



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued November 3, 2022

Department of Conservation and Recreation

For the period July 1, 2019 through June 30, 2021





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

November 3, 2022

Mr. Doug Rice, Commissioner
Department of Conservation and Recreation
251 Causeway Street, Ninth Floor
Boston, MA 02114

Dear Mr. Rice:

I am pleased to provide this performance audit of the Department of Conservation and Recreation. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2019 through June 30, 2021. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Conservation and Recreation for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Ms. Bethany A. Card, Secretary of the Executive Office of Energy and Environmental Affairs

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LIST OF ABBREVIATIONS

DCR	Department of Conservation and Recreation
EOTSS	Executive Office of Technology Services and Security
MBE	minority-owned business enterprise
MMARS	Massachusetts Management Accounting and Reporting System
OSA	Office of the State Auditor
SDO	Supplier Diversity Office
WBE	woman-owned business enterprise

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Conservation and Recreation (DCR) for the period July 1, 2019 through June 30, 2021.

In this performance audit, we determined whether DCR had internal tracking, oversight, and enforcement procedures to ensure that contractors complied with its workforce participation goal¹ in accordance with Section 44A(1)(G) of the General Laws and the Executive Office of Administration and Finance administrative bulletin “Equal Opportunity and Non-discrimination on State and State-Assisted Construction Contracts.” We also determined whether DCR had ensured that all its construction contractors met its business ownership goal for women and minorities² in accordance with Part 1 of its “Instructions to Bidders” for construction projects.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 9	DCR did not have adequate processes or procedures to ensure that its contractors met its workforce participation goal for women and minorities.
Recommendation Page 9	DCR should develop policies and procedures to effectively monitor and collect the data necessary to ensure that the contractors achieve the workforce participation goal.
Finding 2 Page 10	DCR did not ensure that all contractors submitted Certificates of Payment so it could monitor contractor compliance with its business ownership goal.
Recommendation Page 12	DCR should develop policies and procedures to effectively monitor the extent to which each construction contractor achieves the business ownership goal for women and minorities. These policies and procedures should include the enforcement provisions, stated in the contract, that DCR will use against contractors that do not meet the goal.

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1. Workforce participation goals are the percentages of work hours for each construction contract that must be worked by minorities and women.
 2. A business ownership goal is the percentage of dollars spent cumulatively on DCR contracts with minority-owned business enterprises (MBEs) and woman-owned business enterprise (WBEs) out of the dollars spent on contracts with non-MBE and non-WBE enterprises.

Finding 3 Page <u>13</u>	DCR did not ensure that all employees completed required annual cybersecurity awareness training during the audit period.
Recommendations Page <u>14</u>	<ol style="list-style-type: none">1. DCR should stay informed about all requirements of the Executive Office of Technology Services and Security's Information Security Risk Management Standard IS.010.2. DCR should document and implement policies and procedures that require all employees to complete initial and annual cybersecurity awareness training. The policies and procedures should include internal controls to monitor and document completion of the training.

OVERVIEW OF AUDITED ENTITY

The Department of Conservation and Recreation (DCR) was created in 2003 by the merging of its two predecessor agencies, the Metropolitan District Commission and the Department of Environmental Management. DCR is authorized by Section 1 of Chapter 41 of the Acts of 2003. It operates under the direction of the Executive Office of Energy and Environmental Affairs and is responsible for the administration and oversight of state parks, forests, reservations, and recreational facilities (e.g., campgrounds, swimming pools, and bike trails). According to its website, DCR's mission is "to protect, promote and enhance our common wealth of natural, cultural and recreational resources for the well-being of all."

For fiscal year 2020, DCR had 2,615 full-time employees; 2,159 seasonal full-time employees; and state appropriations of \$97,061,517. For fiscal year 2021, DCR had and 2,722 full-time employees; 2,189 seasonal employees; and state appropriations of \$103,520,022.

Construction Contract Management

DCR is responsible for contracting with contractors and overseeing state construction projects, which are governed by Chapter 149 of the Massachusetts General Laws or Section 39M of Chapter 30 of the General Laws, depending on the type of work performed by the general contractor. The following construction contracts were awarded during the audit period.

DCR Construction Contracts Awarded July 1, 2019 through June 30, 2021

Fiscal Year	Contracts under Chapter 149 of the General Laws	Contracts under Chapter 30 of the General Laws	Total
2020	\$ 6,345,816	\$ 39,700,460	\$ 46,046,276
2021	21,670,658	65,260,464	86,931,122
<u>Total</u>	<u>\$ 28,016,474</u>	<u>\$ 104,960,924</u>	<u>\$ 132,977,398</u>

Contract Bidding Process

DCR is responsible for ensuring that woman workers and minority workers, as well as minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs), are fairly represented and included in its construction projects. The workforce participation and business ownership goals for women and minorities are included in the request for proposal to bidders.

According to Section 44A(1)(G) of Chapter 149 of the General Laws, construction contracts must include workforce participation goals. The Executive Office of Administration and Finance has issued an administrative bulletin, “Equal Opportunity and Non-discrimination on State and State-Assisted Construction Contracts,” effective March 18, 2009. Section III of an attachment to the bulletin states, “The participation goals . . . shall be 15.3% for minorities and 6.9% for women.”

DCR is also responsible for ensuring that its contractors achieve a 10.4% business ownership goal for women and minorities on its construction contracts. Contractors are required to provide supporting documentation to DCR, stating how they intend to use any Supplier Diversity Office (SDO)–certified³ MBEs and WBEs they plan to hire to work on a project. The documentation includes letters of intent documenting expected expenditures for each MBE or WBE on the project, a schedule of workforce participation, and SDO certification letters stating that the subcontractors are certified MBEs or WBEs. DCR uses a third-party vendor to oversee its entire bid process. This includes collecting the above documentation from bidders. DCR does not have access to individual bids until the bidding has closed.

During the bidding process, DCR may determine that the workforce participation and business ownership goals are unachievable. If this occurs, DCR may reduce or waive the workforce participation and/or business ownership goals in the request for proposal.

The contractor may also determine during the work that it will not meet the business ownership goal for women and minorities. In this case, the contractor must submit a waiver or reduction request to be approved by DCR, listing a reason for the inability to meet the goal. Examples of reasons are a lack of available MBEs or WBEs to perform the work in the area where the project is occurring or an inability to receive commitments from MBEs or WBEs to perform the work.

After the bidding is closed, the third-party vendor provides the winning bid documentation to DCR. DCR reviews the package to ensure that it is complete and submits it for internal approval from its Legal and Administration Department and Finance Department. DCR creates a contract with the bidder to be signed by its commissioner and the bidder, which creates the contract.

3. SDO is a state agency that seeks to increase opportunities to minority- and woman-owned businesses in the Commonwealth. SDO certifies a business as diverse in order to increase the ability of the diverse business to obtain government contracts.

Business Ownership Goal Monitoring

DCR assigns a project manager to oversee an active construction project. One of the project manager's duties is to monitor the business ownership goal and help the contractor achieve it.

To track progress toward the business ownership goal for women and minorities on each contract, DCR requires its contractors to send completed quarterly Certificates of Payment that list the total amounts the contractors have paid to certified MBE and WBE subcontractors during the current quarter.

DCR forwards the Certificates of Payment to SDO with its submission of its SDO comprehensive annual report so that SDO will have the payments made to MBE and WBE contractors on DCR's construction contracts for the entire fiscal year.

Additionally, construction contracts include terms that apply if the contractor fails to meet its business ownership goal for women and minorities. According to Part III Section 8A of DCR's standard construction contract, DCR may do the following in that case:

- (1) suspend payment to the Contractor of an amount equal to the value of the work which was to have been performed by an [MBE or WBE] pursuant to the Contractor's Schedule of [MBE and WBE] Participation but which was not so performed . . . and/or*
- (2) suspend the Contractor's performance of this Contract in whole or in part.*

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Department of Conservation and Recreation (DCR) for the period July 1, 2019 through June 30, 2021.

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

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does DCR have internal tracking, oversight, and enforcement procedures to ensure compliance with its workforce participation goal under Section 44A(1)(G) of Chapter 149 of the General Laws?	No; see Finding <u>1</u>
2. Does DCR ensure that construction contracts under Chapters 30 and 149 of the General Laws meet its business ownership goal for women and minorities in accordance with Section 8 of Part 1 of its “Instructions to Bidders”?	No; see Finding <u>2</u>

In performing our audit work, we also found that not all DCR employees promptly received cybersecurity awareness training, as discussed in Finding 3.

To achieve our objectives, we gained an understanding of DCR’s internal control environment related to the objectives by reviewing contract requirements and conducting interviews with DCR officials. We evaluated the design, and tested the operating effectiveness, of internal controls related to the approval of construction contracts.

To obtain sufficient, appropriate audit evidence to address our audit objectives, we performed the following procedures.

To determine whether DCR had internal tracking, oversight, and enforcement procedures to ensure compliance with the workforce participation goal, we asked DCR officials about their procedures for tracking and overseeing the goal.

To determine whether DCR ensured that its contractors complied with the business ownership goal, we obtained a list of all construction contracts that were active during our audit period for which payments were made to a contractor. We selected a random, nonstatistical sample of 20 of the 99 contracts. For the sample, we obtained each contract's letters of intent (which were used to document planned expenditures for each certified minority-owned business enterprise [MBE] and woman-owned business enterprise [WBE] to be used on the project), schedule of participation (which documented the percentages of the total contract expenditures that were intended to be made to MBEs and WBEs), and Supplier Diversity Office certification letters for planned subcontractors that were certified MBEs or WBEs. We examined these documents to determine whether DCR's construction contracts documented planned spending on MBEs and WBEs.

Using the same population of 99 active construction contracts, we generated an expenditure query from the state's Massachusetts Management Accounting and Reporting System (MMARS) to determine the total expenses paid for all 99 contracts each fiscal year. Next, we calculated DCR's total MBE and WBE expenses paid as a percentage of total expenses for fiscal years 2020 and 2021 to determine whether DCR met business ownership goals for women and minorities each year. To perform this calculation, we obtained copies of all Certificates of Payment⁴ that DCR received from the contractors on its construction contracts. We totaled all the MBE and WBE expenses on these reports for each fiscal year. To determine expenditures on MBEs and WBEs, we then divided the total MBE and WBE payments by the total paid construction contract expenses in MMARS for each fiscal year. If DCR did not receive any Certificates of Payment from an ongoing contract, we asked whether DCR had taken any enforcement action against the contractor.

We used nonstatistical sampling and therefore could not project the results of our testing to the overall populations.

4. Certificate of Payment reports list total payments made by the contractor to MBE and WBE subcontractors on a construction contract during a fiscal year.

Data Reliability Assessment

In 2018 and 2022, OSA performed a data reliability assessment of MMARS that focused on testing certain information system general controls, including access, cybersecurity awareness, audit and accountability, configuration management, identification and authentication, and personnel security. During the current audit, we obtained and reviewed DCR's cybersecurity awareness policies and procedures, evidence of DCR's employees being trained on cybersecurity, and evidence of background checks. (See Finding 3.)

DCR provided a Microsoft Excel spreadsheet listing 99 construction contracts that were active during our audit period. To determine the reliability of the spreadsheet, we randomly selected 12 DCR construction contracts from DCR's list and traced them to DCR's hardcopy construction contract files for agreement. We also randomly selected 12 hardcopy construction contract files and traced them to DCR's list for agreement.

We generated an expenditure query from MMARS to include all DCR construction contract payments for the audit period. To determine the reliability of the query, we randomly selected 20 payments from the query and traced them to DCR's payment vouchers for agreement. We also randomly traced a sample of 20 DCR payment vouchers to the query for agreement.

Based on the results of our data reliability assessments, we determined that the information obtained for our audit period was sufficiently reliable for the purpose of our audit objectives.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Department of Conservation and Recreation did not have adequate processes or procedures to ensure that its contractors met its workforce participation goal for women and minorities.

The Department of Conservation and Recreation (DCR) did not have adequate processes or procedures to effectively monitor and collect data to determine whether each contractor achieved the workforce participation goal for women and minorities. Without adequate processes or procedures, DCR could not collect the data to calculate the workforce participation goal achieved for the 99 construction contracts that were active during our audit period.

Authoritative Guidance

Section 44A(1)(G) of Chapter 149 of the Massachusetts General Laws states,

Every contract by a state agency or state assisted contract for design, construction, reconstruction, installation, demolition, maintenance or repair shall set forth the participation goals of minority and women workers to be employed on each such contract and the processes and procedures to ensure compliance with those workforce participation goals, including reporting and enforcement provisions.

The Executive Office of Administration and Finance's "Equal Opportunity and Non-discrimination on State and State-Assisted Construction Contracts" administrative bulletin states, "The participation goals . . . shall be 15.3% for minorities and 6.9% for women."

Reasons for Noncompliance

DCR officials told us they did not know how to create a process or procedures to collect data from the contractors in order to calculate the workforce participation goal achieved on active contracts.

Recommendation

DCR should develop policies and procedures to effectively monitor and collect the data necessary to ensure that the contractors achieve the workforce participation goal.

Auditee's Response

DCR has established a process and procedures to ensure that contractors meet workforce participation goals for women and minorities. DCR specifically states in each contract that the applicable local minority workforce utilization percentage is a minimum goal of 15.3%. The

applicable local women workforce utilization percentage is a minimum goal of 6.9%. DCR contracts also require contractors to submit weekly workforce reporting forms which detail compliance with each of these goals (see page 59–60 in part III of each contract). These processes and procedures, which were in place during the audit period, enable effective monitoring and compliance with workplace goals for women and minorities.

While DCR processes and procedures are in place, we recognize that implementation of these processes and procedures could be strengthened. DCR therefore is taking steps to further strengthen the collection and monitoring of required reports and compliance with workplace goals. During the period of the audit, weekly reports from contractors were given directly to the DCR project manager and filed with the design and engineering team, while quarterly reports were filed with the DCR contracts manager and filed within the DCR Contracts Unit. DCR is improving and centralizing access to reports and associated information across DCR units by creating a standardized project file within Sharepoint that includes both the design and engineering file and the Contracts Unit file. This unified file will allow DCR's Contracts Unit to more readily monitor and ensure compliance with workforce participation goals for minorities and women.

Auditor's Reply

The Office of the State Auditor (OSA) agrees that DCR states what the local minority and local women workforce utilization percentages are in each contract. OSA also acknowledges that DCR contracts require contractors to submit forms that detail compliance with the workforce participation goal. However, DCR has not established any written policies and procedures that describe how DCR uses these weekly workforce reporting forms in the gathering of the data documented on these reports or the calculation of the percentages based on the data provided by the contractors as stated in the contracts. Written policies and procedures are a critical component of an agency's internal control system that ensure that its activities are conducted consistently, effectively, efficiently, and in compliance with applicable regulations and other requirements. Written policies and procedures also establish accountability and allow management to effectively monitor and manage activities.

Therefore, we reiterate our recommendation that DCR should develop policies and procedures to effectively monitor and collect the data necessary to ensure that the contractors achieve the workforce participation goal.

2. DCR did not ensure that all contractors submitted Certificates of Payment so it could monitor contractor compliance with its business ownership goal.

DCR lacked the policies and procedures to ensure that all contractors submitted Certificates of Payment. These certificates list total payments made by a contractor to minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs) on a construction contract during a fiscal year.

DCR uses them to ensure that contractors comply with its business ownership goal. DCR did not receive Certificates of Payment for 26 of 66 construction contracts for fiscal year 2020 or for 23 of 52 construction contracts for fiscal year 2021. Without such processes and procedures, DCR cannot monitor contractors' compliance with the 10.4% combined women and minority business ownership goal.

Authoritative Guidance

Part III of DCR's standard construction contract requires contractors to complete a "Certificate of Payment by Contractor/Designer to Minority, Women Business and Veteran Owned Business Enterprises" documenting the amount paid to MBEs and WBEs during the quarter. If no payments have been made to MBEs or WBEs, the certificate documents that fact. The certificate states,

MBE, WBE and [veteran-owned business enterprise] payment reports are required for each quarter of the fiscal year for each of your DCR projects. . . . Reports must be submitted within 10 business days of your receipt of this form.

DCR officials told us DCR used Certificates of Payment to determine whether a contractor has complied with the combined women and minority business ownership goal.

All construction contracts that were ongoing during the audit period required the contractor to meet DCR's combined women and minority business ownership goal unless DCR agreed to waive or reduce it. The requirement was detailed in DCR's "Instructions to Bidders" for construction contracts.

During the audit period, DCR had an agency-wide business ownership goal for all its construction projects. Each contract had a combined women and minority business ownership goal of 10.4% documented in the "Instructions to Bidders," except those for which DCR had agreed to a request from the contractor to waive or reduce this percentage.

Reasons for Issue

DCR officials told us they did not request Certificates of Payment from contractors each quarter. Instead, they requested the reports from contractors twice a year and monitored business ownership goal compliance on construction contracts after receiving the reports. Additionally, DCR officials told us that they had limited enforcement mechanisms to ensure that contractors submitted Certificates of Payment. DCR officials did not believe it was feasible to enact enforcement procedures against contractors that did not submit Certificates of Payment. DCR also did not have policies and procedures to effectively monitor

the extent to which each construction contractor achieved the business ownership goal for women and minorities.

Recommendation

DCR should develop policies and procedures to effectively monitor the extent to which each construction contractor achieves the business ownership goal for women and minorities. These policies and procedures should include the enforcement provisions, stated in the contract, that DCR will use against contractors that do not meet the goal.

Auditee's Response

DCR appreciates the importance of improving compliance with requirements to submit certificates of payment. DCR contracts currently include specifically-stated enforcement mechanisms to support compliance with the requirement to submit certificates of payment, including suspension of payment and/or termination of contract for non-compliance. These mechanisms enable DCR to enforce, where appropriate, the requirement to submit certificates of compliance. DCR retains the discretion to determine whether and how to deploy these enforcement mechanisms in the context of a particular contract.

DCR agrees that it is desirable to improve rates of submission of certificates of payment and has taken a number of steps to improve compliance. Under DCR's current Director of Contracts, who began work on the same day the audit period began, DCR has implemented three initiatives to improve compliance with certificate of payment obligations.

First, DCR developed a tracking system specifically for certificates of payment during the audit period. This system is now in place and compliance with reporting today far exceeds the rate of reporting observed during the audit period. This system includes a dedicated email address specifically for collecting quarterly reports from all its contractors, and for sending requests to the contractors to remind them of the need to file the certificates of payment for each quarter. DCR also created a construction tracking sheet within its Sharepoint system, which contains all relevant information for each active construction contract, including whether they have or have not reported for each quarter since the onset of the contract. Prior to these changes, DCR was searching multiple places for this information, whereas now it can all be found in an easily accessible spot.

Second, DCR has instituted a practice of discussions with contractors during the contracting period. DCR's Contracts Unit ensures that each low bidder is aware of their responsibilities and the enforcement mechanisms regarding MBE/WBE compliance at the onset of the contract. This practice ensures that contractors understand and can appropriately respond to requests for quarterly reports. DCR is also in the process of hiring an assistant director of contracts, whose job description includes working with DCR contractors to ensure supplier diversity compliance. This position will further strengthen information exchange and voluntary compliance with contractor reporting obligations.

Third, DCR is using a new supplier diversity hub offered by the Operational Services Division (OSD). This hub will allow contractors to upload their documents directly to the online portal and allow OSD to conduct up to the minute tracking of contractor compliance with all supplier diversity commitments for all contracts. While this hub is still a work in progress, DCR believes that this system will be helpful in enabling it to track and improve rates of submission of certificates of payment.

Auditor's Reply

Based on its response, DCR has taken measures to address our concerns on this matter.

3. DCR did not ensure that all employees completed required annual cybersecurity awareness training during the audit period.

In our review of 10 of 81 training records belonging to 10 active DCR Massachusetts Management Accounting and Reporting System users during the audit period, we found that 7 of the users did not receive annual cybersecurity awareness training. Of the 3 of these 10 users who were hired during our audit period, 2 did not have cybersecurity awareness training upon hire.

If employees do not receive cybersecurity awareness training, DCR could face a higher risk of cybersecurity attacks and financial and/or reputation losses.

Authoritative Guidance

The Executive Office of Technology Services and Security's (EOTSS's) Information Security Risk Management Standard IS.010, effective October 15, 2018, states,

6.2.3 New Hire Security Awareness Training: All new personnel must complete an Initial Security Awareness Training course. . . . The New Hire Security Awareness course must be completed within 30 days of new hire orientation.

6.2.4 Annual Security Awareness Training: All personnel will be required to complete Annual Security Awareness Training.

Reasons for Noncompliance

DCR officials told us that it was DCR's understanding that EOTSS required DCR to complete cybersecurity training every two years. Regarding new hires, DCR personnel stated that DCR's training was handled at the secretariat level: the Commonwealth's Human Resources Division tells the Executive Office of Energy and Environmental Affairs' Human Resources Office, which oversees DCR's training, which EOTSS training programs (including cybersecurity awareness training) are required for each employee. DCR does not have

its own human resources department or its own policies and procedures to ensure that all employees complete initial and annual cybersecurity awareness training.

Recommendations

1. DCR should stay informed about all requirements of EOTSS's Information Security Risk Management Standard IS.010.
2. DCR should document and implement policies and procedures that require all employees to complete initial and annual cybersecurity awareness training. The policies and procedures should include internal controls to monitor and document completion of the training.

Auditee's Response

DCR uses centralized systems offered to comply with required employee training. During the audit period, DCR complied with [the state Human Resources Division, or HRD] and EOTSS annual training through [the Performance and Career Enhancement system] and other independent EOTSS cyber security providers, which did not make information on employee completion of training readily available to managers. As a result, managers may not have timely verified whether all team members completed their required training during the audit period.

DCR now has new tools and controls to ensure that all employees complete required training, including cybersecurity training. DCR follows EOTSS annual training requirements on cybersecurity provided through MassAchieve, the new training module provided by HRD. In the event that an employee does not comply with cybersecurity training, their access to computers and department and state systems is terminated until they complete the training. This termination will take effect 10/15/2022 for any who have not completed training that was due 8/31/2022.

Auditor's Reply

Based on its response, DCR has taken measures to address our concerns on this matter.