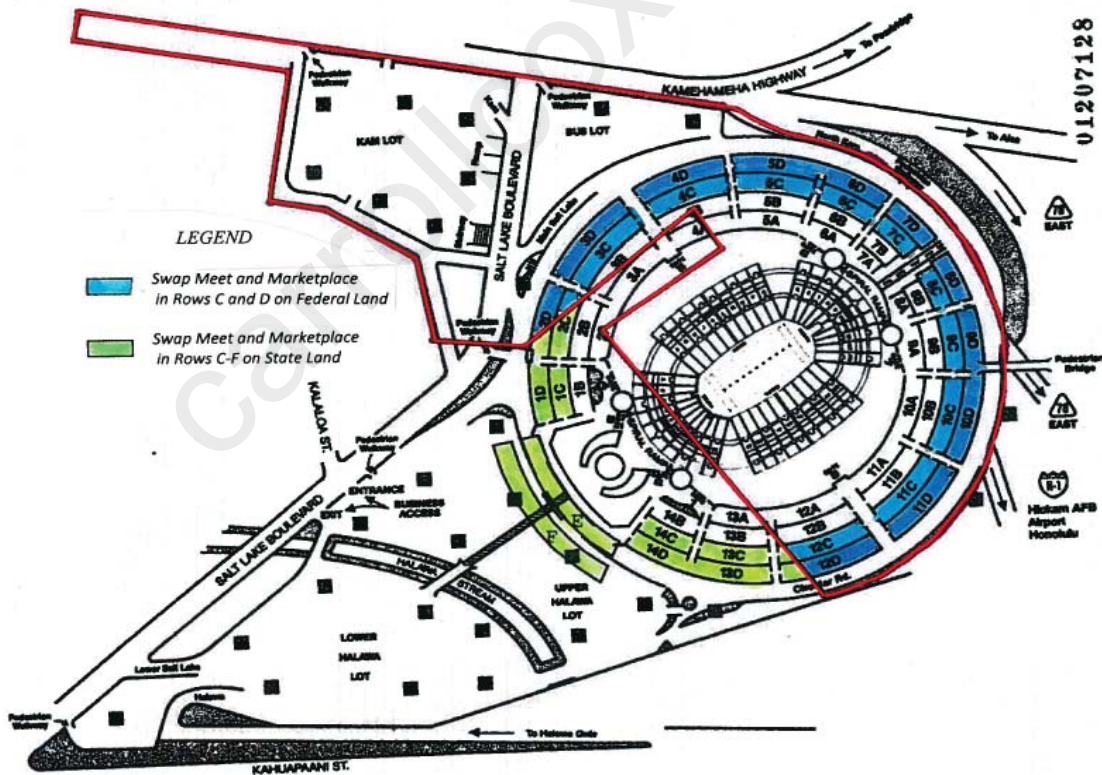
In 1970, the city transferred the stadium lands to the State by a quitclaim deed. The Department of the Interior, Bureau of Outdoor Recreation, approved a change to the original program of utilization to allow “the State to build the Aloha Stadium on the property for public recreational use.” A copy of the quitclaim deed between the City and County of Honolulu and State of Hawai‘i is attached as Appendix A. A 2009 memorandum of understanding between the State and the National Park Service summarized the terms of the quitclaim deed:

The land must be used only for public park or public recreational use in perpetuity according to a program of utilization approved by the National Park Service. Concession agreements may be entered into for the purpose of serving a public park and recreation purpose, but **commercial purposes are not allowed.** (emphasis added.)

To acquire title, the State also agreed to submit biennial compliance reports until 1987, setting forth the use made of the property, including information about any proposed modifications or changes to the program of utilization. In the event of a breach, the State’s title to the property, together with all the improvements, reverts to the United States upon written demand by the Secretary of the Interior.

We reviewed the stadium lands and found that the swap meet and marketplace operates on lands subject to federal use restrictions. The swap meet and marketplace is situated in the parking lot that encircles the arena as shown in Exhibit 1.5. Exhibit 2.1 shows the federal land under the stadium arena and surrounding parking lot outlined in red. The swap meet and marketplace occupy most of rows C and D inside the red line. Given this placement, the Stadium Authority is obligated to seek prior approval from the Secretary of the Interior for use of the land for these operations. Lacking approval or in the event the authority cannot get approval, the secretary could compel the authority to eliminate the swap meet and marketplace or, in the alternative, demand reversion of the lands and the stadium to the United States.

Exhibit 2.1
Map Showing Placement of Swap Meet and Marketplace Operations on Federal Lands



Source: Stadium Authority. Red outline added by the Office of the Auditor.

No record found of federal approval for current swap meet and marketplace activities

Previous swap meet operations had federal approval to operate on stadium lands. In 1977, the stadium manager proposed a Sunday morning swap meet concession “to round out the use of this property during off hours.” A copy of the stadium manager’s proposal describing the swap meet is attached as Appendix B. At that time, the U.S. Department of the Interior, Bureau of Outdoor Recreation, administered the Federal Land to Parks Program and the bureau’s western regional director approved the swap meet concession for a two-year period from 1977-1979. The first swap meet included 50 vendors and was located in the stadium parking lot. The swap meet concession ended after ten months for lack of public support.

In 1979, the stadium manager requested approval to renew the swap meet. Administration of the federal program had since moved to the U.S. Department of the Interior, Heritage Conservation and Recreation Service. The department approved the stadium manager’s request with the understanding that “renewed swap meet activities will be similar to those originally approved . . . and will not conflict with regularly scheduled events at the stadium.”

The 1979 approval apparently was the last federal approval for a swap meet. Neither the stadium manager nor the National Park Service—the agency currently in charge of administration of the federal program—has records of subsequent approval or notification of changes to swap meet operations since that time. Thus, it appears that the Stadium Authority failed to notify the National Park Service of changes in the frequency and size of the swap meet and marketplace activities over the past three decades.

Swap meet and marketplace’s commercial activities unlikely to satisfy deed restrictions

The federal deed restrictions require that the stadium lands be used and maintained as a public recreational area. As such, commercial uses are not allowed, and any concessions must receive prior approval and serve a public park and recreational purpose. Although swap meet concessions have been approved in the past, the current swap meet contractual arrangement has not. More importantly, we found that the current swap meet and marketplace’s operations may violate federal use restrictions because they are commercial activities that neither directly relate to nor support public recreational use.

In 1999, the authority changed the swap meet arrangement from a concession agreement to a service contract. Also, the name—Aloha Flea Market—was changed to Aloha Stadium Swap Meet. The name changed

again in 2008 to Aloha Stadium Swap Meet and Marketplace. These changes to the swap meet, however, were never shared with the National Park Service. Upon hearing a description of swap meet and marketplace activities in 2009, the Federal Lands to Parks Program coordinator, an official with the National Park Service, agreed that it may have evolved into something entirely different from the swap meet concessions approved in the past.

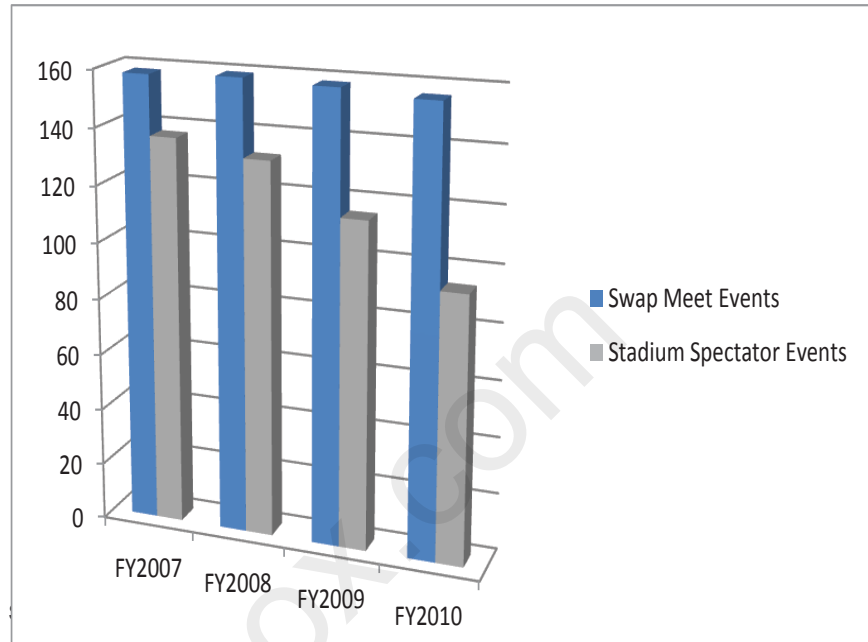
The federal coordinator expressed doubt that the commercial activities occurring in today's swap meet and marketplace would satisfy the deed restrictions and public recreational purpose. He stated that a swap meet would push the boundary of what is acceptable to the agency, but may meet the deed requirements if:

1. It is a public event;
2. It is not a commercial operation;
3. Its use is limited; and
4. Its operation does not remove the property from public recreational use.

Although it is a *public event* that *does not remove the stadium property from public recreational use*, thereby satisfying the first and fourth criteria, it is largely a *commercial operation*, which violates the second. Specifically, the swap meet and marketplace does not directly support a recreational activity and, hence, cannot qualify as a concession. For example, according to the federal coordinator, a kayak rental in a park with lakes and streams would qualify as a concession because people rent kayaks for recreational use. On the other hand, a car rental would not qualify because it does not directly support a recreational activity.

As to the third criterion—*limited use*—the swap meet and marketplace is open for business on more days throughout the year than a combination of all other events held at the stadium. This does not comport with a criterion of limited use. For example, the 1977 swap meet concession approval was for Sunday mornings and an occasional weekday morning not to conflict with scheduled events within the stadium. In total, about 50 to 60 swap meet events per year were allowed. By 1981, nearly 100 swap meet events were held each year, almost double the number of events approved in 1977. By 1991, the number of swap meet days had nearly tripled to three days per week. As shown in Exhibit 2.2, in fiscal years 2007 through 2010 there were almost 160 swap meet days each year. By comparison, in FY2007, there were 137 spectator events held in the stadium. The number of spectator events held in the stadium has dropped each year since then to 94 spectator events held in FY2010.

Exhibit 2.2
Number of Swap Meet Events Compared to Stadium Spectator Events, FY2007 to FY2010



Loss of land swap to remove use restrictions may put State’s and city’s plans at risk

In 1992, Congress enacted a law to authorize the Secretary of the Interior to remove the stadium property use restrictions. That same year, Hawai‘i’s governor and the mayor of Honolulu in a joint letter wrote to the secretary requesting to remove the covenant to use and maintain the stadium lands “forever and continuously . . . as and for a public park and public recreation area . . . only.” At that time, the State and the city planned to use the lands for affordable housing, transit stations, and state offices.

More than 15 years later, in January 2009, the State executed a memorandum of understanding with the National Park Service “to establish requirements for a land exchange, and the process by which the NPS and the State will explore the possibility of a land exchange for the Aloha Stadium property.” The lifting of the restrictions would not be effective until an equal amount of additional land is identified and dedicated for a public park and public recreation uses. At that time, the State sought to allow commercial use of the stadium lands and public-private partnerships to fund needed repairs and the rebuilding of Aloha Stadium. Also, the city sought to use the Aloha Stadium’s Kamehameha parking lot for a transit station to serve approximately 700 vehicles as part of the city’s Honolulu High Capacity Transit Corridor.

During 2009 and 2010, the then-state comptroller led the effort to complete land appraisals and identify properties for the land swap. By December 2010, however, the swap was no longer an option because the stadium property without the deed restriction was valued at \$33.3 million, and the State could not designate property of equal value as required by the federal government. When the authority lost the land swap option, it determined to obtain an alternate definition of recreational activities from the National Park Service. As of August 2011, no response from the service has been received.

In addition, in March 2011, shortly after the City and County of Honolulu conducted a ground-breaking ceremony to signal the start of its transit corridor project, the State requested a teleconference call with the National Park Service and the city to seek the service's concurrence with the State's issuance of a revocable limited right-of-entry to the city for its transit corridor. By September 2011, the park service indicated it would support the non-exclusive easement because the transit stop can support the purposes of the park. It expressed concerns, however, about more elaborate development of the site and reserved the right to review the plans again.

Although the right-of-entry and easement issues related to the city's transit corridor project are almost resolved, the State has yet to receive an alternate definition of recreational activities. A determination by the National Park Service that the proposed uses do not fit within the definition of recreational activities may put at risk or curtail both the State's and the city's plans.

Stadium Authority Has Surrendered Its Management Responsibilities to a Private Contractor, Which Operates With Little Oversight

Our investigation found that the Stadium Authority is not providing needed leadership and oversight of its swap meet contractor. When faced with the opportunity to effect change, the board and the stadium manager instead divested themselves of involvement and responsibility and surrendered oversight of its swap meet contractor.

In addition, we found that the stadium manager ignored his contract administration responsibilities to ensure Centerplate is managing the swap meet operations effectively. Centerplate failed to adequately perform under the terms and conditions of the 2004-2009 contract and inconsistently enforced its swap meet rules and regulations. Yet, the stadium manager awarded a new contract to Centerplate without evaluating its past performance.

Lastly, we found that Centerplate's failure to consistently enforce its rules requiring validation of general excise tax licenses let 26 vendors operate their businesses illegally. After analyzing the data we provided,

the state Department of Taxation (DoTAX) confirmed that one-third of the top 450 vendors at the Aloha Stadium Swap Meet and Marketplace have not been paying or are underpaying their GET taxes.

Stadium Authority board failed to provide the leadership and guidance needed to operate an efficient and effective swap meet

The board failed to provide the leadership and guidance needed to operate an efficient and effective swap meet in the best interests of its swap meet contractor, its vendors, and the general public. The board missed an opportunity to effect change and improve swap meet operations when it did not procure a swap meet consultant. When the board's contractor hired and paid for the consultant, the board declined to accept the report and recommendations. Furthermore, the board never discussed the issues raised by the vendors and took no action to address and resolve their complaints related to the proposed changes. Instead, the board and the stadium manager divested themselves of involvement and responsibility and surrendered oversight of their swap meet contractor when they allowed the contractor to make unilateral decisions and implement the consultant's recommendations.

The board and stadium manager divested themselves of responsibility for changes to swap meet operations

At its July 2007 meeting, the Stadium Authority board discussed at length the loss in revenues at the swap meet and other conditions affecting buyer and seller counts. It decided to hire a consultant to review the operations and management of the swap meet; the consultant was to provide monthly progress reports to the board. By January 2008, however, the stadium manager had made no progress in drafting the RFP. Although the state comptroller had informed the manager and the board that budget restrictions would make approval for the hiring of a consultant highly unlikely, it is unclear whether the board directed the manager to stop work on the RFP.

Thereafter, the Centerplate general manager reported during the January 2008 board meeting that Centerplate had committed to hire the swap meet consultant. The board chair said that Centerplate volunteered to hire the consultant without being requested by the board. The board accepted Centerplate's offer without questioning the arrangement.

When the board announced in May 2008 that Centerplate had hired a consultant, the Aloha Swap Meet Vendors Association complained that Centerplate's involvement in the process may bias the report. To address this complaint, Centerplate's general manager announced to the authority that the consultant's findings would be submitted directly to the board and not to Centerplate. He also suggested that the consultant evaluate Centerplate's swap meet manager's performance, which would also be sent directly to the board.

To address the association's complaint and facilitate submission of the consultant's report directly to the board, the board inquired whether the Stadium Authority could pay for the consultant. The deputy attorney general said he would request an exemption from the State Procurement Office to allow for this. However, a month later, the stadium manager reported to the board that the request had been withdrawn because to seek payment for a contract that had already been executed would violate the State Procurement Code.

When the board discussed the swap meet consultants' report during an August 2008 board meeting, the stadium manager requested board acceptance of the report. Although the board acknowledged receipt of the report, it declined to accept it because Centerplate had hired and paid for the consultant. In the end, the board took the recommendations under advisement. The board then asked the stadium manager and Centerplate to meet and bring their recommendations to the next board meeting.

At the next meeting, the stadium manager did not present any recommendations; rather, he announced that he would allow Centerplate to do its job to run the swap meet as stated in the contract. The Centerplate general manager then presented the changes that Centerplate planned to make to the swap meet operations. Although the board had previously shared the consultant's report with the swap meet vendors, vendor concerns did not influence Centerplate's planned changes.

Disengagement by the board made implementation of the consultant's recommendations problematic

The consultant was hired to construct a plan and a series of programs to make the authority's swap meet efficient, effective, and profitable. The consultant's report, released in June 2008, promised to "set a long term plan to bring the Aloha Stadium back to where it should be ... to turn this Swap Meet around and grow it back to its potential." Some of the issues the consultant's report addressed included the appropriateness of the swap meet's fee schedule for admission and vendor pricing, recommendations for swap meet reconfiguration, and a review of Centerplate's swap meet rules and regulations. Centerplate was required by its contract to establish swap meet rules and regulations; the Stadium Authority does not have rules for its swap meet operations.

Among the consultant's recommendations was the implementation of a *three-strike rule* for vendor violations. According to the consultant, a three-strike rule is an industry standard and ensures compliance while giving vendors the opportunity to familiarize themselves with the rules. The consultant also recommended rescinding the swap meet's *four-space rule* because it does not fit the nature of swap meet competition and free enterprise. Also known as the *four-stall rule*, the rule was created by the

vendors association and used to protect vendors from competition. The rule prohibits a new vendor with a similar product category from being located within four stalls on either side of an existing vendor. By renting every ninth stall in desirable locations, an existing vendor could use this rule to keep out competition.

The board conducted a special four-hour meeting to review the consultant's report and recommendations with the vendors and allow them to voice their opinions. The board recorded the vendors' comments and issued a 28-page document that it appended as Exhibit A to its August 2008 special meeting minutes. The vendors challenged or raised an issue with almost every item discussed.

At the end of the vendor meeting, the board chair stated that the board would discuss and take into consideration all the issues raised during its next meeting. However, the board did not discuss those issues at its next meeting. Instead, the board recommended that the stadium manager and Centerplate meet and bring their recommendations to the following board meeting. Ultimately, the board never discussed the issues raised by the vendors and took no action to address and resolve the complaints.

Not surprisingly, Centerplate encountered problems when it tried to implement the changes. The vendors complained during a subsequent board meeting, filed a petition, conducted a protest during a University of Hawai'i football game, and sent their complaints to the governor and Legislature. The vendors association also provided testimony in opposition to five Stadium Authority board members during their confirmation hearings in 2009 citing false leadership.

Stadium manager's poor contract administration fails to ensure that Centerplate is managing swap meet operations effectively

The stadium manager has been lax in his responsibilities as contract administrator. According to the National State Auditors Association, best practices for contract administration require that contracts be monitored to ensure that contractors comply with contract terms, and any problems are identified and resolved. A contractor's performance should be evaluated against a set of pre-established, standard criteria and documented for future use. The stadium manager has been negligent in monitoring and evaluating Centerplate's performance to ensure that Centerplate satisfactorily met the terms and conditions of its contract. Moreover, the stadium manager failed to notify an evaluation committee that the contractor was derelict in its performance, which could have impacted the committee's recommendation of Centerplate for the new swap meet contract. Ultimately, the stadium manager, as procurement officer, awarded Centerplate a new three-year contract despite its failure to adequately perform under the terms and conditions of the 2004-2009 contract. Without adequate contract monitoring and evaluation, the board and stadium manager cannot hold Centerplate accountable for the

lax enforcement of its rules and regulations or for the deviations from its contract responsibilities and cannot ensure the State has obtained the best value for its money.

Stadium manager awarded a new contract to Centerplate without a performance evaluation

Centerplate was awarded a new three-year contract in July 2009 without an evaluation of Centerplate's past performance on its prior contract. Past performance documented in a performance evaluation should have been an important factor for the contract evaluation committee to consider in evaluating the swap meet proposals. The stadium manager not only failed to conduct a comprehensive performance evaluation, but also failed to tell the committee that Centerplate had not met the authority's goals and had not fulfilled selected provisions of its swap meet contract. In the end, the stadium manager selected Centerplate based on the recommendation of the evaluation committee, which had not been informed of Centerplate's performance shortcomings.

We found that the stadium manager did not conduct a comprehensive performance evaluation of Centerplate during the entire 2004-2009 contract period. In 2007, the board requested the stadium manager prepare a performance evaluation of Centerplate for the contract years 2004-2007, including his recommendations on whether to renew Centerplate's swap meet contract extension. The board requested a comparison of Centerplate's performance against the contract's goals and objectives. The stadium manager evaluated Centerplate as having met the goals of the contract and recommended that Centerplate's swap meet management contract be extended until 2009. Relying on the stadium manager's evaluation, the board approved the extension.

According to performance contracting best practices articulated in The Urban Institute's *Making Results-Based State Government Work*, past performance should be a major factor in deciding later awards and these evaluations should be properly documented. As suggested by best practices, we reviewed Centerplate's performance against the contract goals and found that the stadium manager's assessment was incomplete and not entirely correct. The fact sheet prepared by the stadium manager omitted negative performance from the board, and stated that Centerplate had met the authority's goals. For example, one of the authority's goals was to "[i]ncrease the number of swap meet stalls, vendors and public attendance." We found that Centerplate had not achieved this goal; in fact, over the contract period, both the number of public attendance and the number of swap meet stall rentals decreased.

The stadium manager reported in his fact sheet that the average number of vendor stalls had been 678 for the past three years. The stadium manager's analysis does not reflect that the number of swap meet stalls fell during the three-year period from an average of 727 in 2005; 685 in 2006; to 623 in 2007. Similarly, the stadium manager reported that the average number of buyers had been 8,596 for the past three years. Again, his analysis does not acknowledge a downward trend, with the number of buyers falling from an average of 9,400 in 2005; to 8,540 in 2006; and again to 7,850 in 2007.

In December 2008, as the 2004-2009 contract term was nearing its end, the board set up a sub-committee to prepare the RFPs to manage the swap meet operations and to evaluate the proposals. The comptroller delegated the procurement officer position to the stadium manager. The stadium manager issued an RFP in April 2009, and the board formed an evaluation committee to review and score the proposals. In July 2009, results were tallied and a recommendation was submitted to the stadium manager, who performed the dual role of contract administrator and procurement officer.

Again, we found the stadium manager did not prepare a performance evaluation of Centerplate, this time for the extension period between 2007 and 2009. Coupled with the 2004 to 2007 contract period discussed above, we conclude that the stadium manager failed to conduct an adequate assessment of Centerplate's past performance over the entire 2004-2009 contract period. When questioned, the stadium manager answered that it was not his responsibility to prepare an evaluation; he believed it was the responsibility of the evaluation committee. We disagree.

We interviewed the stadium manager two days before the intent to award the contract was announced. The stadium manager acknowledged at that time that Centerplate had not fulfilled selected provisions of its swap meet contract. In a subsequent interview, he admitted that, prior to awarding the contract he knew that Centerplate was inconsistently enforcing its swap meet rules and regulations based on an investigation by the stadium deputy manager and was, thus, derelict in its performance.

We also confirmed with the evaluation committee chair that the stadium manager provided no information on Centerplate's past performance. According to the State Procurement Office guidelines on contract administration, as contract administrator, the stadium manager had a responsibility to ensure evaluation committee members were informed of significant information relating to the procurement. The stadium manager, however, withheld this information from the evaluation committee. As a result, the evaluation committee had no basis to evaluate Centerplate's past performance, even though this was one of the

evaluation criteria. In the end, only five points separated Centerplate's score of 633 as the highest ranked bidder from the second ranked bidder at 628.

In July 2009, the stadium manager, acting as procurement officer, accepted the evaluation committee's recommendation and announced his intent to award a new three-year contract with an option to extend up to four additional years (seven years total) to Centerplate. By awarding the new contract, the stadium manager effectively excused Centerplate for not fulfilling its prior contract terms. To prevent future contract awards to underperforming contractors, the board must ensure the stadium manager effectively monitors, evaluates, and documents contractor performance. The board should direct the stadium manager to establish an evaluation mechanism and monitor the contractor's performance under the terms of the contract and evaluate the manager's adherence to this directive. Finally, the stadium manager should prepare specific performance indicators to judge the contractor's performance and prepare and document a performance evaluation to be used when deciding future awards.

Stadium manager ignored his oversight responsibility to administer the swap meet contract

We found that the stadium manager has been lax in monitoring and ensuring Centerplate's performance. Although the stadium manager described an informal process he uses to monitor Centerplate's contract, we found that the board and stadium management have no written policies and procedures for contract administration. Further, the authority has no policies or procedures regarding the systematic and formal evaluation of contractors. Finally, the board neither evaluates the stadium manager's administration of the swap meet contract, conducts regular evaluations of the stadium manager, nor documents the stadium manager's shortcomings.

Oversight responsibilities belong primarily to the stadium manager as the Stadium Authority's contract administrator and procurement officer. According to his position description, the stadium manager participates in "negotiation of leases, contracts, booking, and agreements with concessionaires, service contractors, or organizations using the stadium, and negotiates and administers contracts . . . [while] ensuring compliance with contractual specifications." According to the State Procurement Office's definition of contract administrator, the stadium manager is the person designated to manage the various facets of the swap meet contract to ensure the swap meet contractor's total performance satisfies

the contractual commitments and obligations, including meeting the following minimum requirements and performance standards:

- Realize minimum annual revenues of \$4 million net of commission;
- Increase the number of swap meet stalls, vendors and public attendance; and
- Develop and implement an annual \$150,000 advertising and marketing program to promote the swap meet.

Although the stadium manager should be conducting day-to-day contract administration, he instead relies on monthly reports submitted by Centerplate. One report shows that Centerplate has met the requirement of increasing the number of swap meet stalls but has fallen short on increasing the number of vendors and the public attendance. Centerplate also submits a monthly financial report that the stadium manager uses to monitor compliance with the requirement to realize minimum annual revenues of \$4 million net of commission. These reports do not provide information on the performance standard of implementing an annual \$150,000 advertising and marketing program. Stadium management had to request this data from Centerplate to show us that Centerplate was meeting this requirement. The stadium manager should be independently assessing Centerplate's performance rather than relying on Centerplate's incomplete and self-reported numbers.

In addition, monitoring should ensure that any problems are identified and resolved. The State Procurement Office's guidance on contract administration requires the contract administrator to document the monitoring of the contractor performance and, if warranted, to issue a notice of default and a notice to correct or cure a default. The stadium manager was unable to provide us with notices sent to Centerplate; accordingly, we conclude that he did not issue any. By failing to document problems with Centerplate's performance, the stadium manager excused Centerplate's deficiencies, thereby eliminating the authority's ability to terminate for breach of contract. And by failing to properly fulfill his role as contract administrator, the stadium manager cannot ensure that the State is receiving best value for its money. The board needs to evaluate the stadium manager as contract administrator and hold him responsible for the contractor's evaluation and performance.

Stadium manager failed to monitor vendor complaints as required by the contract

The swap meet contractor is required to provide prompt, courteous, and efficient service to vendors and buyers. By monitoring and evaluating complaints received, the Stadium Authority should be able to ascertain whether its swap meet contractor is fulfilling this requirement. Yet, we found that Centerplate does not have a complaints process. Lacking a process, Centerplate's documentation of complaints is not readily available and is incomplete. As a result, the stadium manager can neither monitor nor evaluate the complaints. In the end, the stadium manager has no idea whether Centerplate has fulfilled this important contract provision.

We reviewed documentation Centerplate provides to the swap meet vendors, including the Aloha Stadium Marketplace and Swap Meet Rules and Regulations, vendor application, and stall usage contract. To file a complaint, Centerplate instructs vendors to use the Swap Meet general form, but this form provides no information on a complaints process. The general form instructions state:

1. Fill out form and all information above;
2. Detail all complaints, compliments and/or suggestions. Attach second page if needed;
3. Appeals process will take one (1) week from the date of filing the form with the swap meet office at box 6; and
4. Appointments with management is [sic] available on Sunday's [sic] from 10am – 3pm.

Likewise, Centerplate's Aloha Stadium Marketplace and Swap Meet Rules and Regulations also provide no instructions on submitting a complaint.

We confirmed with the Centerplate general manager that the appeals process in the instructions refers to an appeal within Centerplate management and not to the Stadium Authority board. A vendor complaint goes through Centerplate's chain of command until it is resolved. Although the stadium management may listen to complaints to become familiar with them, it expects Centerplate to resolve all complaints. Stadium management explained that "the buck stops with Centerplate."

We also confirmed that the board and stadium management do not have a formalized and transparent appeals process to resolve vendor

complaints beyond the Centerplate process. According to interviews we conducted in 2009, we found that the board and stadium manager removed themselves from the swap meet complaint handling process two months after informing us that they were part of the process, preferring to let Centerplate resolve all vendor complaints. This is contrary to best practices as articulated in Cyril O. Houle's *Governing Boards*, wherein Houle states that the executive is the central authority in operating the institution and is responsible for resolving any conflicts that arise, including any situation not covered by policy.

The president of the vendors association stated during a May 2008 board meeting that 50 to 100 vendors reported they had not received prompt, courteous, and efficient services from Centerplate. When asked about complaint documentation, Centerplate stated it does not produce operating reports on vendor complaints and does not maintain, for example, a folder of swap meet vendor complaints and their resolution. To follow up on the president's statement, we asked to review vendor complaint files, but were told by Centerplate's general manager that complaints are filed in each vendor folder and that it does not keep a log. The general manager had difficulty locating the files and our review revealed that the files were incomplete. Because the stadium manager has been remiss in his contract monitoring responsibilities, and Centerplate lacks a complaints process, we are unable to determine if Centerplate is fulfilling its responsibility to provide services to vendors. The board chair appeared misinformed when he reported to us that the lack of vendor complaints shows that stadium management and Centerplate are doing a better job in servicing the swap meet vendors and addressing their concerns.

Centerplate's failure to consistently enforce its rules lets vendors operate unchecked

The Hawai'i general excise tax (GET) law requires every person or company intending to do business in Hawai'i to obtain and display a general excise tax license. This requirement has been added to the Aloha Stadium swap meet contract, which requires the authority's swap meet contractor to ensure that vendors secure and keep current all permits or licenses and clearly display applicable permits or licenses in their respective parking stall areas. Centerplate also added these requirements to its Aloha Stadium Swap Meet and Marketplace Rules and Regulations. Centerplate's inconsistent enforcement of these provisions, however, enabled vendors to operate illegally at the swap meet in noncompliance with general excise tax law.

Centerplate's failure to verify general excise tax licenses allowed at least 26 vendors to operate illegally

Centerplate requires vendors to furnish a copy of their general excise tax license prior to engaging in business at the swap meet and Centerplate

is responsible for verifying that all licenses and permits are valid and current. We found, however, Centerplate's failure to verify vendors' general excise tax license enabled many vendors to operate illegally.

When we began our audit in 2009, Centerplate's general manager told us that swap meet vendors rent stadium parking stalls via a stall usage contract and must submit a copy of their general excise tax license. Upon receipt, Centerplate files the license without verification. To test the validity of licenses received, we selected the top 450 swap meet tenants and asked the Hawai'i Department of Taxation (DoTAX) to check the license numbers. The department reported that 26 vendor license numbers did not match DoTAX records; hence, these 26 vendors may be operating illegally at the swap meet. In addition, we checked the top 50 high-paying vendors using the DoTAX website and found that five vendors had an invalid license status—either *closed* or *pending-closed*—and therefore also may be operating illegally at the swap meet. Based on our review, it is reasonable to conclude that the number of vendors holding invalid licenses could be higher than the 26 we uncovered. Moreover, we found one vendor who paid more than \$31,000 in rent and operated for a whole year at the swap meet before getting a general excise license.

Verifying licenses utilizing the DoTAX website and its tax license database is a simple process. Until our review and verification of vendor licenses, however, Centerplate had not verified license information, resulting in widespread violation of Hawai'i's tax laws. After our review, Centerplate began verifying vendor licenses against the DoTAX website. The Centerplate general manager reported that it found many more vendors operating without a valid GET license and indicated that its staff would be vigilant in this area. Given the likelihood of abuse as borne out by our review, the stadium manager should require Centerplate to continue verifying vendors' general excise tax licenses to ensure that swap meet businesses collect and remit the general excise tax as required by law.

Rule requiring vendors to display their general excise tax license has not been enforced

The authority's swap meet contract requires the swap meet contractor to ensure that vendors clearly display applicable permits or licenses in their respective parking stall areas as required by Hawai'i general excise tax law. In addition, Centerplate's swap meet rules and regulations reinforce that requirement by providing that vendors have their license and ID badge in their possession and on display at all times while on stadium property. We found, however, Centerplate has not enforced these provisions for the duration of its swap meet contracts.

In September 2009, we visited the swap meet and marketplace to determine whether vendors displayed their general excise tax licenses. We observed that none of the 437 vendors in the marketplace displayed their general excise tax license as required. We suspect that some of the vendors did not have their license with them in their stall. Centerplate's general manager acknowledged that the company had failed to enforce the requirement since it began managing the swap meet in 2004. He explained that he was unclear whether the rule was necessary and was consulting with his company's legal department to determine whether to remove the rule from the swap meet rules and regulations. Centerplate was apparently unaware that the rule stemmed from Hawai'i law.

In November 2010, the DoTAX Special Enforcement Section began inspecting swap meet vendors as provided in Act 134, Session Laws of Hawai'i 2009, entitled the *Cash Economy Enforcement Act of 2009*. Intended to reduce tax noncompliance—known as the *tax gap*, which is the difference between the amount of tax that is reported and owed and the amount of tax that is reported and paid—Act 134 focuses on the *cash economy* or cash-based transactions. Even though vendors were told of the enforcement section's visit, the section still cited two swap meet vendors for not having a GET license. According to the Centerplate general manager, DoTAX is requiring vendors to produce their licenses on demand rather than display their licenses in the stalls. As a result, Centerplate is not checking on vendor license display.

One-third of swap meet businesses underpay their taxes or do not pay taxes at all

Vendors rent a stadium parking stall by signing a stall usage contract that is renewed on a monthly basis. A copy of the stall usage contract is shown in Appendix C. Under the contract, vendors are “solely responsible for collecting and remitting, as required by law, all GE tax . . . [and] shall provide Centerplate with a photocopy of its GE tax license at the time of signing [the] Contract.”

We worked with DoTAX to analyze the top 450 vendors for calendar years 2007, 2008, and half of 2009. Each of these vendors paid rents in the aggregate of between \$3,561 and \$236,810. The rent paid by these top 450 vendors make up on average 97.5 percent of total stall rental payments received.

We provided our data on vendor rental payments and general excise tax identification numbers to DoTAX to test vendor compliance with the general excise tax laws. According to the department's analysis, almost one-third (118, 124, and 194 of 450 vendors) have not filed their general excise tax returns for 2007, 2008, and 2009, respectively. In those same years, 18, 17, and 7 vendors, respectively, underreported their tax obligation by filing a zero (\$0) general excise tax return even though the top 450 vendors paid an average of \$29,500 in rental payments

during this period. Exhibit 2.3 contains the results of the October 2009 DoTAX analysis. We note that these numbers may be overstated as the department reviewed the top 450 vendors in the aggregate over the two-and-a-half-year period. To clarify, we noted that some of the vendors had no established business in 2007 and 2008 or have a business but had not started renting at the swap meet, stopped renting at the swap meet, or closed their business. Of the 450 top vendors, we found that 59 vendors stopped renting at the swap meet during the review period, while 32 vendors started.

**Exhibit 2.3
Department of Taxation Analysis of the Top 450 Swap Meet Vendors, 2007–2009**

	2007		2008		2009	
Filed GE returns	306	68.00%	300	66.67%	230	51.11%
Did not file GE returns	118	26.22%	124	27.56%	194	43.11%
No valid Tax ID	26	5.78%	26	5.77%	26	5.78%
Total	450	100.00%	450	100.00%	450	100.00%

	2007		2008		2009	
Reason for no valid Tax ID						
Unable to find customer ID	26	100.00%	26	100.00%	26	100.00%

	2007		2008		2009	
Filed returns						
Filed “zero” return (“\$0” GE taxes)	18	5.88%	17	5.67%	7	3.04%
Filed with >\$0 GE taxes	288	94.12%	283	94.33%	223	96.96%
Total	306	100.00%	300	100.00%	230	100.00%

	2007		2008		2009	
Filed with >\$0 GE taxes						
Outstanding balance (owe taxes)	4	1.39%	11	3.89%	7	3.14%
No balance due	284	98.61%	272	96.11%	216	96.86%
Total	288	100.00%	283	100.00%	223	100.00%

Source: Department of Taxation

The DoTAX Special Enforcement Section has begun coordinating with the swap meet contractor on matters relating to joint investigations and information-sharing arrangements as provided for in the *Cash Economy Enforcement Act of 2009*. The stadium manager reported that DoTAX requested a list of swap meet vendors and their respective locations so it could monitor vendor compliance with the tax law. Centerplate provided this information to DoTAX and notified vendors of DoTAX’s intention to visit the swap meet.

Conclusion

The Stadium Authority has not been vigilant in notifying the National Park Service of changes to the use of stadium lands. This violation could result in the federal government reclaiming its property and the stadium, an action that could shut down swap meet operations and the Aloha Stadium. While the likelihood of this action may seem remote, it is imperative for the Stadium Authority to do everything in its power to ensure that its operations comply with all relevant laws and agreements. In addition, unless the authority obtains approval from the federal government for future development projects, it will be unable to generate revenue needed to repair and rebuild the stadium and the city may not be able to build the transit station for its rail project.

Furthermore, the Stadium Authority board and stadium manager do not adequately oversee the swap meet contractor, which in turn, does not consistently enforce swap meet rules and regulations. As a result, one-third of swap meet businesses underpay their taxes or do not pay taxes at all.

The Aloha Stadium Swap Meet and Marketplace, considered by many to be Hawai'i's premier discount outlet and outdoor market, is the Stadium Authority's largest revenue generator, earning approximately \$6 million a year. To protect and grow this valuable state resource, the authority board and stadium manager need to take active roles in the management and oversight of the swap meet contractor and swap meet operations in general. In other words, they must run the Aloha Stadium Swap Meet and Marketplace like an important business, which it clearly is.

Recommendations

1. The Stadium Authority board should:
 - a. Seek instruction and guidance from the U.S. Department of the Interior, National Park Service, Federal Land to Parks Program coordinator, to properly apply use restrictions to events on stadium land;
 - b. Direct the stadium manager to communicate with the Department of the Interior to request an evaluation of the Aloha Stadium Swap Meet and Marketplace activities for compliance purposes;
 - c. Establish policies and procedures related to contract administration to ensure consistency of oversight, including the requirement for systematic and formal evaluation of contractors. Ensure the stadium manager uses the policies and procedures

and the State Procurement Office guidelines to effectively monitor, evaluate, and document contractor performance to ensure that the State is receiving best value for its money; and

- d. Evaluate the stadium manager as contract administrator in administering the contract to market, coordinate, and manage the Aloha Stadium Swap Meet and Marketplace and hold him responsible for the contractor's performance. Include the manager's adherence to the board's contract administration policies and procedures in his evaluation. The board should establish a 12-month timeline for the stadium manager to show improvements in his contract administration skills.
2. The stadium manager should:
- a. Complete State Procurement Office (SPO) procurement training workshops related to contract administration and procurement;
 - b. Develop and implement procedures to independently evaluate, monitor, and document the swap meet contractor's performance rather than relying on contractor's self-reported numbers. Prepare specific performance indicators to judge the contractor's performance and document a performance evaluation to be used as a factor in deciding future awards;
 - c. Effectively perform role of contract administrator using SPO guidelines and the board's policies and procedures to ensure that the State is receiving best value for its money.
 - d. Implement an appeals process that allows vendors to appeal complaints to the stadium manager and Stadium Authority board;
 - e. Require swap meet contractor to continue to verify vendors' general excise tax licenses to ensure that swap meet vendors comply with Hawai'i's general excise tax law; and
 - f. Require swap meet contractor to consistently enforce its swap meet rules and regulations.

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carrollcox.com

Appendix A
Quitclaim Deed Between the City and County of Honolulu and State of Hawaii

71- 6505

CORDATION REQUESTED BY:

Office of the
CORPORATION COUNSEL
Honolulu, Hawaii 96813

TER RECORDATION, RETURN TO:

Office of the
CORPORATION COUNSEL
Honolulu, Hawaii 96813

TURN BY: MAIL () PICKUP (X)

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1571 FEE - 5 PM 2:26

[Signature]
HONOLULU REGISTER

QUITCLAIM DEED

This Deed made the 27th day of October,
1970, by and between the CITY AND COUNTY OF HONOLULU, a municipal
corporation of the State of Hawaii, the principal place of business
and post office address of which is Honolulu Hale, Honolulu, Oahu,
Hawaii, hereinafter called the "GRANTOR," and the STATE OF HAWAII,
hereinafter called the "GRANTEE."

W I T N E S S E T H:

The Grantor, for and in consideration of the continuous use
and maintenance of the premises by the Grantee as and for public
recreational purposes; to include the construction, operation and
maintenance of a stadium, together with appurtenant facilities and
improvements for service and concession facilities, does remise,
release and forever quitclaim unto the Grantee, and to its successors
and assigns, the real property situated in the City and County of
Honolulu, State of Hawaii, consisting of 56.024 acres and described
in Exhibit A attached hereto and by reference incorporated herein
and made a part hereof.

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464948

UCR 7397 425

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee, its successors and assigns forever, subject to the reservations, conditions and covenants herein contained.

The said Grantee does by the acceptance of this deed covenant and agree for itself, and its successors and assigns forever, as follows:

- (1) The premises above described shall be forever and continuously used and maintained for the aforesaid purposes, in accordance with the application of October 5, 1966, on file with the Bureau of Outdoor Recreation.
- (2) Biennial Reports setting forth the use made of the property during the preceding two-year period shall be filed by the Grantee with the regional office, Bureau of Outdoor Recreation, San Francisco, California, until June, 1987, and as further determined by the Secretary of the Interior.
- (3) ~~The property shall not be sold, leased, assigned, or otherwise disposed of except to another local governmental agency that the Secretary of the Interior is satisfied can assure the continued use and maintenance of the property for the aforesaid purposes.~~ However, nothing in this provision shall preclude the Grantee from providing facilities and services to the visiting public through concession agreements entered into with third parties, provided the prior concurrence of the Secretary of the Interior, or his designee is obtained to such agreements.

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(4) The United States of America shall have the right during the existence of any national emergency declared by the President of the United States of America, or the Congress thereof, to the full, unrestricted possession, control and use of the premises, or any part thereof, without charge; EXCEPT THAT the United States of America shall be responsible during the period of such use, if occurring within a period of 20 years from the conveyance by quitclaim deed of June 30, 1967, from the United States, acting by and through the Administrator of the General Services Administration, to the City and County of Honolulu, for the entire cost of maintaining the premises, or any portion thereof, so used, and shall pay to the State of Hawaii a fair rental for the use of any installations or structures which have been added thereto without Federal aid; PROVIDED, HOWEVER, that if such use is required after the expiration of said 20 years from said conveyance, the United States of America shall pay a fair rental for the entire portion of the premises so used.

(5) As part of the consideration for this Deed the Grantee, by acceptance thereof, covenants and agrees for itself, its successors and assigns, that (a) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with, and will require any other person (any legal entity) who through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said

UNDER 7397 427

program to comply with, all requirements imposed by or pursuant to the regulations of the General Services Administration as in effect on the date of this Deed (41 CFR subpart 101-6.2) issued under the provisions of Title VI of the Civil Rights Act of 1964; (b) this covenant shall be subject in all respects to the provisions of said regulations; (c) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (d) the United States shall have the right to seek judicial enforcement of this covenant, and (e) the Grantee, its successors and assigns, will (i) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (ii) furnish the original of such agreement to the Secretary of the Interior, or his successors, upon his request therefor. This covenant shall run with said property and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of, and enforceable by the United States of America against the Grantee, its successors and assigns.

-4-

464951

REF 7397 PAGE 428

(6) In the event of any breach of any condition or covenant herein contained, regardless of the cause of such breach, all right, title and interest in and to the above described property, in its then existing condition, including all improvements thereon, shall revert to and become the property of the United States upon demand made in writing by the Secretary of the Interior, or his successor in function. In such event the United States shall have the immediate right of entry upon said property, and the Grantee, its successors and assigns, shall forfeit all right, title, and interest in said property and in any and all of the tenements, hereditaments, and appurtenances thereunto belonging, and shall take such action and execute such documents as may be necessary or required to evidence transfer of title to such property to the United States. The failure of the Secretary of the Interior, or his successor in function, to insist upon complete performance of this condition in any one or more instances shall not be construed as a waiver or relinquishment of future performance thereof, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

464952

DEER 7397 PAGE 429

IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be executed as of the day and year first above written.

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU

[Signature]
FRANK F. FASI, Mayor

GRANTOR

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Acceptance for and on behalf of the STATE OF HAWAII

[Signature]
JOHN A. BURNS, Governor

GRANTEE

Approved for and on behalf of the Secretary of the Interior

[Signature]
Regional Director
Bureau of Outdoor Recreation
Pacific Southwest Region

STATE OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS.

On this 27th day of October, 1970, before me personally appeared FRANK F. FASI, to me personally known, who being by me duly sworn, did say that he is the Mayor of the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed in behalf of said municipal corporation by authority of its City Council; and said FRANK F. FASI acknowledged the said instrument to be the free act and deed of said municipal corporation.

[Signature]
Notary Public, First Circuit,
State of Hawaii

My commission expires: August 15, 19

464953

Appendix B
Stadium Manager's Letter Describing Proposed Swap Meet Concession

March 15, 1977

Mr. Robert Van Etten
Chief, Division of Land Use Coordination
Bureau of Outdoor Recreation
Pacific Southwest Region
P. O. Box 36062
450 Golden Gate Avenue
San Francisco, California 94102

Dear Mr. Van Etten:

Thank you for your call and for the special attention which you are giving our proposed Swap Meet Concession.

This letter is official request for review and approval of our Swap Meet Concession.

We will open the bids on Thursday morning, March 17, 1977, as scheduled, but as you recommended, we will await word from your office prior to making the award.

The hours of operation of the Swap Meet are contemplated for early morning hours to approximately mid-afternoon. This is consistent with the normal swap meet hours on this Island. We would expect that the popular Sunday morning swap meet would be the case here in addition to an occasional weekday morning.

Aloha Stadium hosted more than 120 separate events during 1976, and our 1977 calendar will be augmented by a season of professional soccer, bringing the total to approximately 135. This makes Aloha Stadium one of the most continuously used stadia in the country. All events, with the exception of rock shows, selected high school football games and the annual Hula Bowl, have starting times at four o'clock in the afternoon or later. Except for a very few, the remainder have starting time at seven o'clock in the evening or later. Therefore, we do not foresee any conflict between Swap Meet hours and our normal scheduled events. The Swap Meet will have the function of rounding out the use of this property during off hours.

464941

Page 2
March 15, 1977

As you have discussed with Mr. Bob Fishman, my Deputy, the specifications provide for a preemption of the Swap Meet by any scheduled event within the Stadium.

The open market concept has been with us in Honolulu for some time, not only through the established swap meets which have been operated at three drive-in movie theatres, but through municipally sponsored programs of open markets which utilize public beaches and park areas throughout the Island. In this way, families have combined a pleasure outing with a hunt for bargains. Additionally, we would encourage our swap meet concessionaire to provide musical entertainment, a play area for children, and a general "picnic atmosphere." We feel this is not only consistent with the objective of the Stadium to serve the general public but it is, additionally, easily workable within the scheduling pattern of Stadium events.

We are hopeful you will concur. We will be awaiting your response.

Sincerely yours,

Mackay Yanagisawa

RJF:cvh

464940

Appendix C Stall Usage Contract

Stall Usage Contract At Aloha Swap Meet and Marketplace.

This Contract is a made by and between Volume Services, Inc., d/b/a Centerplate (hereinafter referred to as "Centerplate") and _____, (hereinafter referred to as "Vendor"), for vendor booth space in the Aloha Swap Meet and Marketplace (hereinafter termed "Swap Meet") for _____.

1. Upon execution of this Agreement, Vendor agrees to pay, the usage fee as described in the "Rental Fee Rates" attachment. Vendor understands and acknowledges that the Rental Fee Rates may be changed from time to time as determined by Centerplate, in its sole discretion. Usage fees are due and payable to Centerplate by personal delivery to Centerplate's Swap Meet Office as described in the "Rental Fee Rates" attachment.
2. **Agreement will be renewed on a month to month basis and may be cancelled at any time with the notification, in writing, to both parties.**
3. Vendor has read, signed, and agrees to abide by the Swap Met Rules and Regulations provided to Vendor by Centerplate and posted at the Swap Meet. **Vendor understands and acknowledges that the Swap Meet Rules and Regulations may be changed from time to time as determined by Centerplate, in its sole discretion.**
4. Vendor understands and acknowledges that Centerplate does not guarantee exclusivity, and that there may be other vendors promoting substantially similar products on the same day in the Swap Meet.
5. Vendor is solely responsible for collecting and remitting, as required by law, all GE tax. Vendor shall provide Centerplate with a photocopy of its GE tax license at the time of signing this Contract.
6. Vendor will indemnify, defend, and hold harmless Centerplate and the State of Hawaii and their respective officers directors, employees, agents or representatives from any and all liability arising from bodily injury or property damage, incurred in connection with any third party claim against Centerplate and or the State of Hawaii which arises out of the negligence, acts or omissions of the Vendor, it's employees, agents or representatives.
7. Vendor shall not sell, sublet, rent, assign, trade or give possession of the Vendor's designated booth or the selling privileges granted under this Contract to another vendor, affiliate or entity.
8. There will be a permanent lottery held once a month unless specified by Centerplate. The permanent lottery allows a vendor to acquire a permanent stall. The permanent lottery consists of at least 3 lotteries. The first allows current

vendors to move. The second allows vendors with no stalls to obtain a stall. The third allows vendors with stalls to obtain up to three stalls per day.

9. There will be a vacation lottery held once a month on the last market day of the month unless specified by Centerplate. The vacation lottery allows vendors to, in advance; pick up a temporary stall that a permanent vendor has put on vacation. The vacation lottery consists of at least 2 lotteries. The first allows a vendor without a stall to get a temporary stall. The second allows vendors with stalls to obtain multiple temporary stalls. There is no limit on the amount of temporary stalls a vendor may obtain.

10. There will be an absentee lottery held once every market day unless specified by Centerplate. The absentee lottery allows vendors to pick up a temporary stall that a permanent or temporary vendor has not shown up for. The absentee lottery consists of at least 2 lotteries. The first allows a vendor without a stall to get a temporary stall. The second allows vendors with stalls to obtain multiple temporary stalls. There is no limit on the amount of temporary stalls a vendor may obtain.

Signature _____

Print _____

Date _____

Centerplate _____

Responses of the Affected Agencies

Comments on Agency's Response

We transmitted a draft of this report on February 21, 2012 to the Department of Accounting and General Services and the Stadium Authority board of directors and its management team. A copy of the transmittal letter to the board is included as Attachment 1. The board's response, dated March 1, 2012, but submitted on March 2, 2012, is included as Attachment 2. The Department of Accounting and General Services did not submit a response.

The Stadium Authority generally disagreed with the report findings. In so doing, it ignores both the reality of present-day swap meet operations and risks associated with possible noncompliance. In responding to our first finding that the lack of federal approval for the use of the stadium lands puts swap meet operations and future plans at risk, the authority replied that "[it] is in full compliance with Deed Restrictions." The authority stated that it had received approval from the Department of the Interior (DOI) to operate a swap meet in 1979 and that its core swap meet operations remain unchanged since then. We point out, however, that the authority's approved arrangement was a concession agreement, which the authority changed to a service contract in 1999. We also point out that the current swap meet and marketplace's operations are commercial activities that neither directly relate to nor support public recreational use. Neither the authority's service contract arrangement nor the swap meet's commercial activities have been approved by the DOI. In fact, the DOI official we spoke with expressed doubt that the commercial activities occurring in today's swap meet and marketplace would satisfy the deed restrictions and public recreational purpose.

The authority also disputes the second finding that the Stadium Authority has surrendered its management responsibilities to a private contractor, stating that "Centerplate satisfactorily performed under the 2004 contract and, therefore, the authority and stadium manager appropriately and responsibly executed its duties and responsibilities." The authority's response fails to address some of the report's key points—that the Stadium Authority is not providing needed leadership and oversight of its swap meet contractor and that the stadium manager was negligent in monitoring and evaluating Centerplate's performance.

For example, the authority trivializes Centerplate's performance deficiencies raised in the report, stating that we erroneously conclude that they resulted in Centerplate being in default or insufficiently performing under its contract. We disagree. We documented that Centerplate fell

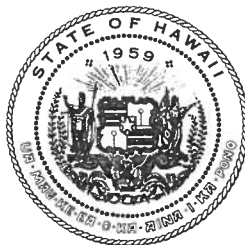
short on goals to increase the average number of swap meet stalls and public attendance. With the authority's admission in its response that Centerplate also failed to increase the number of vendors, we note that Centerplate failed to satisfy goal 4 in its entirety. In addition, Centerplate also had not fulfilled selected provisions of its swap meet contract, including its obligation to monitor vendors' posting of their general excise tax licenses. This failure enabled swap meet vendors to operate illegally and underreport their tax obligations.

Finally, we reported the stadium manager failed to notify an evaluation committee that Centerplate had not met the authority's goals and selected provisions of its swap meet contract, which could have impacted the committee's recommendation of Centerplate for the new swap meet contract. The authority responded that "the Stadium Manager appropriately (as advised) refrained from inserting himself into the 2009 RFP process for the suggested purpose of providing his opinion on a vendor that may or may not have been an offerer."

The authority misses our point. The stadium manager as contract administrator has a responsibility to ensure evaluation committee members were informed of significant information relating to the procurement. The stadium manager acknowledged to us that he was aware of Centerplate's poor performance as well as its inconsistent enforcement of its swap meet rules and regulations. Yet, the stadium manager withheld this information from the committee, which was confirmed by the committee chair. We conclude that the stadium manager was lax in his responsibilities as contract administrator.

We stand by our findings.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

February 21, 2012

COPY

The Honorable Dean Seki
Acting Comptroller
Department of Accounting and
General Services
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Seki:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Investigation of the Stadium Authority's Swap Meet Operations*. We ask that you telephone us by Thursday, February 23, 2012, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Thursday, March 1, 2012.

The Stadium Authority's Manager, Stadium Authority's Board of Directors, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

NEIL ABERCROMBIE
GOVERNOR

DEAN H. SEKI
ACTING COMPTROLLER

SCOTT L. CHAN
MANAGER

LOIS M. MANIN
DEPUTY MANAGER



ALOHA STADIUM
An Agency of the State of Hawaii

March 1, 2012

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OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

The Stadium Authority ("Authority") appreciates the opportunity to respond to the February 21, 2012, draft audit report of the Office of the Auditor entitled Investigation of the Stadium Authority's Swap Meet Operations ("Report"), as authorized pursuant to Act 162, SLH 2009.

While the Report focuses on the swap meet held on the Aloha Stadium grounds, it is important to highlight that the Authority is primarily charged with maintaining, operating, and managing the Aloha Stadium and its facilities. HRS § 109-1, 109-2(1).

To this end, the Authority hosts a myriad of events ranging from professional, collegiate, high school, and grade school football, international soccer, concerts, religious congregations, fun runs, car shows and other types of events of varying size and activity.

Ultimately, the Authority's mission is to ensure that the Aloha Stadium is available and affordable for the recreational and entertainment needs of the people of Hawaii to enrich their lives through attendance at spectator events and shows.

In an effort to ensure that the Legislature, the general public, and the State Auditor have a clearer perspective and, most importantly, an accurate and comprehensive understanding of the operations of the Authority, we provide the following comments to clarify and correct items and findings noted in the Report.

I. THE AUTHORITY IS IN FULL COMPLIANCE WITH DEED REQUIREMENTS

The Aloha Stadium is situated on 104 acres of land in Halawa that includes 56 acres of former federal surplus property that was originally deeded to the City and County of Honolulu (the "City"). In 1970, the U.S. Department of the Interior ("DOI") approved the transfer of title from the City to the State of Hawaii via Quitclaim Deed (the "Deed"), which has a restriction for public recreational purposes.

- A. The Authority has always recognized that the property upon which the swap meet is held is subject to a Deed restriction that limits its use to “public recreational purposes.” As such, in 1977 the Authority requested and received approval from the DOI to operate a swap meet for a period of two years.

In 1979, upon request from the Authority, the DOI authorized swap meet activities, without an expiration date, so long as the activities were similar to those originally approved and did not conflict with regularly scheduled events at the stadium. Since then, while the volume of activity has fluctuated over the years, the core swap meet activities remain unchanged and they have not conflicted with regularly scheduled events at the facility.

- B. Over the years, the Authority has provided all reports as required or requested by the Deed and/or the DOI, which disclosed the swap meet activities. Additionally, the Authority has operated the swap meet openly and continuously since 1977. It is advertised locally, nationally, and internationally in various forms of media. Not once has the DOI or any other federal agency provided any communication or notice, either expressed or implied, to the Authority that the swap meet activities violate the terms, conditions, and/or restrictions of the Deed.
- C. Finally, in conveying the property, the intent of the federal government was to support a stadium and any ancillary activities thereto. This aligns acutely to the Authority’s core mission and responsibility to operate and maintain a stadium that provides people of all ages with the opportunity to enrich their lives through attendance at spectator events and shows. Ultimately, all decisions and actions taken by the Authority support these stated objectives.

The fact remains, however, that the events within the stadium itself only generate a portion of the revenue to cover its operating costs. To avoid raising rates to users and patrons of the stadium, the Authority uses the revenue generated by the swap meet to support continued operations and maintenance of the stadium and its activities. This injection of revenue ensures that the stadium remains open and available to the public at affordable prices.

- D. In conclusion, the Authority complies with all requirements of the Deed, as well as its spirit and intent.

II. CENTERPLATE SATISFACTORILY PERFORMED UNDER THE 2004 CONTRACT AND, THEREFORE, THE AUTHORITY AND STADIUM MANAGER APPROPRIATELY AND RESPONSIBLY EXECUTED ITS DUTIES AND RESPONSIBILITIES

As stated earlier, the Authority’s core mission and responsibility is to operate and maintain a stadium that provides people of all ages with the opportunity to enrich their lives through attendance at spectator events and shows. Recognizing that operating a swap meet is peripheral to the Authority’s core business, the Authority issued a Request for Proposals (RFP) in 2004 to secure the services of a company with the experience and expertise to manage such an operation effectively.

To achieve this, the Authority desired to: (1) hire a “property manager” to coordinate and manage vendors and address swap meet issues; and (2) ensure continuation of an important revenue stream for Stadium operations (in excess of \$4 million per year).

At its core, the Report focuses on the performance of Volume Services, Inc., dba Centerplate (“Centerplate” or the “Contractor”), who was properly procured by the Authority in 2004 to manage the swap meet (the “2004 Contract”). However, the Report erroneously concludes that Centerplate either defaulted or insufficiently performed under its contract. Furthermore, contrary to representations made otherwise in the Report, the Authority and the Stadium Manager have always taken the position that Centerplate satisfactorily performed under the 2004 contract.

- A. Section Three (Scope) of the 2004 Contract sets forth 24 performance requirements of Centerplate. Except for their inconsistent oversight in ensuring that all vendors were current with, and clearly displaying their general excise license, Centerplate satisfactorily performed all requirements of the 2004 Contract.
- B. Verification of general excise tax licenses is an important part of the swap meet Contractor’s scope of work. In that regard, the Authority acknowledges that the Contractor inconsistently enforced the requirement for all swap meet vendors to keep current with, and clearly display all permits or licenses in their respective parking stall areas, especially the general excise tax license. Contrary to the Report, this alone does not constitute a default by the Contractor.

The Authority, the Stadium Manager, and Centerplate do not condone any illegal activity. As such, Centerplate has updated their procedures to ensure greater compliance by vendors to keep current with and clearly display their general excise tax license. To this end, a number of vendors have been notified by Centerplate of expired or canceled licenses.

- C. The Report erroneously cites Section Two (Background and Monetary Goals) as contract requirements. To clarify, these were goals of the Authority and not requirements of the Contractor. If these goals were met, the overall satisfaction of the swap meet program by the Authority would increase.

As stated in the 2004 Contract, the Authority program goals were:

- 1. Contract with a single business entity to market, coordinate and manage the Aloha Stadium Swap Meet.
- 2. Maintain a minimum of 600 vendor stalls with projected annual gross revenue yield of at least \$4.0 million. The maximum number of stalls is approximately 1,300. A vendor stall is equivalent to two (2) parking stalls.
- 3. Realize a minimum of \$3.0 million net of commission.
- 4. Increase the number of swap meet stalls, vendors, and public attendance.

With the exception of “increase in the number of Vendors,” the Contractor achieved all other stated goals.

- D. General complaints are accepted in writing at the swap meet office. In addition, vendors are advised and encouraged to make an appointment with the swap meet manager to discuss swap meet issues. If complaints remain unresolved, Centerplate brings the complaint to Stadium Management either immediately (if needed) or at their weekly operations meeting. If further discussion is warranted, Stadium Management presents the complaint to the Board for discussion at their monthly meeting.
- E. The Stadium Manager was not part of the evaluation committee for the 2009 Request for Proposals for swap meet management services ("2009 RFP"). As such, throughout the solicitation process, the Stadium Manager would not have known the identity of the prospective offerors. To that end, the Stadium Manager appropriately (as advised) refrained from inserting himself into the 2009 RFP process for the suggested purpose of providing his opinion on a vendor that may or may not have been an offeror.

In summary, the Stadium Authority is legally and appropriately operating a swap meet in full compliance with all Deed requirements. Furthermore, the Stadium Authority and the Stadium Manager appropriately and responsibly executed its managerial and contract administration duties and responsibilities.

Sincerely,



Nelson Oyadomari, Chairman
Stadium Authority



Kenneth Marcus, Vice Chairman
Stadium Authority