

Black Repertory Group
Management Study Report
September 30, 1996 – September 30, 1998

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I. Executive Summary

For 34 years, the Black Repertory Group (BRG) has served the South Berkeley Community. In April of 1998, the group presented to Council a plan for expansion, and for purchase of the City-owned theater property for \$1.00.

In order to enable City staff and the City Council to evaluate the viability and the desirability of such a proposal, the City Manager asked the City Auditor to perform a Management Study of BRG.

The City Auditor was requested to evaluate two areas: 1) the administrative and financial capacity of BRG to maintain current service levels, and 2) BRG's ability to prepare for operating an expanded community cultural arts center.

Our study finds that:

1. The City failed to adequately monitor BRG's compliance with the terms of the lease.

BRG is not in compliance with the terms of lease. However, the City did not effectively monitor the lease agreement. The lease requires the City to perform significant monitoring procedures. No one in the City was assigned to monitor the lease agreement.

2. There are significant unanswered questions about whether BRG can maintain current service levels.

3. There are several specific BRG board policies and staff practices, which we believe, if not addressed, will ultimately prevent this organization from being able to realize its future vision. These deficiencies fall into three categories: board policies, board practices, and management practices.

A. Board Policies

Recently adopted BRG by-laws suggest a sense of ownership, rather than stewardship, of publicly funded assets, particularly:

1. Lack of regular times, places, and public notice of meetings
2. Stipulation that 30% of Board members must be Vaughn family members.
3. Lack of term limits for Board members

4. Requirement that a 75% vote is needed to remove a board director; thus, ensuring veto power for family members.
5. Lack of appropriate limitations on number of paid staff who may also serve as Directors.
6. Failure to institute an anti-nepotism policy that would prohibit an Executive Director from hiring near relatives as BRG staff.

B. Board Practices

Deficiencies in current board practices, which contribute to a lack of information available to the community, to the City, and to the board itself about BRG operations, include:

1. Contrary to its by-laws, the Board does not appear to be keeping approved minutes of meetings of the board or its subcommittees. If such minutes are kept, they were not provided to the auditors despite numerous requests by the auditor.
2. There is no evidence that the board has any mechanism for evaluating the performance of the Executive Director or other paid staff, or of evaluating the inputs and outcomes of its programs.
3. Even if such systems were in place, it seems reasonable to assume that the dual roles played by paid staff as board members would cause serious difficulty in achieving objective evaluation of the BRG staff and programs by the board.

C. Management Practices

BRG is heavily dependent on grants and other public funding, with very little of its income derived from private contributions or proceeds from performances. Deficiencies noted in documentation and record keeping could put grant funding at risk.

Members of BRG's staff are primarily near relatives who also serve as board members. Payments to these individuals are not being supported by time cards (in the case of labor) or by invoices (in the case of reimbursements).

Nonprofit corporations are held to high standards of documentation and disclosure in cases of "related party transactions" in order to assure that tax exempt status is maintained and that public funds are used for public benefit. Employment of management's immediate family and undocumented payments to board members and employees are at variance with these standards.

BRG's management refused the study team the right to examine and inspect BRG's premises and records. As a result, BRG is not in compliance with the terms of its lease and its fiscal years 1998 and 1999 Civic Arts contracts with the City.

These deficiencies in BRG's board structure, policies, and practices are significant, but they can be corrected if management and the City so require. Only then will BRG be in a position to strengthen its ability to keep alive its dreams and to effectively contribute to the community. Until these deficiencies are corrected, we recommend that the City Manager withhold new funding.

II. Introduction

The Black Repertory Group (BRG) cultural arts center theater, located at 3201 Adeline Street, Berkeley, CA 94703, is owned by the City. BRG manages and operates the Cultural Arts Center under a ten-year sublease from the City. BRG's primary mission has been to educate black youth in theatrical arts and to provide an opportunity for young people to perform as actors and actresses.

The sublease expired on May 31, 1998. In April 1998 BRG submitted a proposal to purchase the building for \$1.00 and to significantly expand its operations. The City and BRG agreed to a one-year extension of the sublease to allow for greater analysis and discussion of BRG's proposal. On July 21, 1998, the City Council approved a recommendation to extend the sublease agreement with BRG until August 30, 1999.

III. Scope and Objective

At the request of the City Manager, the City Auditor initiated a Management Study (study) of BRG for the period September 30, 1996 - September 30, 1998. The purpose of our study was to evaluate the administrative and financial capacity of BRG to maintain current service levels and prepare for operating an expanded community cultural arts center. Except as discussed in the following paragraph, this study was performed in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States.

Pursuant to a demand from BRG to suspend the audit on February 19, 1999, we were unable to complete testwork of cash receipts, disbursements, payroll and selected programs. In addition, BRG interfered with the selection and application of audit procedures and in the selection of transactions to be examined. Due to significant restrictions to the scope of our

work, we were not able to complete the study. However, some testwork was performed and the results are documented in this report.

The auditors held an entrance conference with BRG's Board of Directors, including the Executive Director, on November 2, 1998. On site fieldwork began the week of November 9, 1998. On February 3, 1999, the auditors met with BRG's board to discuss the interim findings that were documented. On February 19, 1999, the auditors were told by BRG's staff to stop testwork immediately and the auditors' access to BRG's books and records was terminated. In addition, BRG's management refused the study team the right to examine and inspect BRG's premises. On March 15, 1999, BRG asked the City to renew the lease agreement instead of opting to purchase the building.

IV. Status of Prior Audit Findings

The Auditor's Office previously performed audits of BRG. One BRG audit covered fiscal year 1988/89 and another contract audit covered fiscal year 1994/95. During our current Management Study, we reviewed the status of prior audit findings. We noted that findings identified in the 1988/89 audit were resolved in the 1994/95 audit. However, our current Management Study, which examined the period 1996-1998, revealed, in addition to new findings, several findings, identified below, in the 1988/89 audit that had been resolved but are now outstanding.

1. Box office cash receipts were not reconciled to the general ledger
2. Inadequate program cost accounting
3. Accounting records were not substantiated by invoices or properly executed contracts
4. Board minutes were not available
5. Some employees did not complete time sheets

V. Conclusions

A. BRG's Organizational Structure: Board Policies Inconsistent with Publicly funded Organization

1. Restrictive Board Provisions

The most recent revisions to the by-laws were designed to ensure that members of the Vaughn family are represented on the board. BRG board members stated that the reason for this is to maintain the original vision and mission of BRG founder, Mrs. Nora Vaughn. Article III, Section 3 of BRG's amended Articles of Incorporation dated December 4,

1995 stipulates that at least 3 family members (approximately 30%) are to be on the board. The by-laws also stipulate that it takes a 75% board vote to remove any director. The total number of board members is eleven. While it may be beneficial to have representatives of the Vaughn family on the board, the effect is that these by-laws unduly restrict the board.

Recommendation

BRG's board should rescind policies, including By-Laws and Articles of Incorporation, which unduly restrict the board.

BRG's Response

The allegations that "recently" (actual date: December 1995) amendments to BRG's by-laws suggest a sense of ownership is false because they were submitted to and not challenged by either the California Secretary of State, the California Franchise Tax Board or the Internal Revenue Service, Exempt Organization Division. As a public benefit corporation without statutory members, the BRG board is legally permitted to have designated directors. The 75% vote requirement for removal of a director is legally valid under current California law and was enacted unanimously by the BRG Board on which "family members" were a minority.

Auditor's Disposition

The purpose of our report was to evaluate the administrative and financial capacity of BRG to maintain current service levels and to evaluate BRG's ability to prepare for operating an expanded community cultural arts center. Our report does not state that BRG's organizational structure and board policies are illegal. However, it is our opinion that a restrictive board, such as BRG's, may limit the board's effectiveness. BRG appears to have negatively affected its relationship with the community that it serves by presenting the appearance of a family owned organization and by limiting community involvement on the board. Therefore, we recommend that BRG's board rescind policies, including By-Laws and Articles of Incorporation, which unduly restrict the board.

2. No Time Limit to Board Tenure

There are no required breaks in service for board members. Technically, board members can serve on the board indefinitely. Article III, Section C of BRG's by-laws dated December 4, 1995 states "Each such director shall hold office for three years and until a successor has been elected and qualified. A director may serve an unlimited number of terms." This practice gives the appearance of a private "closed" corporation, rather than that of a "public benefit corporation." Not requiring board members to take a break after serving consecutive terms limits community participation, minimizes the infusion of new ideas, and increases the risk of participation burn out. New board members bring with them new energy, fresh ideas, and expanded exposure for the organization. This can be crucial in

obtaining continuing community support.

Recommendation

We recommend that required term breaks for board members be incorporated into the BRG by-laws, and that new board members be recruited to replace those who will consequently take a break in service each year.

BRG's Response

Under current California law, there is no statutory term limit requirement for board members of public benefit corporations.

Auditor's Disposition

As stated above, the purpose of our report was to evaluate the administrative and financial capacity of BRG to maintain current service levels and to evaluate BRG's ability to prepare for operating an expanded community cultural arts center. Our report does not state that BRG's organizational structure and board policies are illegal. We are recommending fundamental changes to strengthen the non-profit organization's community relations and support.

3. BRG Employment of Board Members and Their Families

BRG's Executive Director is a member of the board as is BRG's Development Director. The Development Director is the Executive Director's son. A large percentage of total BRG annual salary cost is paid to these two people.

Recommendation

The Board should consider the impact of family members serving on the board and holding key management positions within the organization. This practice gives the appearance of family control of a non-profit organization and preferential hiring of family members. This could also cause the loss of community support. Given the small size of BRG's staff, BRG should amend the by-laws to state that no more than one paid staff member should be a voting board member.

BRG's Response

BRG's bylaws contain the entire provisions of the California statute that places a limitation on the percentage of directors who may either be compensated for services or related to persons who receive compensation for services.

Auditor's Disposition:

Again, the purpose of our report was to evaluate the administrative and financial capacity of BRG to maintain current service levels and to evaluate BRG's ability

to prepare for operating an expanded community cultural arts center. Our report does not state that BRG’s organizational structure and board policies are illegal. However, the practice of family members serving on the board and holding the majority of key management positions within the organization gives the public appearance of family control of a non-profit organization and preferential hiring of family members. We are recommending fundamental changes to strengthen the non-profit organization’s community relations and support. BRG is a “public benefit corporation” and the organizational structure and board policies should support that intention.

4. Deficiencies in Board Recruitment and Communication Policies

Article IV Section G (4b) of the BRG Articles of Incorporation (Membership Records) requires that “the secretary shall keep or cause to be kept, at the corporation’s principal office or at a place determined by resolution of the board, a record of the corporation’s directors, showing each director’s name, address, and date of election and term of service.”

Completed applications approved for board membership appeared not to be maintained. A blank application form received from the BRG’s Executive Director was obsolete. In addition, the process for board membership review and acceptance by BRG’s nominating committee was not documented. The cause of BRG’s inadequate maintenance of board membership applications and lack of documented procedures is unknown.

The effect of poor maintenance of board membership records is to preclude public access to this information. It appears that board and committee memberships are ad hoc. The application process is unclear. The lack of documented procedures makes it difficult for interested parties to understand application procedures and criteria for board membership. This may limit public trust in an organization designed for public benefit and discourage members of the community from applying for board membership and supporting BRG’s ongoing mission.

We mailed survey questionnaires to all identified board members whose address we were able to obtain. Other questionnaires were delivered to BRG in care of the Executive Director. No board members responded. Two people who learned of the survey contacted the City Auditor’s Office with complaints that the board was closed. These people stated that they had applied for board membership, but the process was so exasperating that they decided not to participate. They described instances of unorganized behavior, poor business practices, and a feeling that they were not welcome.

Recommendation

We recommend that BRG update its application for board membership and that the process for board membership be documented. Approved applicants for board membership should be documented in the minutes.

In addition, we recommend the institution of an open and active board membership recruitment program. A Nominating Committee should be established, and should search throughout the year for individuals with desired characteristics such as experience in personnel management, fiscal or legal expertise. The board should also include representatives of the client population being served. This should assure the involvement of the service area community at large.

BRG's Response

Updating applications and documenting BRG's process for board membership was done before the audit.

Auditor's Disposition

The application provided to the auditor by BRG's Executive Director was obsolete. It contained a signature line for the late founder of the BRG theater.

B. Board Administrative Practices

1. By-laws not Signed - Lack of Evidence of Board Approval

The December 1995 amendments to the by-laws of the corporation were not signed by the Secretary of the Board. The effect is that governance of the BRG is not formally structured. Lack of proper documentation of board decisions limits the City's and the community's ability to obtain verifiable information about BRG's activities and policy decisions

Recommendation

By-laws should be signed (attested to) by the Secretary and President of the Board and approval of new by-laws should be documented in the board minutes.

BRG's Response

Done

2. Minutes of Board Meetings Not Properly Maintained

We requested minutes of the Board of Directors for the period September 30, 1996 through September 1998. Complete board minutes were not made available. The Executive Director provided minutes to two board meetings during the 24 months under review; these minutes were incomplete and were not signed by the board secretary or recorder. Failure to maintain complete minutes, attested to by the secretary of the Board, violates Article IX, Section A of BRG By-Laws dated December 4, 1995. This section states that "The corporation shall keep . . . written minutes of the proceedings of its board, committees of

the board and advisory committees, if any.” In addition, Article IV, Section G(4)b states, “The secretary shall keep or cause to be kept, at the corporation’s principal office or such other place as the board may direct, a book of minutes of all meetings, proceedings, and actions of the board, and of committees of the board.” The cause of BRG’s inadequate maintenance of board minutes was not determined. The effect is that it cannot be determined whether the policy changes made by BRG were, in fact, approved by the Board of Directors.

Lack of proper documentation of board decisions limits the City’s and the community’s ability to obtain verifiable information about BRG’s activities and policy decisions. Boards need to vote to formally demonstrate that they have taken actions. The minutes of board meetings document this exercise of stewardship, the setting of goals and objectives, and the policies set to achieve objectives. An effective board will assure that the minutes recording their deliberations are complete, accurate, and available for review.

Recommendation

We recommend that minutes be prepared, approved by the board at the subsequent board meeting, and certified and attested to by the president and recording secretary for all board and subcommittee meetings. Evidence of this certification should be the president and the recording secretary’s signatures on the minutes.

BRG’s Response

Done. It’s crucial to remember, minutes were lost up until October 1998. Minutes from November to present were available but audit scope ended on September 30, 1998.

Auditor’s Disposition

Various communications from BRG about the minutes’ existence or nonexistence have been contradictory. Minutes were not made available to the auditors.

3. Unscheduled Board Meetings-Policy and Practices

The amended December 4, 1995 by-laws state in Article III, Section E that “regular meetings of the board may be held without notice at such time and place as the board may fix from time to time.” BRG has not established regularly scheduled board meeting dates, for example, every first Tuesday of the month. BRG’s by-laws do stipulate that “an annual meeting shall be held on the second Saturday of September of each year at 10 o’clock a.m.”

The size of the BRG corporation requires board involvement, oversight, and independent review of BRG financial affairs. This requires that the board meet frequently and on a regular basis. The board is responsible for policy setting, fiscal guidance, and ongoing

governance, and should regularly review the organization's policies, programs, and operations. Since BRG is a small nonprofit agency, it is important that the board actively and regularly monitor BRG's activities.

Recommendation

We recommend that BRG establish and schedule regular monthly board of director meetings. The schedule should be made available to all board members as soon as possible for planning purposes. Exceptions to these scheduled meeting should be made in accordance with the procedures defined in BRG's December 4, 1995 amended by-laws.

BRG's Response

Done. Current California law requires that nonprofit corporations without statutory members, such as BRG, are only required to hold an annual meeting and that if the time and place of that meeting is stated in its bylaws (as it is in BRG's) no notice is required.

Auditor's Disposition

Again, our report does not state that BRG's board practices are illegal. The intent of our recommendation is to improve BRG's community relations and accountability.

4. No Board Policy Prohibiting Paid Staff from Hiring and Directly Supervising Their Own Family Members.

BRG's Board has not implemented a policy that prohibits the hiring and direct supervision of family members by paid managerial staff. The Executive Director, who is also the Artistic Director, directly supervises her son, who is the Development Director and Youth Program Director. In addition, the Tutorial and Cultural Empowerment (TACE) program coordinator is also the Executive Director's daughter. It is difficult enough to objectively evaluate an employee's work; it has to be especially difficult to objectively evaluate one's own children. In addition, this practice gives the appearance of family control of a nonprofit organization and preferential hiring of family members. If the community believes that BRG is engaging in self-inurement, BRG could lose community support and grant funding.

Recommendation

The Board should include in the by-laws a policy prohibiting the hiring and direct supervision of family members of BRG's paid managerial staff. Once this "conflict of interest" policy is established, BRG will need to reevaluate its staffing needs, and hire staff who are not family members.

BRG's Response

As stated above, BRG's by laws contain all legally required provisions and comply with current federal, state, and local regulations. During the 34 years, the Board has negotiated contracts with federal, state, and local entities, this policy requirement has never been raised. Please provide a copy of City of Berkeley's regulation on this matter referred to in the allegation.

Staff needs are reassessed each year by the Director in concert with the Board of Directors. The actual and projected budget is viewed, and staffing decisions are made in juxtaposition to fulfilling needs given the possibilities of funding to do so. The advisory board of BRG is subsequently appraised of the needs to raise X amount of dollars in support of BRG's programmatic goals.

Auditor's Disposition

We do not state that the findings are illegal. However, the hiring of family members described in the above finding is inappropriate. According to the *Field Work Standards for Performance Audits* in Chapter 6 of the Government Audit Standards abuse is defined as:

"...distinct from illegal acts and other noncompliance. When abuse occurs, no law, regulation, contract provision, or grant agreement is violated. Rather, the conduct of a government program falls far short of societal expectations for prudent behavior."

Abuse appears to be the case at BRG and we've identified what we believe to be this instance of abuse in this report. The BRG board should prohibit the practice of hiring members of the Executive Director's immediate family, placing them in paid key management positions, and placing responsibility for their supervision and performance with their parent.

C. Operational and Administrative Concerns

1. Related Party Records - Lack of Time Cards and Invoices

Not all BRG's employees and contractors fill out timecards. Most of BRG'S payroll expenses were to BRG management. (As noted, two members of the management team are family members and board members.) We noted payments to BRG's management and family members of BRG board members, which were not supported by time cards or, in the case of reimbursements, by invoices. The payments were for typing, cleaning, stage lighting and sound, etc. These services appeared to have been provided. However, since BRG staff did not complete timecards we could not determine whether time contributed was commensurate with salary.

Recommendation

We recommend that all services be supported with timecards and expenses be supported by invoices.

BRG's Response

All contractors submit invoices with the dates and hours worked as a precursor to getting paid. Key staff works prescribed/assigned weekly hours and is paid a paltry salary bimonthly. The key benefits are being able to make a cultural contribution and a positive difference in the lives of some of the participants.

Auditor's Disposition

We examined 28 disbursements. Seven items (25%) were not supported by invoices. According to BRG's hand written notes in the check register, these items include reimbursement to management and staff for travel, a tape deck, keys, project reconnect, an order from the Franchise Tax Board, and two additional unidentified reimbursements. Our concern about the reimbursements increased since some of the reimbursements were to close family members of the Executive Director or members of the Board.

BRG's programs are supported by various funding sources and staff oftentimes works in more than one capacity; for example, the Executive Director is also the Artistic Director and the Development Director is also the Youth Program Director. It is crucial that time spent in each capacity be properly recorded on timecards so that time can be accurately charged to the appropriate funding agency. This will improve public accountability and facilitate future planning by management.

BRG is a public benefit corporation. It is commendable that BRG staff enjoys making a cultural contribution and a positive difference in the lives of some of the participants. However, since the services provided at BRG are paid by the citizens, BRG's management has to be able to provide information to prove public accountability.

2. Fundraising - Lack of Community Financial Support

BRG is heavily dependent on grants and other public funding. BRG's Fiscal Year 1998 income was \$144,646.00. Seventy percent of that income was generated by grants. Very little income is derived from private contributions. BRG did not effectively generate income through individual donations. All charities must raise funds to survive. BRG has a Development Director who did apply for grant funding. However, based on BRG's unaudited income statements, it appeared that there was no income generated under the category line item fundraising. This means that no income was generated through popular

fundraising techniques such as making direct in-person requests for donations by volunteers at homes or direct mail or telephone solicitation. BRG has a large list that identifies past patrons. It appears that BRG did not effectively utilize the information to generate individual donations.

This is potentially a large income resource that is not being utilized. Generally, smaller theater agencies generate about 45% of their operating income through individual contributions. Also note that organizations that hire their own “development officers” as salaried employees, to serve as fundraising experts and plan to carry out all of the charity’s fundraising programs, are usually large charitable organizations with sufficient operating budgets. It is unusual for an organization BRG’s size to have a “development officer” as a full-time salaried employee. This fundraising function generally is the responsibility of the board in smaller organizations.

We also noted that BRG board members were not required to make a financial contribution to the organization either directly or through soliciting donations. Nonprofit arts groups rarely, if ever, earn enough income through ticket sales alone to support the artists, staff, organization and infrastructure that make for success in the arts. This is one reason fundraising is seen as the most crucial contribution from the boards of directors to arts groups. Individual donors are as essential to healthy balance sheets as are corporate, private foundations, and government funding sources.

BRG aggressively pursues grant revenues. However, we were informed that two grant proposals were denied based on their presentation. According to the granting agencies, the proposals submitted were incomplete and unpolished.

Recommendation

We recommend that BRG actively pursue individual contributions.

BRG’s Response

Individual donors have in fact given. More will be solicited in the future.

Auditor’s Disposition

If in fact individual donors have made fund raising contributions to BRG, the Executive Director must ensure that the contributions are properly reflected in the financial statements. BRG’s 1998 unaudited financial statements reflect “0” in the income category “donations”.

3. Poor Financial and Physical Internal Controls
 - a. Poor Physical Security of the Facility

Public access to all areas of the facility is unrestricted. Theft of physical assets and equipment and loss of records has occurred as a result.

Recommendation

We recommend that BRG obtain a safe. We also recommend that restricted areas be clearly marked and that the restriction be enforced by BRG staff.

BRG's Response

A Safe-Safe will be purchased for on-site.

b. Box Office Receipts Not Properly Accounted For

Cash receipts were poorly controlled. Deposits were made only weekly. Cash was taken home by board members because there is no safe on the premises for secure storage. Reconciliations between cash deposits and box office cash receipts were not performed. Transfers of accountability were not always recorded.

Recommendation

We recommend that BRG perform monthly reconciliations between what was collected at the box office and what was deposited. BRG should consider acquiring a night drop box.

BRG's Response

Board member box office volunteers and staff will continue to reconcile box-office receipts on a weekly, or at the latest, on a bimonthly basis.

Auditor's Disposition

At the exit conference BRG stated that they are discussing stronger cash control procedures with their accountant. They are also exploring recruiting a public interest accountant to assist them with establishing stronger accounting controls. We encourage BRG to continue to pursue this course of action.

c. Lack of Procedures Over Advance Ticket Sales

The procedures in place to record and account for advance ticket sales were not adequate. The Assistant to the Director is normally in charge of advance ticket sales. However, when she was not available, the auditor's observed that the process of selling tickets in advance was unclear to other BRG staff. The procedures had not been documented and BRG staff, other than the Assistant to the Executive Director, had not been adequately trained on how to properly process and record advance ticket sales.

Recommendations

1) BRG needs to establish and document a system for advance ticket sales. 2) BRG should consider designating a sequentially numbered lot of tickets to establish a system for tracking advance sales. 3) One person should be accountable for processing advance ticket sales. 4) A form should be developed to record advance ticket sales 5) Only designated staff should be allowed to sell advanced tickets 6) BRG might consider opening the box office for advance ticket sales during a specific time slot, for example, Tuesdays between 2-4pm so the community would know that advance tickets were available for pick up at a set time weekly.

BRG's Response

Perhaps when BRG secures additional funding to hire a staff person that could oversee this procedure on a regular basis, BRG will take this recommendation under advisement.

Auditor's Disposition

The auditor discussed implementing procedures for advance ticket sales with members of BRG's board and administrative staff. A member of the board proposed procedures that the auditor deemed reasonable. It was the auditor's understanding that those procedures would be implemented. However, if BRG's management chooses not to develop and implement procedures to record and account for advance ticket sales, BRG runs the risk of defalcation of funds.

d. Signatures on Blank Checks

BRG has a policy requiring dual signatures to process checks. However, we noted that several blank checks were signed by two of the authorized signers. The explanation given was for convenience.

Recommendation

We recommend that BRG not permit signatures on blank checks.

BRG's Response

BRG will prohibit the occurrence of two authorized signatures being put on blank checks.

e. Lost/Stolen Computer-Based Files

Specific information applicable to the time period of this study was not available for testing because BRG's computer systems were stolen. BRG did not maintain backup files. Because BRG did not maintain backup files, information critical to their operation was lost. Currently, BRG is in the process of reconstructing that information.

Recommendation

We recommend that BRG maintain daily backup files and store the backup in a safe area off site.

BRG's Response

BRG will maintain off-site, stored in a safe place, its computer backup files.

f. Inadequate Program Accounting and Program Budgeting

1. Inadequate Program Accounting

BRG's current accounting system is not set up to track the operating income and cost by program. Not having this type of programmatic financial information limits BRG's ability to effectively track and monitor its program related revenues and expenditures. This is important when programs are funded by various funding agencies. Without properly tracking program related financial information, it is difficult to determine if the funds were used for their intended purpose. It also limits management's ability to effectively evaluate ongoing results, and to plan and budget for future or expanded operations.

Recommendation

We recommend that BRG work with their accountant to expand their current accounting system to include program costs. This will require BRG to maintain time cards and perform a more detailed level of bookkeeping, which will require more time from the Assistant to the Executive Director. However, this will strengthen BRG's management tools and enable BRG to more effectively track and monitor revenues, expenditures, assets and liabilities associated with specific programs.

BRG's Response

BRG already has a cost accounting system in place. However, it will have its staff and accountants review the auditor's recommendations for considerations of efficacy. BRG has a cost accounting system that allows it to distinguish between various funding sources (i.e., grants as distinguished from contracts as distinguished from in-house generated funds). Since its inception, 35 uninterrupted years ago, BRG has worked to develop a system that allows it to most efficaciously provide Q. A. in its protocols for accounting and reporting its income and expenditures. However, BRG will pass on the recommendations to its efficacious accountants to look into increasing the efficacy of our project/program cost accounting system.

2. Inadequate Program Budgeting

BRG did not adequately prepare program budgets. Program budgets are an essential planning tool in determining the financial viability of a project. BRG had budget information on their productions and overall financial results, but had no information on individual programs.

Recommendation

We recommend that BRG prepare annual program budgets in addition to their line-item budgets. We also recommend that BRG's Board of Directors review and approve these budgets at the beginning of the fiscal year after they are prepared. Evidence of the board's review and approval should be noted in the board minutes.

BRG's Response

Untrue. BRG has always operated by preparing annual program budget. These budgets are not only reviewed by the Board of Directors, but are usually submitted to our funding sources, are used by our accountants and are precursive deliverables required from the City of Berkeley Arts Contract.

Auditor's Disposition

BRG's unaudited financial statements contained the overall budget and individual production budgets. However, BRG's unaudited financial statements did not contain program budgets.

BRG offers several programs to the public. Three programs offered by BRG are the Tutorial and Cultural Empowerment, Summer Camp, and Street Kids at Risk programs. The auditors were not given line item budgets for any of these programs. Financial statements should contain line item information for each program. This information is necessary for effective comparisons of ongoing results, and for planning of current operations and future expansion.

g. Inadequate and Incomplete Records Systems

BRG's records were not complete. BRG has a record maintenance system in place. However, BRG staff could not locate three out of seventeen bank statements we requested. BRG staff also could not locate three out of the five box office receipts forms tested. However, seven out of seven contracts for building rentals tested were properly recorded and supported. We tested 27 grant receipts. All appeared to be properly recorded and deposited.

Recommendation

We recommend that BRG either hire additional staff to perform the bookkeeping functions or allow the current assistant director enough time to properly maintain BRG's

records. Alternatively, we recommend that BRG consider inviting U.C. and/or CSUH and CSUSF students to intern in theater management to assist with back office functions

BRG's Response

BRG will continue to maintain its records completely

- h. Program Participant Tracking-Tutorial and Cultural Empowerment Program (TACE); Incomplete Student Attendance and Evaluation Records

We examined 100% of the available Tutorial and Cultural Empowerment Program (TACE) files (19 participants). We noted that currently there are eight students that are active in the TACE program. The remaining eleven students were no longer participating.

The objective of the TACE program is to assist middle school students in arithmetic and reading skills so as to help them participate at an academic standard above that of their classmates. BRG believes that if a student's attitude towards learning is improved their attendance and performance in school will simultaneously improve. In an attempt to evaluate the efficacy of the program, BRG gives surveys to the BRG tutors and the middle school teachers twice a year: once when the tutors first begin instruction with their student and again when their instructions approach conclusion. The aim of the survey is to note whether the student has shown progress in his/her behavior or attitude towards school.

The auditor spoke with the TACE program coordinator and noted that there was also a TACE packet, which was to be completed by the TACE participant's parent/guardian. The packet includes a Parental Permission and Participation Form and a parent handbook.

We tested 19 TACE files and noted the following:

1. Five out of the 19 TACE files did not contained signed Parental Permission and Participation Forms
2. Seven out of the 19 files did not have student progress evaluation forms prepared by the BRG tutors
3. There was no evidence that the parents received the parent handbook
4. Monthly attendance sheets were maintained but were not signed by the participating student or parent.

5. No surveys completed by the participants' middle school teachers were noted.

The audit was suspended before the auditor was able to complete testing of the Summer Camp and Street Kids at Risk (SKAR) programs. However, based on the limited testwork performed, we were not able to verify the number of participants in the Summer Camp or SKAR programs. The records were not organized, complete, or readily available. It is important that proper records be maintained of registrants for funding and insurance purposes.

Recommendation

We recommend that 1) each TACE participant's file be complete 2) the files contain completed Parental Permission Forms and evaluations 3) parents sign a form indicating receipt of the parent handbook 4) monthly attendance sheets be signed by the student and the parent/guardian (because of the circumstances surrounding many of these at-risk youth, we understand that at times parents are not available to sign the student out; however, the student should always sign the attendance form when in attendance) 5) the survey forms provided to the BRG tutors and the middle school teachers be completed and included in the student's file.

BRG's Response

No response from BRG as of July 7, 1999.

D. Operation of the Lease Agreement

The terms of the lease agreement have not been met. The lease requires the City to perform significant monitoring procedures. Initially, monitoring the lease agreement was the responsibility of the Office of Real Property Management. However, that division no longer exists. During the period under review no one in the City was assigned to monitor the lease agreement. Consequently, the lease agreement was not adequately monitored.

Our testwork revealed that BRG has not been submitting the specific reports the lease requires to be submitted on specific dates each year. However, the City has not followed up in writing to remind them of the due date or to notify them that they are in noncompliance with the provisions of the lease. The following identifies specific sections of the lease we reviewed for compliance.

1. Section 501 Use not Limited to Theatrical Performances

Section 501 of the lease agreement begins by stipulating that BRG may use the Premises only to satisfy the purposes set forth in Section 102. Section 102 states "Through the execution of this Sublease, the parties intend to provide for operation of a community cultural arts center by BRG to achieve their mutual objectives to: a) foster the preservation and development of

cultural, ethnic and artistic identity amount minority residents in South Berkeley; and b) enable BRG to continue and expand its services in South Berkeley by becoming a more visible and permanent institution in the neighborhood.”

Section 501 of the lease agreement states, “Specifically, the Premises shall only be used as a community center for theatrical performances that will foster the preservation and development of cultural, ethnic, and artistic identity among minority residents in South Berkeley.”

BRG appears not to be in compliance with Section 501 of the lease agreement. BRG produces five mainstage plays and several new arts programs. However, BRG also offers a summer camp program, job training, HIV awareness, and a tutorial program. These programs are not theatrical performances as stipulated in Section 501, which could be considered a violation of the lease agreement.

2. Section 503 Scheduling of Events- Use by Other Groups not Approved by the City

Section 503 of the lease states that “BRG shall schedule and undertake a number of performances each year during the term that will enable it to achieve the purpose of the sublease in accordance with the Annual Use Plan submitted by BRG and approved by the City . . . BRG shall submit to the City a Proposed Annual Use Plan for the following calendar year. The Annual Use Plan shall specify BRG’s proposed schedule of events for the year; the proposed use of the Premises by Outside Users . . . Within sixty days after receipt by the City Manager of a proposed Annual Use Plan, the City Manager shall either (a) approve the Annual Use Plan in writing or (b) set forth in writing the deficiencies . . . The City Manager’s review and approval of the Annual Use Plan submitted by BRG shall be limited to BRG’s compliance with its purposes as set out within its Charter documents and its continuing compliance with the general purpose and the specific terms of this Sublease, and shall not include any review or approval of the artistic content of the performances proposed by BRG.”

BRG is not in compliance with Section 503 of the lease requirement. A copy of the current Annual Use Plan was requested during this study. It was not provided for our review. BRG’s management appeared to be unaware of this requirement of the lease agreement.

It is critical that BRG submit their Annual Use Plan to the City for approval. During the study the auditor received direct complaints from neighbors who were concerned about the activities offered at BRG. In particular these neighbors were concerned for their safety during the October 3, 1998 riot at BRG. Many of the neighbors were “terrorized by the night’s events.”

The neighbors’ concern increased because they had had a similar problem four months

earlier, on July 4, 1998. They noted that the Development Director met with them after the initial July 4, 1998 incident and BRG's neighbors were disappointed that he didn't maintain his commitment to "never have another similar event." It appears that this has contributed to BRG's neighbors' loss of trust and respect for the organization.

If BRG had submitted the Annual Use Plan to the City for approval then the City would have been given the opportunity to prevent the October 3, 1998 concert. At a minimum the City should review the Annual Use Plan to make sure that BRG is in compliance with Section 501 of the lease agreement. Had this been done, the second riot could have been prevented. Since BRG did not submit the Annual Use Plan to the City for approval, BRG is in noncompliance with the lease agreement.

3. Section 502 No Schedule of Furnishings, Fixtures, and Equipment

Section 502 of the lease stipulates that, "BRG shall replace such furnishings, fixtures and equipment at its sole expense, according to a schedule that will enable it, at all times, to present professional-level theatrical productions in a manner consistent with applicable industry standards . . ."

BRG applied for and was awarded CDBG funding for theater improvements. BRG used the money to replace the carpets and is in the process of replacing the theater curtains. We noted that the chairs, desks, and tables were old, broken, dirty, in nonfunctional condition, and needed to be replaced. Thus, BRG is in partial compliance with Section 502 of the lease agreement.

4. Section 504 Poor Operation and Maintenance

Section 504 of the lease stipulates that, "BRG shall maintain the Premises and all furnishing, fixtures and equipment, on the Premises in clean, attractive, and functional condition in accordance with an Annual Maintenance Plan submitted by BRG and approved by the City Manager. The Premises and all furnishings, fixtures and equipment shall, at all times, be maintained, repaired and replaced by BRG so as to enable BRG to present professional-level theatrical productions in a manner consistent with applicable industry standards."

Our financial testwork revealed an instance where a buy-out patron, an outside organization that hosts an event by purchasing a large group (100-250) of theater seats to a play, refused to make full payment because the facility was poorly maintained. Another past patron whose organization purchased buy-out performances annually stated that their last buy-out was disappointing. He stated that the physical state of the theater was deplorable, the show started one hour late, and the lights went out during the performance.

5. Section 509 City Not Obligated to Pay for Repairs

Section 509 of the lease agreement states that, “The City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises.”

According to City records, the City regularly responded to BRG’s calls to change the lights, unclog the sinks and toilets, tighten the door locks, and repair theater seats. Since these items are the responsibility of BRG, it would be more appropriate for the City to use these resources to monitor the lease.

6. Section 1005 Access to the Premises Denied

Section 1005 of the lease agreement provides that any designated representative of the City shall have the right, at all reasonable times, to enter upon and examine and inspect the premises.

BRG is not in compliance with Section 1005 of the lease agreement. BRG’s management refused the study team the right to examine and inspect BRG’s premises and records.

7. Section 507 Prompt Payment of Utilities- Not Determined

“Promptly as they become due and payable, BRG shall pay for or otherwise arrange payment of all charges for utility services . . . including janitor services, security, power, gas, telephone, light, heating, water, garbage . . .”

We could not determine if BRG was in compliance with Section 507 of the lease agreement because testwork was curtailed by BRG on February 19, 1999.

8. Part 600 Adequate Levels of Insurance- Not Determined

BRG is required to maintain public liability and property damage, fire and extended coverage, and rental interruption insurance. Section 602 of the lease agreement stipulates, “The City may require greater coverage or higher policy limits as part of its semiannual review of BRG’s operations.”

The City did not monitor BRG’s insurance for adequacy. However, the City might need to require substantially more insurance coverage since the premises was being used for purposes which include additional programs for children and youth. We were unable to determine whether BRG was in compliance with the insurance requirements per the lease agreement because our testwork was curtailed by BRG.

Recommendation

We recommend that the City review BRG's insurance for adequacy. Should a program participant be injured, and the BRG found liable, the City might also be at risk.

9. Section 202 (e) Non-Profit Status Maintained

Section 202 (e) of the lease agreement stipulates that, "BRG represents and warrants that it is now, and BRG covenants that it shall remain at all times during the Term of this Sublease, a corporation organized and qualified under Section 501(c)(3) of the Internal Revenue Code"

BRG has maintained its nonprofit 501 (c)(3) status. Thus, BRG was in compliance with Section 202 (e) of the lease agreement as of the end of our fieldwork

Summary of Lease Recommendations

The City has devoted substantial staff time to working with BRG. However, BRG has failed to provide required reports for City approval and the City failed to follow up to ensure compliance. A number of reports are due October 1, 1999.

We recommend that BRG comply with the terms of the lease agreement. We also recommend that the City Manager assign City staff to monitor the lease agreement in accordance with the lease requirements.

City Manager's Response

Agree: Although the specifics of the lease were not monitored, staff has spent many hours over the years monitoring other BRG contracts and assisting the BRG. Many of the requirements of the other contracts have similar provisions as the lease, i.e., insurance and list of programs (see Exhibit A). A condition of the \$25,000 annual operating contract is a list of programs similar to the "use plan" required under the lease agreement.

The problem over the years is that there have been a number of City staff working on different issues related to the BRG, but have not communicated or tracked specifics of the lease agreement.

To remedy this situation, one staff person has been assigned the responsibility to monitor all BRG contracts including the lease. Staff has also sent BRG a letter notifying BRG that the City plans to require full compliance with the terms of the lease (see attached letter dated June 10, 1999).

BRG's Response

Again, City Staffer . . . has conducted over seven walk-throughs between 1998 and June 1999. City staff has admitted to having had the proper facility maintenance plan

submitted by BRG in December 1998. BRG, as usual, has overlooked the fact that City staff was remiss and continues to work with the City on a regular basis concerning facility maintenance matters. Effective collaboration with the city is always welcome, given the fact and understanding by all involved, that the BRG site is not a plantation. Moreover, we should keep the understanding that anyone with a plantation mentality should park these attitudes at the door. BRG is leasing the building from the City . . . BRG is not farming out its soul.

Auditor's Disposition:

The purpose of our audit was to evaluate the administrative and financial capacity of BRG to maintain current service levels and prepare for operating an expanded community cultural arts center. Our report does not state that BRG's organizational structure, policies, procedures, and practices are illegal. However, BRG is a "public benefit organization." Given the value of the theater and BRG's initial request to purchase the theater for \$1.00, the City would be remiss not to hold BRG's management accountable for stewardship of this valuable asset. Based on our audit and the findings noted in this report, BRG's management should reevaluate the performance of the organization and its programs. Our recommendations were designed to provide information to improve BRG's public accountability and assist with BRG management's decision making.

Section XVI, Article 16 Public Finance of the California Constitution prohibits the City from making any gift or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation. The theater that BRG is leasing from the City is a public asset. If BRG is unable or unwilling to improve its public accountability, then the City, itself, risks the appearance of making a gift of public funds for private benefit.

E. Community Concern About BRG Operations

The stated purpose of the lease is "to provide for operation of a community cultural arts center to achieve the mutual objectives to: a) foster the preservation and development of cultural, ethnic and artistic identity among minority residence in South Berkeley; and b) enable BRG to continue and expand its services in South Berkeley by becoming a more visible and permanent institution in the neighborhood."

Although BRG is operating a community cultural arts center in the South Berkeley community, we have concerns about the effectiveness of the services provided, BRG's relationship with the community, and the ability of BRG to obtain the support necessary to successfully expand its services.

The City Auditor's Office used the reverse directory to randomly select our sample for the survey

questionnaires. We mailed 53 survey questionnaires to neighbors of BRG. We received seven responses to our neighborhood surveys and two noted BRG services to be very good. The majority of the surveys revealed that although the neighborhood residents were aware of the facility and liked the idea of having an African-American community theater, they didn't utilize the services offered by BRG. Two individuals that did visit the facility found BRG services to be unsatisfactory. Again, the dominant complaint was mismanagement of the facility.

One South Berkeley neighbor noted that he believed that the theater was "falling apart from lack of professional skills and organization, it is hard to see how any afternoon programs teaching children theater could be that successful." He also voiced his concern about the nepotism in BRG's management.

Another neighbor stated that, "There appears to be a lack of viability in the current operations" She also stated that, "it is a shame to see the life taken out of this valuable community asset."

City Auditor's Office staff also mailed 27 survey questionnaires to former BRG patrons. We received five responses. One respondent rated BRG as very good. Of the two respondents who rated BRG satisfactory, one stated that BRG was poorly managed. Two respondents rated BRG unsatisfactory with strong complaints. One parent of the summer camp program stated that her son was attacked by another child at the theater summer camp program. The attacker was not a participant in the program, but had been allowed on site. When the patron approached management to discuss the attack, she was told that her son needed to toughen up. She stated that after two weeks she removed her children from the summer camp program, and BRG refused to give her a refund.

The Auditor's Office staff mailed a survey to each BRG board member. We received no responses.

VI. Summary

Recommendations for the City:

Due to the large dollar value of the theater, community concerns, and significant findings noted in this report, we recommend that the City not provide any additional funds to BRG, until the City Manager can confirm that BRG has demonstrated significant progress towards implementing the major recommendations in this report.

Prior to additional funds being provided to BRG, the City should complete the following actions:

1. City staff should verify that the recommendations addressing changes in board policies and administrative structure that specifically resolve findings A (1, 2, 3 and 4) in the study are implemented and documented in the board minutes.
2. City staff should confirm that changes in BRG's board's administrative practices, such as,

approving by-laws, preparing minutes, scheduling regular board meetings and prohibiting the hiring and direct supervision of family members of paid staff, are fully implemented and performed on a consistent basis.

3. Subsequent to these policies being established by BRG, City staff should verify that new BRG staff is recruited in accordance with the newly adopted “conflict of interest” policy. This policy should specifically prohibit the hiring and direct supervision, and performance evaluation of one family member by another. The City staff should also affirm that new board policies are implemented in order to satisfy the revised board membership criteria, which includes a rotation of existing board members and inclusion of client and community representatives.

4. The City must also monitor BRG’s compliance with the terms of the lease agreement. The City Manager should designate a City staff member to monitor the lease.

In order to verify that City staff is monitoring BRG’s compliance with the lease terms, the City Manager should confirm in his report to Council that BRG has timely submitted the following items to the City’s designated representative for review and/or approval. These items should be submitted by BRG no later than October 1, 1999 in accordance with the lease agreement:

- Completed Annual Use Plan with BRG’s proposed schedule of events for the year with the proposed use of the premises by outside users
- Completed Schedule of Furnishings, Fixtures and Equipment
- Completed Annual Maintenance Plan

In addition, City staff should review BRG’s level of insurance for adequacy based on additional programs offered by BRG.

The City Manager should submit to Council a preliminary report on the implementation of the recommendations, including BRG’s compliance with the lease terms, in March 2000.

Recommendations for BRG:

Although our study was curtailed by BRG board’s action, we were able to examine sufficient data to conclude that their administrative capacity is not adequate to effectively sustain the operation of a community theater as they are presently organized. Our greatest concern is the present structure of the Board of Directors and management. We recommend the following immediate actions be taken by BRG’s Board of Directors:

To remedy deficiencies in current board policies BRG’s board should:

- Rescind the by-laws requiring 30% family membership and a 75% vote to remove a director

- Establish required breaks in board service
- Amend the by-laws to state that no more than one paid staff member shall be a voting board member
- Establish a policy prohibiting the hiring and direct supervision of family members

To remedy deficiencies in current board practices BRG's board should:

- Update application and document their process for board membership
- Update and approve the by-laws
- Immediately start preparing minutes to all board and subcommittee meetings
- Establish regular board meetings
- Recruit replacement board members

To eliminate noted deficiencies in BRG's operations and administration BRG's Executive Director should:

- Reassess staffing needs and develop a transition plan for board approval
- Require staff and contractors to complete timecard and submit invoices for all reimbursements
- Actively pursue support from individual donors
- Obtain a safe and/or bank drop box
- Require staff to reconcile box office receipts monthly
- Develop and document procedures for advance ticket sales
- Prohibit signatures on blank checks
- Maintain complete records
- Incorporate program related budget and financial information into the accounting system and
- Maintain daily computer backup files off site.

Recommendations for Joint City and BRG Action:

BRG should schedule a meeting with City staff to perform a walkthrough of the facility to assess the maintenance level of the theater and its furnishings, fixtures, and equipment no later than October 1, 1999. BRG should repair items that are the responsibility of BRG, rather than calling the City to do so. BRG needs to demonstrate effective management of its public resources, and the City must demonstrate effective oversight of BRG's performance.

VII. Methodology

Our testwork was designed to determine whether 1) explicit plans were developed to achieve clearly defined results, 2) an appropriate structure of management authority and responsibility exists, 3) management has clearly communicated its expectations to those responsible for operations, 4) operations are monitored and evaluated regularly using appropriate criteria so that variance from plans can be detected and corrected in a timely manner, and 5) technical methods being utilized are appropriate to the operations performed. The methodologies used in performing this study were inquiries, observations, interviews, surveys, inspection of documents, and direct testing of data.

VIII. BRG Curtailment of the Management Study

The Auditors held an entrance conference with the BRG Board of Directors, including the Executive Director, on November 2, 1998. The purpose of the entrance conference was to review the scope and procedures of our Management Study and to discuss any BRG concerns about the study. After discussion of the scope and procedures of the study, it was agreed that on site fieldwork would begin the week of November 9, 1998.

On February 19, 1999, while the auditors were still performing testwork, the City Auditor received a hand delivered letter by a BRG representative which stated “. . . we are compelled to officially suspend the audit . . .” The auditors were told by BRG's staff to stop testwork immediately and the auditors' access to BRG's books and records was terminated. As a result, test of cash receipts, disbursements, payroll and programs were not completed. Our request for a tour of the facility was also denied.

Although we found a number of deficiencies that we were able to fully document, we can offer no assurance regarding whether or not other problems would have been uncovered had we been allowed to complete testwork. However, curtailment of our work is in violation of the terms of the

lease agreement and the audit clause in the contract budgeted in the Civic Arts Program for \$25,000.00. This contract was approved by Council on October 27, 1998.

IX. Authority to Audit

Section 61 of the Charter of the City of Berkeley states, “The Auditor shall have the authority and responsibility to conduct performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards. Such audits may include financial, compliance, efficiency and economy, and program results auditing. The Auditor shall consult with the Mayor, City Council, and City Manager regarding the selection of the audit entities . . . Audit reports completed by the Auditor shall be provided to the Council and made available to the public.”