

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued August 19, 2024

Massachusetts Convention Center Authority

For the period January 1, 2021 through December 31, 2022



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

August 19, 2024

Gloria Cordes Larson, Interim Executive Director
Massachusetts Convention Center Authority
415 Summer Street
Boston, MA 02210

Dear Ms. Larson:

I am pleased to provide to you the results of the enclosed performance audit of the Massachusetts Convention Center Authority. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2021 through December 31, 2022. When examining the Massachusetts Convention Center Authority's procurement and employee complaint practices, we extended the audit period back through January 1, 2018. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Massachusetts Convention Center Authority. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

cc: Emme Handy, Chair of the Massachusetts Convention Center Authority Board of Directors

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	7
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	12
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	19
1. The Massachusetts Convention Center Authority did not ensure that it met the annual benchmarks for diverse supplier spending set by the Supplier Diversity Office.	19
2. The Massachusetts Convention Center Authority could not demonstrate that it obtained original quotes for all purchases between \$10,000 and \$50,000.	22
3. The Massachusetts Convention Center Authority did not follow its procurement policies when entering into a media contract for over \$100,000.	26
4. The Massachusetts Convention Center Authority entered into vendor contract extensions without approval from its board of directors.	28
5. The Massachusetts Convention Center Authority could not ensure that it sent and retained pre-event security surveys to meet client needs in a consistent, fair, and equitable manner.....	30
6. The Massachusetts Convention Center Authority did not have an adequate process for handling employee complaints.....	32
7. The Massachusetts Convention Center Authority did not have a transparent or accountable process related to non-union employee settlement agreements, including those containing non-disclosure, non-disparagement, or similarly restrictive clauses.	34
8. The Massachusetts Convention Center Authority executed an employee settlement agreement exceeding \$250,000, in violation of Chapter 190 of the Acts of 1982 and Massachusetts Convention Center Authority Bylaws.	38
9. The Massachusetts Convention Center Authority is missing certain information system general controls over its procurement system.	40
OTHER MATTERS	42
1. The Massachusetts Convention Center Authority did not post bid invitations for art commissions in areas that were readily accessible to the art community.	42
2. The Massachusetts Convention Center Authority did not ensure that all board members and employees signed conflict of interest material acknowledgment forms or completed biennial conflict of interest training.	43

EXECUTIVE SUMMARY

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 the Massachusetts Convention Center Authority (MCCA) for the period January 1, 2021 through December 31, 2022. When examining MCCA's procurement and employee complaint practices, we extended the audit period back through January 1, 2018.

The purpose of our audit was to determine the following:

- whether MCCA had a process in place to ensure that it met the fiscal years 2021 and 2022 benchmarks set by the Supplier Diversity Office (SDO) for contracting with minority-owned,¹ woman-owned, and veteran-owned businesses;
- whether, when procuring goods and services, MCCA adhered to its "Procurement, Purchasing and Payment Policy and Guidelines" and Section 12 of Chapter 30B of the General Laws for purchases of \$10,000 or more;
- whether MCCA developed event safety plans for ballroom events at the Boston Convention & Exhibition Center (BCEC) and the John B. Hynes Veterans Memorial Convention Center, referred to in this report as the Hynes Convention Center, in accordance with MCCA policies and Section 20.1.5.6.1 of the Massachusetts Comprehensive Fire Safety Code;
- whether MCCA developed event safety plans for non-ballroom events at the BCEC, the Hynes Convention Center, and the Lawn on D Powered by Citizens Bank, referred to in this report as the Lawn on D, in accordance with MCCA policies;
- whether MCCA addressed non-union employee complaints dating back to January 1, 2018 in accordance with its "Non-Discrimination/Non-Harassment Policy"; and
- whether MCCA followed a process when determining whether to enter into, and when reviewing and finalizing, non-union employee settlement agreements dating back to January 1, 2018.

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

Finding 1
Page 19

MCCA did not ensure that it met the annual benchmarks for diverse supplier spending set by SDO.

1. According to the Supplier Diversity Office Comprehensive Annual Report Fiscal Year 2022, SDO defines a minority-owned business "as a business that is owned by a racially or ethnically diverse individual. While the [term is] meant to define an ethnically or racially diverse individual or business . . . [it is] not meant to denote a smaller or lesser status of the individuals or businesses included in this definition."

Effect	Because MCCA did not have a process for meeting SDO's benchmarks, MCCA's ability to evaluate and improve the effectiveness of its efforts to promote diversity in its procurement process was limited.
Recommendations Page 20	<ol style="list-style-type: none"> 1. MCCA should develop, document, and implement policies and procedures to effectively monitor, and communicate to its board of directors, the extent to which it achieves its annual benchmarks for diverse supplier spending. 2. MCCA should use established policies to track diversity spending throughout the year. 3. MCCA should involve its chief diversity officer in the procurement process to help support an inclusive and equitable business environment. 4. MCCA should collaborate with SDO to ensure increased accountability.
Finding 2 Page 22	MCCA could not demonstrate that it obtained original quotes for all purchases between \$10,000 and \$50,000.
Effect	Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. This matter has been referred to appropriate officials for further review. If MCCA does not obtain and retain original quotes from vendors, then it cannot be sure that it awards contracts to the most appropriate vendors at the lowest available cost. This also risks wasting public resources, elevates risk for potential bid splitting, increases the possibility of ethical violations, etc.
Recommendations Page 24	<ol style="list-style-type: none"> 1. MCCA should retain evidence of all quotes received for purchases between \$10,000 and \$50,000. 2. MCCA should implement sufficient monitoring controls to ensure that original quotes from vendors are obtained and retained. 3. MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the General Laws. 4. MCCA's board of directors should exercise appropriate oversight of MCCA management to ensure the agency's compliance with procurement, ethics, and all other applicable laws.
Finding 3 Page 26	MCCA did not follow its procurement policies when entering into a media contract for over \$100,000.
Effect	Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. If MCCA does not put contracts out to bid, then there is an increased risk that MCCA may not award contracts to the most appropriate vendor offering the lowest price; this risks wasting public resources. Additionally, circumventing the procurement process may lead to unfair or inappropriate behavior in the procurement process. We have referred this matter to appropriate officials for further review.
Recommendations Page 27	<ol style="list-style-type: none"> 1. MCCA should always follow its purchasing process by advertising and documenting procurements of \$50,000 or more. 2. MCCA should follow its existing policy and ensure that its procurement department is involved during the process for every procurement of \$50,000 or more. 3. MCCA should review all of its existing procurements to ensure they comply with its policy. 4. MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the General Laws. 5. MCCA's board of directors should exercise appropriate oversight of MCCA management to ensure the agency's compliance with procurement, ethics, and all other applicable laws and review all of its existing procurements to ensure they comply with its policy.

Finding 4 Page <u>28</u>	MCCA entered into vendor contract extensions without approval from its board of directors.
Effect	Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. By extending contracts past the allowable three-year period, without board approval, MCCA cannot regularly ensure that it receives services from the most appropriate vendors that offer the required goods or services at the lowest available price. Additionally, by not requesting new proposals or inviting new bids for these contracts, MCCA may have missed opportunities to hire and work with diverse vendors. Failing to secure appropriate approvals for contract extensions, particularly those that exceed the \$250,000 threshold, may also place contractors at risk of not receiving payment because these contracts may be unenforceable. Not only does this cause potential harm to contractors, it also places taxpayer funds at risk.
Recommendations Page <u>29</u>	<ol style="list-style-type: none"> 1. MCCA should request and secure approval from its board of directors for vendor contract extensions to ensure compliance with Section 35 of Chapter 190 of the Acts of 1982, as well as MCCA Bylaws. 2. MCCA should always follow Chapter 30B of the General Laws relative to the number of extensions and maximum term length for contracts, regardless of the contract's dollar value instead of only "generally" following Chapter 30B, which leaves room for potential waste, fraud, and abuse. As such, MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the General Laws.
Finding 5 Page <u>30</u>	MCCA could not ensure that it sent and retained pre-event security surveys to meet client needs in a consistent, fair, and equitable manner.
Effect	If MCCA does not send and retain pre-event security surveys there is an increased risk, actual and/or perceived, that MCCA may not be addressing client needs consistently, fairly, and equitably.
Recommendations Page <u>31</u>	<ol style="list-style-type: none"> 1. MCCA should ensure it sends pre-event security surveys to clients and retains this documentation. 2. MCCA should retain all pre-event security surveys completed by its clients in a central, accessible location. 3. MCCA should ensure that its information technology systems support record retention and retrieval to facilitate data analysis, audit, investigations, and other required business processes. 4. MCCA should engage with the Secretary of the Commonwealth's supervisor of public records on this matter to ensure compliance with the Commonwealth's public records laws and applicable records retention schedules.
Finding 6 Page <u>32</u>	MCCA did not have an adequate process for handling employee complaints.
Effect	If MCCA does not have an adequate process for handling employee complaints regarding personnel issues, it may not identify trends in employee complaints or ensure that all employee complaints are addressed and handled in a consistent, timely, and appropriate manner.

Recommendations Page <u>33</u>	<ol style="list-style-type: none">1. MCCA should develop, document, and implement internal controls over the process of handling employee complaints that would include the tracking and documentation of complaints.2. MCCA should create and retain a centralized list of complaints to ensure that all complaints are addressed in a consistent, timely, and appropriate manner.
Finding 7 Page <u>34</u>	MCCA did not have a transparent or accountable process related to non-union employee settlement agreements, including those containing non-disclosure, non-disparagement, or similarly restrictive clauses.
Effect	If MCCA does not have a transparent and accountable process to handle employee settlement agreements, especially with those containing non-disclosure, non-disparagement, or similarly restrictive clauses, it cannot ensure that employee settlements are handled in an ethical, legal, or appropriate manner. If the MCCA board of directors does not ensure appropriate oversight regarding employee settlements, the well-being and financial stability of MCCA and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, and other forms of misconduct, while protecting perpetrators of abuse in MCCA.
Recommendations Page <u>37</u>	<ol style="list-style-type: none">1. MCCA should develop, document, and implement a policy related to employee settlement agreements.2. To help increase transparency and accountability, MCCA should track and document all complaints that result in payments and the use of non-disclosure, non-disparagement, or similarly restrictive clauses in employee settlement agreements. This should be done both within respective personnel files and a centralized list.3. To help increase accountability, MCCA should assign an agency attorney or staff member to handle and monitor claims and employee settlement agreements.4. To help increase transparency and accountability, MCCA should seek and obtain approval from its board of directors prior to executing employee settlement agreements and any non-disclosure, non-disparagement, or similarly restrictive clauses in its agreements.5. As a best practice, MCCA should file all monetary employee settlement agreements with the Office of the Comptroller of the Commonwealth, in accordance with Section 5.00 of Title 815 of the Code of Massachusetts Regulations.
Finding 8 Page <u>38</u>	MCCA executed an employee settlement agreement exceeding \$250,000, in violation of Chapter 190 of the Acts of 1982 and Massachusetts Convention Center Authority Bylaws.
Effect	If MCCA does not have a transparent and accountable process to handle employee settlement agreements, especially with those containing non-disclosure, non-disparagement, or similarly restrictive clauses, it cannot ensure that employee settlements are handled in an ethical, legal, or appropriate manner. If the MCCA board of directors does not ensure appropriate oversight regarding employee settlements, the well-being and financial stability of MCCA and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, and other forms of misconduct while protecting perpetrators of abuse in MCCA.

Recommendations Page 39	<ol style="list-style-type: none"> 1. MCCA should develop, document, and implement a policy related to employee settlement agreements. 2. To help increase transparency and accountability, MCCA should seek and obtain approval from its board of directors before executing employee settlement agreements and any agreement that includes non-disclosure, non-disparagement, or similarly restrictive clauses. 3. To help increase transparency and accountability, MCCA should track and document all complaints that result in payments and the use of non-disclosure, non-disparagement, or similarly restrictive clauses in employee settlement agreements. This should be done both within respective personnel files and a centralized list. 4. To help increase accountability, MCCA should assign an agency attorney or staff member to handle and monitor claims and employee settlement agreements. 5. MCCA, its executive director, and its employees should comply with the law and all agency bylaws. 6. MCCA's board of directors should provide appropriate oversight of personnel and the powers it has delegated to its employees.
Finding 9 Page 40	MCCA is missing certain information system general controls ² over its procurement system.
Effect	If MCCA does not conduct reviews of user access rights, it has an elevated risk of exposure to unauthorized access. If MCCA does not ensure that its employees complete initial and annual refresher cybersecurity awareness trainings, it is exposed to an increased risk of cyberattacks and financial and/or reputational losses.
Recommendations Page 41	<ol style="list-style-type: none"> 1. MCCA should maintain certificates of completion of cybersecurity awareness training for all of its employees in their respective personnel files and/or on a centralized list. 2. MCCA should conduct and document user access reviews at least twice per year.

In addition, we identified issues regarding the advertising for art commissions, Certificates of Receipt of Conflict of Interest Law materials, and Conflict of Interest Law training completion (see [Other Matters](#)).

Furthermore, during the course of our audit, we made several observations that raised concerns regarding potential violations of different state laws, including Chapter 190 of the Acts of 1982, Chapter 268A of the General Laws, Chapter 30B of the General Laws, Chapter 66 of the General Laws, and Chapter 30 of the General Laws. We have referred these instances to external agencies for their investigation and potential enforcement:

- **Media Contract**—This matter was selected in our testing sample and was also separately referred to us for review by stakeholders interviewed as part of our audit planning process. Our analysis indicates that this agreement lacked any procurement process and raised questions about

2. Information system general controls are the policies and procedures that apply to an agency's information system, which help ensure the proper operation of the system. These controls assure management and stakeholders of the reliability of the information system and the data residing in it.

contract validity, equity, access, and ethics. We have referred this matter to the Office of the Attorney General and the State Ethics Commission for their review and potential enforcement.

- **Procurements**—A number of procurements reviewed in this audit lacked documentation, though MCCA stipulated that a procurement process was followed. Accepting this stipulation as fact, procurement documentation would therefore have existed, and those documents should have been retained. This lack of documentation raises concerns regarding records retention and procurement processes in general. We have referred these concerns to the Secretary of the Commonwealth’s supervisor of records and other appropriate enforcement agencies³ for their review and potential enforcement.
- **Pre-event security surveys**—MCCA failed to retain pre-event security surveys in the majority of instances examined in our audit. This raises concerns regarding records retention. We have referred these concerns to the Secretary of the Commonwealth’s supervisor of records for their review and potential enforcement.

Post-Audit Activity

More recently, the interim executive director at MCCA hired an outside law firm to examine the bid process for the development of parcels on D Street and E Street. The firm provided a report to MCCA which found that “MCCA leadership did not maintain appropriate controls. Competitively sensitive information was not shared equally between the bidders.” (Jon Chesto, “MCCA to Halt Development Plans for Southie Land after Prior Leadership Shared Info with One Bidder,” *The Boston Globe*, March 27, 2024.)

The external report was presented to the MCCA board on March 28, 2024, and the board ultimately voted to reject all pending proposals and cancel the request for proposals associated with the development of the properties on D and E Streets. (The Editorial Board, “Governor Seeks Role for Convention Centers that Goes Beyond Putting ‘Heads on Beds,’” *The Boston Globe*, April 4, 2024.)

OSA requested this report under public records law while we were finalizing our review. MCCA declined to provide a copy of this report to our office, citing attorney-client privilege. OSA adheres to the doctrine of attorney-client privilege; therefore, this matter has been referred to the Secretary of the Commonwealth’s supervisor of records for further review.

3. This referral to other appropriate enforcement agencies is related to the validity of the contracts.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Convention Center Authority (MCCA) is an independent public authority of the Commonwealth that owns and operates several public facilities primarily for conventions, trade shows, and industry meetings. MCCA was established by Section 31 of Chapter 190 of the Acts of 1982 to acquire and operate the Hynes Convention Center and the Boston Common Parking Garage. The Hynes Convention Center in Boston has 176,480 square feet of exhibition space, including a multipurpose auditorium, 38 meeting rooms, and a 24,544-square-foot ballroom. The Boston Common Parking Garage is beneath the Boston Common and holds 1,350 vehicles. It provides parking for commuters, nearby residents, and tourists.

Through Chapter 152 of the Acts of 1997, MCCA was tasked with overseeing the construction and operation of the Boston Convention & Exhibition Center (BCEC) and acquiring and operating the Springfield Civic Center, now the MassMutual Center. The BCEC is in South Boston and has approximately 2.1 million square feet of meeting and exhibition spaces. The MassMutual Center, in Springfield, contains 100,000 square feet of flexible meeting space, including a renovated 8,000-seat arena.

MCCA also owns and operates the Lawn on D and its parking lot, the Lot on D. The Lawn on D, in South Boston, is a 2.7-acre outdoor venue with a capacity for 4,000 people. The venue includes two private event spaces: the Pavilion on D and the Signature Pavilion.

According to its website,

The MCCA's mission is to generate significant regional economic activity by attracting conventions, tradeshow, and other events to its world-class facilities while maximizing the investment return for the residents and businesses in the Commonwealth of Massachusetts.

MCCA is governed by a 13-member board of directors. The Governor appoints nine members and the Mayor of Boston appoints two members to this board. Additionally, the Secretary of Administration and Finance and the Collector-Treasurer of the City of Boston, or their designees, are members. The board appoints an executive director to serve as MCCA's chief executive officer.

According to MCCA's fiscal year 2022 financial statements, "The BCEC, Lawn on D, Hynes Convention Center and [MassMutual Center] revenues consist primarily of rental income and income for services,

such as electricity, commercial revenue, . . . telephone, cleaning, rigging, security, internet access, equipment and food and beverage revenues.”

Discretionary Spending

MCCA voluntarily participates in the Massachusetts Supplier Diversity Office’s (SDO’s) Supplier Diversity Program. According to the Supplier Diversity Office Comprehensive Annual Report Fiscal Year 2022, SDO was established within the Massachusetts Executive Office for Administration and Finance in January 2021 to provide “resources for, and support a wide range of diverse and small businesses in competing for contracts being bid across the Commonwealth.”

Through consultation with the Operational Services Division, SDO sets annual benchmark percentages for spending with minority-owned, woman-owned, and veteran-owned businesses.⁴ During the audit period, SDO set the following benchmark percentages for participating agencies’ total annual discretionary spending for fiscal years 2021 and 2022: 8% for minority-owned businesses, 14% for woman-owned businesses, and 3% for veteran-owned businesses.

MCCA’s chief financial officer calculates MCCA’s discretionary budget⁵ by calculating the total amount of money spent on all operating and capital expenditures. MCCA’s chief financial officer excludes non-discretionary items that have set price points (such as payroll, contracted expenses, utilities, insurance, and payments to the Boston Police Department and other agencies), then deducts an additional percentage to account for purchases related to existing contracts. The remainder is MCCA’s discretionary budget, which MCCA can use for procuring goods and services through bid invitations or quotes.

Procurement

While MCCA is not mandated to follow Chapter 30B of the Massachusetts General Laws, MCCA has elected to incorporate the law into its “Procurement, Purchasing and Payment Policy and Guidelines.” Specifically, Section 4 of Chapter 30B of the General Laws states, “For the procurement of a supply or service for a governmental body in the amount of \$10,000 or greater, but not more than \$50,000, a procurement officer shall seek written quotations from not fewer than 3 persons customarily providing the supply or

-
4. The percentage for veteran-owned businesses combines the requirement for veteran- and service-disabled veteran-owned businesses.
 5. During our audit work, now-former MCCA officials made misleading and contradicting statements regarding the definition and applicability of discretionary spending. Discretionary spending is defined by SDO and is generally a straightforward concept and calculation. This is noted here for management attention.

service.” MCCA also has a documented public bidding process for purchases over \$50,000 that requires it to advertise a bid invitation or request for proposals.

Section 5 of Chapter 30B of the General Laws mandates that bid invitations “remain posted, for at least two weeks, in a conspicuous place in or near the offices of the governmental body until the time specified in the invitation for bids.” According to MCCA, bid invitations are posted on its website, the Secretary of the Commonwealth’s *Central Register* website,⁶ with *The Boston Herald*, and the COMMBUYS website.⁷ According to MCCA’s director of procurement, they also directly reach out to minority-owned, woman-owned, and veteran-owned businesses to encourage diverse vendors to participate. MCCA’s departments submit requests for goods and services to MCCA’s centralized procurement department in the form of a purchase quote through MCCA’s procurement system. MCCA may use COMMBUYS to make purchases from contractors, which are approved by the Operational Services Division.

Crowd Management

According to MCCA in its response to this audit report, dated August 6, 2024, “The MCCA Public Safety Department consistently conducts safety and security operations at the MCCA with the highest standards of care and custody for our clients, employees, and contractors. . . . The MCCA Public Safety program is the only such program in the convention industry to be formally recognized by the Department of Homeland Security (DHS) with a DHS Safety Act Designation. The only other venue in the Commonwealth to have received such an award is Gillette Stadium.”

The Massachusetts Comprehensive Fire Safety Code (outlined in Section 1.00 of Title 527 of the Code of Massachusetts Regulations) requires certain venues to provide a certain number of crowd managers for their events. According to the Massachusetts Comprehensive Fire Safety Code, crowd managers are assigned to assist with the safe operations of venues that operate as nightclubs, dance halls, discotheques, or bars. Their duties include maintaining clear paths of egress, initiating fire alarms, directing attendees to emergency exits, and ensuring that venues stay within occupancy limits. The Massachusetts Comprehensive Fire Safety Code also requires venues to provide at least one crowd manager for events with over 100 attendees and additional crowd managers for events with more than 250 attendees, with

6. According to the Secretary of the Commonwealth’s website, “The Central Register contains information about state, county, and municipal contracts for design, construction, and reconstruction of Massachusetts public facilities. It’s published weekly.”

7. According to the Operational Services Division’s website, “COMMBUYS is the official procurement system for the Commonwealth of Massachusetts’ Executive Departments.”

one crowd manager for every 250 attendees. Many events hosted by the MCCA are exempt from certain crowd management requirements of the fire code due to the nature of the events.⁸

MCCA hosts events, considered ballroom or non-ballroom events, at both the BCEC and the Hynes Convention Center. MCCA also hosts non-ballroom events at the Lawn on D. MCCA's public safety department employees serve as crowd managers, and it uses a third-party security company—Allied Universal—for additional coverage. MCCA's Event Planning Guides for the BCEC, the Hynes Convention Center, and the Lawn on D require one crowd manager for every 500 attendees.

MCCA's Public Safety Department begins to plan for an event once an event manager has scheduled it in MCCA's system related to event management. The planning process begins with a meeting between the public safety director and the client to discuss preliminary event information, such as the number of expected attendees and the duration of the event. MCCA's deputy director assigns a public safety manager to each event. The public safety manager for the event, with the assistance of an intelligence analyst, sends the client a pre-event security survey via email and conducts research to assess the preliminary risk for the event. Using this information, the assigned public safety manager drafts a security proposal that includes the event security concerns, an evacuation and technology plan, law enforcement details, and a staffing schedule that outlines the minimum number of crowd managers required for the event.

After the deputy director and director of public safety approve the security proposal, the intelligence analyst or deputy director disseminates this security proposal to the client and all first-responder agencies that were identified in the planning process. At the conclusion of the event, the public safety manager finalizes the event security plan to ensure that it bills the client for the number of crowd managers present at the event.

8. According to Section 20.1.5.6.1.2 of the Massachusetts Comprehensive Fire Safety Code, "A crowd manager is not required for: (1) A temporary structure erected at the same location for no more than ten days in any calendar year; or (2) A facility that features fixed seating, such as a theatre, auditorium, concert hall or similar place of assembly; or (3) A facility used for organized private function where: (a) Each guest has a seat and table for dining purposes; and (b) Attendance for each event is limited by pre-arrangement between the facility operator and the private event organizers; and (c) The legal capacity of the facility provides not less than 15 square feet (net) per occupant."

Non-Union Employee Complaints and Settlement Agreements

MCCA's Human Resources Department has a "Non-Discrimination/Non-Harassment Policy" that it issues to employees annually. This policy describes what discrimination and harassment are, as well as the process for handling internal complaints of that nature. While MCCA does not have a documented procedure for handling employee complaints⁹ outside of discrimination or harassment, the resolution process generally involves an investigation of the complaint to include interviews with the affected parties and their managers, and mediation and disciplinary action, if necessary. The process is initiated when the employee brings a complaint forward to their supervisor or an employee of the Human Resources Department. The Human Resources Department is supposed to retain documentation of these incidents in hardcopy files.

When resolving legal matters concerning employees, there have been instances where MCCA entered into settlement agreements with employees. MCCA has internal legal counsel but sometimes uses private outside legal counsel to handle employee settlement agreements. MCCA does not have a standard process for approving settlement agreements; they are handled and approved on a case-by-case basis.

Before the audit period, MCCA executed a widely publicized \$1.2 million settlement agreement arising out of employee allegations of racial discrimination. We extended our review to include this and other settlement agreements, as well as non-union employee complaints, starting on January 1, 2018.

9. While MCCA's "Non-Discrimination/Non-Harassment Policy" applies to all MCCA employees, the scope of our audit only included non-union employee complaints. MCCA's union employee complaints had an additional process defined by their collective bargaining agreement.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

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 certain activities of the Massachusetts Convention Center Authority (MCCA) for the period January 1, 2021 through December 31, 2022. When examining MCCA's procurement and employee complaint practices, we extended the audit period back through January 1, 2018.

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, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did MCCA have a process in place to ensure that it met the fiscal years 2021 and 2022 benchmarks set by the Supplier Diversity Office (SDO) for contracting with minority-owned, women-owned, and veteran-owned businesses?	No; see Finding <u>1</u>
2. When procuring goods and services, did MCCA adhere to its "Procurement, Purchasing and Payment Policy and Guidelines" and Section 12 of Chapter 30B of the General Laws for purchases of \$10,000 or more?	No; see Findings <u>2</u> , <u>3</u> , and <u>4</u>
3. Did MCCA develop event safety plans for ballroom events at the Boston Convention & Exhibition Center (BCEC) and the Hynes Convention Center, in accordance with (a) MCCA policies and (b) Section 20.1.5.6.1 of the Massachusetts Comprehensive Fire Safety Code?	(a)—MCCA policies: No; see Finding <u>5</u> (b)—Fire Safety Code: Yes
4. Did MCCA develop event safety plans for non-ballroom events at the BCEC, the Hynes Convention Center, and the Lawn on D, in accordance with MCCA policies?	No; see Finding <u>5</u>
5. Did MCCA address non-union employee complaints dating back to January 1, 2018 in accordance with its "Non-Discrimination/Non-Harassment Policy"?	Yes; however, note Finding <u>6</u>
6. Did MCCA follow a process in compliance with Section 35 of Chapter 190 of the Acts of 1982 and Section 4.15 of the MCCA Bylaws when determining whether to enter into, and when reviewing and finalizing, non-union employee settlement agreements, dating back to January 1, 2018?	No; see Findings <u>7</u> and <u>8</u>

To accomplish our audit objectives, we gained an understanding of MCCA's internal control environment relevant to our objectives by reviewing applicable agency policies and procedures, as well as by interviewing MCCA's staff members and management. We evaluated the design and implementation of internal controls and tested the operating effectiveness of controls related to the approval of procurement purchases. We identified an issue regarding MCCA's internal controls for its employee complaint process. See [Finding 6](#) for more information.

In addition, during the course of our audit, we identified issues regarding certain information system general controls over MCCA's procurement system. See [Finding 9](#) for more information.

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

Supplier Diversity Spending

To determine whether MCCA had a process in place to ensure that it met the fiscal years 2021 and 2022 benchmarks set by SDO for contracting with minority-owned, women-owned, and veteran-owned businesses, we took the following actions:

- During the course of our audit, we held multiple interviews with MCCA officials to gain an understanding of how MCCA develops its discretionary spending budget and how MCCA reports its spending to SDO.
- We reviewed the Supplier Diversity Comprehensive Annual Report for both fiscal years 2021 and 2022 to identify the amounts of MCCA's discretionary budget¹⁰ spent that would qualify toward meeting SDO's benchmarks for contracting with minority-owned, women-owned, and veteran-owned businesses. These reports indicated that MCCA did not meet SDO's benchmarks for fiscal years 2021 or 2022. We then inquired with MCCA officials to determine why MCCA did not meet these benchmarks.

See [Finding 1](#) for more information regarding the results of our testing of MCCA's supplier diversity spending.

Procurement

To determine whether MCCA adhered to its procurement and purchasing policies for purchases made during the extended audit period of January 1, 2018 through December 31, 2022, we took the following

10. SDO provides a [list of object codes](#) that identifies the types of purchases are considered part of an agency's discretionary budget.

actions. We obtained all purchases made from MCCA's procurement systems and grouped them based on contract numbers to determine the entire amount per contract. This allowed us to ensure that MCCA was not splitting purchases into lesser amounts to circumvent spending threshold guidelines. We then divided our population into two categories based on the spending thresholds for purchases over \$10,000 outlined in MCCA's "Procurement, Purchasing and Payment Policy and Guidelines."

For purchases that MCCA made between \$10,000 and \$50,000, we selected a random, nonstatistical sample of 35 purchases from the population of 214 purchases for goods or services that were not procured through Operational Services Division–approved contractors. We reviewed each purchase in our sample to determine whether MCCA obtained three quotes before the purchase, selected the lowest quote, and retained records that included who provided the quote, the date the quote was provided, and the amount quoted for all quotes, in accordance with MCCA's policies for purchases of these amounts.

For purchases that MCCA made that were \$50,000 and over, we selected a judgmental,¹¹ nonstatistical sample of 35 purchases from the population of 144 purchases for goods and services that were not procured through Operational Services Division–approved contractors. We reviewed each order to determine whether MCCA published a bid invitation or request for proposals, obtained bids before the purchase, selected the lowest bid amount, and retained all supporting documentation (i.e., proof of bid invitation or request for proposals, dollar amounts of bids submitted, and contract awarded). We also determined whether MCCA received board approval for purchases over \$250,000. Additionally, we reviewed the term length of the contracts in our sample to determine whether MCCA received board approval before entering into contracts that extended beyond three years, as required by Section 12 of Chapter 30B of the General Laws as follows:

Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option. Such authorization may apply to a single contract or to any number or types of contracts, and may specify a uniform limit or different limits on the duration of any such contracts.

See Findings 2, 3, and 4 for more information regarding the results of our testing of MCCA's procurement.

11. Auditors use judgmental sampling to select items for audit testing when a population is very small, the population items are not similar enough, or there are specific items in the population of interest. Auditors use their knowledge and judgment to select the most appropriate sample. For example, an auditor might select items from areas of high risk. The results of testing using judgmental sampling cannot be used to make conclusions or projections about entire populations; however, they can be used to identify specific issues, risks, or weaknesses.

Ballroom Events

To determine whether MCCA developed ballroom event safety plans in accordance with MCCA policies and Section 20.1.5.6.1 of the Massachusetts Comprehensive Fire Safety Code, we took the following actions:

- We selected a random, nonstatistical sample of 20 ballroom events from the list of all 90 ballroom events from the audit period, which came from MCCA's event management system.
- For each event in our sample, we examined supporting documentation (including pre-event security surveys, security proposals, employee rosters, attendance records, and safety plans) to determine whether MCCA created an event safety plan, sent pre-event security surveys to each client, and scheduled the required number of crowd managers for each ballroom event.
- To identify any instances of unnecessary overstaffing of crowd managers, we compared the minimum number of crowd managers required for each event to the number of crowd managers scheduled. For events that we found to have more than the required number of crowd managers scheduled, we reviewed the safety plans to determine a reason for the extra crowd managers.

See [Finding 5](#) for more information regarding the results of our testing related to the development of safety plans for ballroom events.

Non-Ballroom Events

To determine whether MCCA developed event safety plans for non-ballroom events in accordance with its "[Public Safety Department] Standard Operating Procedures Event Security Assessment Program," we took the following actions:

- We selected a judgmental, nonstatistical sample of 40 non-ballroom events from the list of all 362 non-ballroom events from the audit period, which came from MCCA's event management system.
- For each event in our sample, we examined supporting documentation (including pre-event security surveys, security proposals, employee rosters, attendance records, and safety plans) to determine whether MCCA created an event safety plan, sent pre-event security surveys to each client, and scheduled the required amount of crowd managers for each non-ballroom event.
- To identify any instances of unnecessary overstaffing of crowd managers, we compared the minimum number of crowd managers required for each event to the number of crowd managers scheduled. For events that we found to have more than the required number of crowd managers scheduled, we reviewed the safety plans to determine a reason for the extra crowd managers.

See [Finding 5](#) for more information regarding the results of our testing related to the development of safety plans for non-ballroom events.

Non-Union Employee Complaints

To determine whether MCCA addressed non-union employee complaints in accordance with its “Non-Discrimination/Non-Harassment Policy,” we took the following actions:

- We obtained and reviewed the files for all 27 non-union complaints filed during the extended audit period of January 1, 2018 through December 31, 2022.
- For each filed complaint, we determined the length of time taken to address the complaint to determine whether MCCA investigated the complaint within 10 business days and whether MCCA conducted interviews with the complainant(s), the subject(s) of the complaint, and any associated witnesses. Additionally, we determined what remedial actions were taken, if necessary.

We noted no exceptions in our testing; therefore, we conclude that, during the audit period, MCCA met the relevant criteria regarding its handling of non-union employee complaints.

Non-Union Employee Settlement Agreements

To determine whether MCCA followed a process when determining whether to enter into, and when reviewing and finalizing, non-union employee settlement agreements, we took the following action:

- As part of our internal control review, we interviewed MCCA’s general counsel and now-former chief financial officer to determine the steps MCCA takes when entering into a settlement agreement. During this interview, these MCCA officials told us that MCCA did not have a documented process for reviewing and finalizing its non-union employee settlement agreements.

See [Finding 7](#) for more information regarding the results of our testing of the process for non-union employee settlement agreements.

We used nonstatistical sampling methods for testing and, therefore, did not project the results of our testing to any corresponding population.

Data Reliability Assessment

Procurement

To determine the reliability of the data received from MCCA’s procurement systems used during the audit period, we interviewed MCCA officials who were knowledgeable about the data. We also tested certain general information system controls (including security management, access controls, configuration management, segregation of duties, and contingency planning) over MCCA’s current

procurement system. See [Finding 9](#) for more information regarding the results of our testing of the procurement system controls.

From both of the procurement systems used during the audit period, we obtained both a list of purchases and a list of invoices for a total of four data sets.¹² For each of these four data sets, we tested to ensure that there were no blank fields or duplicates and that all the data was from within the audit period. Further, we selected a random sample of 20 transactions from each of the four data sets for a total of 80 transactions and traced the data to the original purchase and/or invoice.

Ballroom and Non-Ballroom Events

To determine the reliability of the list of ballroom and non-ballroom events from MCCA's event management system, we interviewed employees knowledgeable about the data. For the event data obtained for the audit period, we tested to ensure that there were no blank fields or duplicates and that all of the data was from within the audit period. Further, we performed a reconciliation to match the data from the event management system to a separate listing of MCCA events.

Non-Union Employee Complaints

We received a list of 72 lines of data for employee complaints from the now-former director of human resources. However, we did not rely on this list for testing, as it was missing dates and names, had incorrect complaint descriptions (for example, one complaint stated that an employee received "respectful treatment" instead of "disrespectful treatment"), and one line of data was missing all information except the type of complaint filed. The interim director of human resources at the time of our audit and the assistant general counsel provided us with 83 hardcopy employee complaint files dating back to November 2015, which we manually compiled into a list by doing the following:

- We reviewed all of the provided complaint files to determine whether the dates associated with the complaints fell within the extended audit period (January 1, 2018 through December 31, 2022).
- We verified that 71 of the complaint files that we received were on the original list of complaints provided, and the other 12 complaint files were not included on that list. Of the 83 hardcopy complaint files, the following were inapplicable to our testing: 29 that were from outside of the audit period, 2 that were for complaints brought to the Human Resources Department against clients or contractors, and 25 that were filed by union employees. The remaining 27 of these 83

12. During the audit period, MCCA transitioned from one procurement system to another.

complaint files were non-union employee complaints filed during the audit period. We used these 27 complaint files as the population of non-union employee complaints for our testing.

We used this data as it was the only source of data available for our audit objective (see [Finding 6](#)).

Based on the results of the data reliability assessment procedures described above, we determined that the information obtained for the audit period was sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Massachusetts Convention Center Authority did not ensure that it met the annual benchmarks for diverse supplier spending set by the Supplier Diversity Office.

The Massachusetts Convention Center Authority (MCCA) did not have processes in place to ensure that it met the annual benchmarks for diverse supplier spending set by the Supplier Diversity Office (SDO). During the audit period, MCCA did not meet discretionary spending benchmarks for minority-owned, women-owned, and veteran-owned businesses. The table below summarizes MCCA's benchmark attainment during fiscal years 2021 and 2022.

	Fiscal Year 2021	Fiscal Year 2022
Minimum Amount MCCA Needed to Spend to Meet the Minority-Owned Business Benchmark (8%)	\$1,538,182	\$2,023,443
Amount Spent	\$329,827	\$1,178,128
Minimum Amount MCCA Needed to Spend to Meet the Women-Owned Business Benchmark (14%)	\$2,691,818	\$3,541,025
Amount Spent	\$855,572	\$2,632,462
Minimum Amount MCCA Needed to Spend to Meet the Veteran-Owned Business Benchmark (3%)	\$576,818	\$758,791
Amount Spent	\$0	\$186,000

Because MCCA did not have a process for meeting SDO's benchmarks, MCCA's ability to evaluate and improve the effectiveness of its efforts to promote diversity in its procurement process was limited.

Authoritative Guidance

SDO's "The Commonwealth of Massachusetts Diverse and Small Business Program Policies for Goods and Services Procurements" states:

On a regular basis, departments must enter planned procurements in the SDO Supplier Diversity Hub. . . . The purpose of the planning process is to identify purchasing, procurement, and contracting opportunities that will be available for diverse and small businesses and assist agencies in achieving the following goals:

- *Meet or exceed all SDO benchmarks for the fiscal year*

- *Increase the total spending with diverse and small companies compared to the previous fiscal year*
- *Increase the number of diverse and small firms the department buys from compared to the previous fiscal year*

Reasons for Issue

MCCA had not established policies and procedures to effectively monitor the extent to which it was meeting the SDO's annual benchmarks for diverse supplier spending. Additionally, MCCA's then-chief financial officer told us in a meeting on May 2, 2023 that their interpretation of discretionary spending was "purchases that fall under the \$10,000 threshold." Given that discretionary spending is defined by SDO and is a straightforward concept and calculation, we believe former MCCA officials made misleading and contradictory statements to our office regarding the definition, applicability, and their understanding of discretionary spending.

Recommendations

1. MCCA should develop, document, and implement policies and procedures to effectively monitor, and communicate to its board of directors, the extent to which it achieves its annual benchmarks for diverse supplier spending.
2. MCCA should use established policies to track diversity spending throughout the year.
3. MCCA should involve its chief diversity officer in the procurement process to help support an inclusive and equitable business environment.
4. MCCA should collaborate with SDO to ensure increased accountability.

Auditee's Response

The MCCA consistently meets or exceeds its Supplier Diversity Office (SDO) benchmarks for spending on diverse suppliers, and is proud of its record in this regard. The MCCA exceeded its SDO benchmarks in [fiscal year 2018], [fiscal year 2019], [fiscal year 2020], [fiscal year 2023], and [fiscal year 2024]. While the MCCA did not meet the SDO benchmarks in [fiscal year 2021] and [fiscal year 2022], this underperformance was caused by the COVID-19 pandemic. During this time, all MCCA-hosted events, operations, and venues were shut down by public health executive orders from the Commonwealth of Massachusetts, the City of Boston, and the City of Springfield, which prohibited mass gatherings.

In response to the pandemic, the Commonwealth of Massachusetts tasked the MCCA with retrofitting the Boston Convention & Exhibition Center (BCEC) into a COVID-19 hospital capable of handling over 500 beds to accommodate overflow patients from Boston area hospitals. Additionally, the BCEC was adapted to care for over 500 [individuals experiencing homelessness] from the City of Boston who were suffering from COVID-19 and could not be accommodated in local shelters.

During this same period the Commonwealth asked the MCCA to retrofit the Hynes Convention Center as a "Mass Vaccination Site," one of only several identified in the state. In short, the [Office of the State Auditor (OSA)] has not identified any years outside of this extraordinary and non-representative period in which the MCCA fell short of its SDO benchmarks. The MCCA therefore disagrees with the [OSA] finding that the MCCA "did not ensure that it met the annual benchmarks for diverse supplier spending."

In addition, the MCCA has established a process to ensure that annual SDO benchmarks are met. This process can be verified in all publicly advertised Chapter 149 Construction Project [requests for proposals (RFPs)] and 30B RFP documents. The standard contract language in our RFPs includes the Authority's goals for [minority-owned and woman-owned business] participation, along with standard letters of intent with [minority-owned and woman-owned business] and other required documentation.

For Chapter 149 Construction RFPs, both the proposal form and instructions to bidders require the General Contractor to list the expected goal for supplier diversity spend and to identify the supplier diversity company name and diversity type. In publicly advertised 30B Procurement RFPs, bidders/firms are instructed to include their commitment percentage of the contract amount dedicated to subcontracting with supplier diverse businesses. Each proposer's commitments are part of the Authority's selection criteria and may be included in a . . . Plan Form, which was formulated in collaboration with the [Operational Services Division] office.

The MCCA's process aligns with the [Operational Services Division's] benchmarks for Supplier Diversity Spend, which are currently set at 14% [minority-owned businesses], 8% [woman-owned businesses], and 1% for veterans. Additionally, the Authority follows the Department of Capital Asset Management and Maintenance (DCAMM) goals for construction projects, which are currently 8.8% MBE and 4.2% WBE.

Finally, the MCCA notes that its current leadership is conducting an internal review of supplier diversity procurement efforts. This review includes, but is not limited to, examining policies and procedures, staffing, managerial understanding of SDO requirements, and organizational structure with an eye toward even further exceeding current statewide benchmarks.

Auditor's Reply

As noted above, MCCA did not meet the SDO's discretionary spending benchmarks for minority-owned, women-owned, and veteran-owned businesses during the audit period of January 1, 2021 through December 31, 2022. We appreciate MCCA's acknowledgement that its operations were impacted by the COVID-19 pandemic and that these circumstances likely contributed to MCCA's failure to meet these annual benchmarks. We accept MCCA's statement that its convention operations were shuttered during the COVID-19 pandemic and that repurposing it to serve as a field hospital could reasonably disrupt its operations and its ability to meet supplier diversity goals.

Although MCCA indicates that it exceeded its SDO benchmarks in fiscal years 2018, 2019, 2020, 2023, and 2024, in contrast, SDO's annual reports indicate that MCCA did not meet its women and veteran spending benchmarks in fiscal years 2018, 2019, 2020, and 2023. While the SDO annual report for fiscal year 2024 has not been issued yet, we are hopeful that MCCA did indeed meet all of its SDO benchmarks for this year.

The underlying issue remains that MCCA did not have adequate processes in place to ensure that it met annual benchmarks for diverse supplier spending. In MCCA's response, it indicates that procurement documents may contain language regarding its goals for diverse supplier spending and may require firms responding to procurements to identify how and in what amount they are including diverse businesses within their proposals. However, these documents do not constitute policies and procedures that would establish how the MCCA monitors and tracks spending in each diverse supplier category on an ongoing basis.

According to its response, MCCA will conduct an internal review of its supplier diversity procurement efforts. This review will include establishing policies and procedures related to supplier diversity, staffing, managerial understanding of SDO requirements, and organizational structure. We believe that these measures are prudent. We commend the MCCA for agreeing to fully implement our recommendations.

2. The Massachusetts Convention Center Authority could not demonstrate that it obtained original quotes for all purchases between \$10,000 and \$50,000.

MCCA could not demonstrate that it obtained original quotes for all purchases between \$10,000 and \$50,000. Specifically, MCCA could not provide evidence that it obtained three quotes, as required by MCCA policy, for 13 out of our sample's 35 purchases (37%) between \$10,000 and \$50,000 that were not purchased through Operational Services Division–approved contractors (see table below).

Purchases without Original Procurement Documents

Vendor Name	Amount	Purchase Date	Purpose of Procurement
Anixter Brothers, Inc.	\$11,846.32	June 5, 2019	Electrical cable
Integration Partners Corporation	\$26,255.24	June 5, 2018	Computer network software
Integration Partners Corporation	\$14,595.00	July 25, 2019	Network configuration
Integration Partners Corporation	\$35,216.00	December 18, 2019	Network equipment

Vendor Name	Amount	Purchase Date	Purpose of Procurement
Jackson Lewis, LLP	\$39,721.12	March 14, 2022	Legal fees
John F. Bailey	\$10,000.00	January 30, 2019	Consulting firm
John F. Bailey	\$16,232.22	March 18, 2019	Consulting firm
Joseph's Transportation	\$19,065.00	June 8, 2020	Transportation services
Kaman Automation, Inc.	\$13,500.00	October 23, 2018	Drive systems
Krokidas & Bluestein	\$25,000.00	December 8, 2022	Legal fees
LexisNexis	\$17,510.00	August 1, 2019	Law review subscription
Searchwide Minnesota, LLC	\$35,000.00	February 3, 2020	Job recruiting service
Walker Parking Consultants	\$20,120.00	January 22, 2019	Parking study of the MassMutual Center parking garage

For an additional 4 out of these 35 purchases (11%), MCCA documented the amounts of the three quotes but did not retain the original quotes (see table below). As a result, we were unable to independently verify the value of the quotes stated by MCCA or the lowest cost vendor.

Purchases with Documented (but Not Retained) Quote Amounts

Vendor Name	Amount	Purchase Date	Purpose of Procurement
Integration Partners Corporation	\$40,823.20	January 31, 2018	Computer network software
Milton Cat	\$39,500.00	April 29, 2019	Portable generator
Presidio Networked Solutions	\$42,900.00	June 13, 2019	Information security strategy assessment
The Eagle Leasing Company	\$11,778.00	November 26, 2018	Storage containers

Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. This matter has been referred to appropriate officials for further review. If MCCA does not obtain and retain original quotes from vendors, then it cannot be sure that it awards contracts to the most appropriate vendors at the lowest available cost. This also risks wasting public resources, elevates risk for potential bid splitting, increases the possibility of ethical violations, etc.

Authoritative Guidance

MCCA's "Procurement, Purchasing and Payment Policy and Guidelines" states:

PURCHASES BETWEEN \$10,000 - \$50,000

- *Competition is required during vendor selection. Written price quotations must be obtained from at least three (3) different vendors prior to an order being placed. . . .*
- *The contract will be awarded to the responsible vendor offering the supplies or services needed at the lowest prices.*
- *Buyers [in this case, MCCA] must keep a record of the names and addresses of all persons contacted for quotations, as well as the names of all persons who submitted quotations and the date and amount of each quotation. This information will be required as supporting documentation for the MCCA purchase requisition and the MCCA's Finance Department.*

Reasons for Issue

MCCA's director of procurement told us that original quotes were not always retained because of the small size of the procurement department and workload demands. MCCA did not have sufficient monitoring controls in place to ensure that original quotes were obtained and retained from vendors.

Recommendations

1. MCCA should retain evidence of all quotes received for purchases between \$10,000 and \$50,000.
2. MCCA should implement sufficient monitoring controls to ensure that original quotes from vendors are obtained and retained.
3. MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the Massachusetts General Laws.
4. MCCA's board of directors should exercise appropriate oversight of MCCA management to ensure the agency's compliance with procurement, ethics, and all other applicable laws.

Auditee's Response

The MCCA acknowledges that it did not retain several of the "original quotes" for some purchases between 2018 and 2022. That said, in each instance mentioned the [Office of the State Auditor's (OSA's)] findings, the MCCA demonstrated that all quote information or business justifications were electronically recorded, even though the "original quotes" were not retained. In any case where quote information was not electronically recorded, the MCCA provided the [OSA] with a recorded business justification, such as Emergency Procurement or Sole Source, demonstrating why collection of quotes was not required for that particular procurement.

Vendor Name	Amount	Purchase Date	Purpose of Procurement	Category
Anixter Brothers, Inc.	\$11,846.32	6/5/2019	Electrical cable	Emergency procurement
Integration Partners Corp.	26,255.24	6/5/2018	Computer network software	State blanket
Integration Partners Corp.	14,595.00	7/25/2019	Network configuration	State blanket
Integration Partners Corp.	35,216.00	12/18/2019	Network equipment	State blanket
Jackson Lewis, LLP	39,721.12	3/14/2022	Legal fees	Sole source procurement
John F. Bailey	10,000.00	1/30/2019	Consulting firm	Sole source procurement
John F. Bailey	16,232.22	3/18/2019	Consulting firm	Sole source procurement
Joseph's Transportation	19,065.00	6/8/2020	Transportation services	Electronic record of three quotes
Kaman Automation, Inc.	13,500.00	10/23/2018	Drive systems	Sole source procurement
Krokidas & Bluestein	25,000.00	12/8/2022	Legal fees	Sole source procurement
LexisNexis	17,510.00	8/1/2019	Law review subscription	Sole source procurement
Searchwide Minnesota, LLC	35,000.00	2/3/2020	Job recruiting service	Sole source procurement
Walker Parking Consultants	20,120.00	1/22/2019	Parking study of Mass Mutual parking garage	Sole source procurement
Integration Partners Corp.	40,823.20	1/31/2018	Computer network software	State blanket
Milton Cat	39,500.00	4/29/2019	Portable generator	Electronic record of three quotes
Presidio Networked Solutions	42,900.00	6/13/2019	Information security strategy Assessment	Electronic record of three quotes
The Eagle Leasing Company	11,778.00	11/26/2018	Storage containers	Electronic record of three quotes

In 2020, the MCCA transitioned to a new business system that automatically retains all original quotes and business justifications. The MCCA agrees that evidence of quotes and business justifications must be appropriately collected and retained.

Auditor's Reply

The Office of the State Auditor seeks to verify procurements to original procurement documents for several reasons, including because not maintaining original records violates public records law, and because non-original records of the procurement documents could allow for abuse in the procurement process. Given its response and the new business system referenced above, we believe MCCA is taking sufficient steps to resolve this issue.

3. The Massachusetts Convention Center Authority did not follow its procurement policies when entering into a media contract for over \$100,000.

MCCA entered into a no-bid contract, which was 1 of the 35 purchases over \$50,000 in our sample, without following MCCA's procurement policies. This contract was for a media consultant; \$102,000 was expended in association with this purchase. During the audit period, in total, MCCA spent \$505,000 under the contract and spent an additional \$103,371 after the audit period. MCCA was unable to demonstrate that this purchase followed its procurement policies.

Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. If MCCA does not put contracts out to bid, then there is an increased risk that MCCA may not award contracts to the most appropriate vendor offering the lowest price; this risks wasting public resources. Additionally, circumventing the procurement process may lead to unfair or inappropriate behavior in the procurement process. We have referred this matter to appropriate officials for further review.

Authoritative Guidance

The MCCA "Procurement, Purchasing and Payment Policy and Guidelines" states:

PURCHASES OF \$50,000 OR MORE

Competition is required during vendor selection. A formal, advertised public bid process must be followed which, depending on the type of goods or services needed, may take the form of an Invitation for Bid (IFB) or a Request for Proposal (RFP).

Reason for Issue

MCCA's director of purchasing told us that the previous executive director chose the media consultant and that the procurement department was not involved in the process.

Recommendations

1. MCCA should always follow its purchasing process by advertising and documenting procurements of \$50,000 or more.
2. MCCA should follow its existing policy and ensure that its procurement department is involved during the process for every procurement of \$50,000 or more.
3. MCCA should review all of its existing procurements to ensure they comply with its policy.
4. MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the General Laws.
5. MCCA's board of directors should exercise appropriate oversight of MCCA management to ensure the agency's compliance with procurement, ethics, and all other applicable laws and review all of its existing procurements to ensure they comply with its policy.

Auditee's Response

The MCCA agrees with the [Office of the State Auditor's] finding. The MCCA did not follow its internal procurement policy when procuring a media contract in May of 2020. This media contract, which was terminated during [fiscal year] 2023, was pursued as a sole source procurement by the MCCA's prior executive director without the involvement of the procurement department. While Sole Source procurements are allowed under the MCCA procurement policy, there was no sufficient business justification provided for a Sole Source procurement in this case. In 2023, the Healey-Driscoll Administration appointed 7 new members to the MCCA's board, including a new chairperson.

The MCCA's current board of directors exercises appropriate oversight of MCCA management to ensure the agency's compliance with procurement, ethics, and all other applicable laws.

Auditor's Reply

Given its response and the new business system referenced in MCCA's response to [Finding 2](#) of this report, we believe that MCCA is taking steps to resolve this issue. We believe that MCCA needs to strengthen its existing procurement process by ensuring that it has effective internal controls in place that are designed to prevent similar events from occurring in the future. We reiterate our recommendation that MCCA should conduct a review of all its existing procurements to ensure that it complies with its policies and the law.

4. The Massachusetts Convention Center Authority entered into vendor contract extensions without approval from its board of directors.

MCCA entered into contract extensions without approval from its board of directors. Specifically, of the 35 purchases over \$50,000 in our sample, 5 (14%) received contract extensions that brought the length of the contracts past the allowable three-year contract period without the approval from MCCA's board of directors.

The table below summarizes these five purchases.

Vendor Name	Purpose of Procurement	Spending Under Original Contract	Initial Contract Term	Unapproved Contract Extensions	Spending under Unapproved Extensions during the Audit Period
Joseph's Transportation	Shuttles from public transit stops to MCCA venues	Varied per services provided	October 9, 2015–July 8, 2016	Received three extensions through December 2021	\$2,498,454.42
Levy Premium Food Serv LP	Food/beverage management	Per services provided	May 16, 2013–June 30, 2017	Received one extension through 2020	\$111,935.10
Aerva, Inc.	Software maintenance	Per services provided	May 2, 2016–May 2, 2017	Received four extensions through May 2021	\$296,650.00
Simplexgrinnell LP	Fire safety system maintenance	\$326,679	February 1, 2018–January 31, 2021	Received two extensions through 2023	\$95,370.17
Gray Media, Inc.	Media Management	Not to exceed \$8,500 per month	June 1, 2018–May 31, 2020	Received three extensions through May 2023	\$102,000.00

Circumventing the procurement process may result in, and itself may constitute, inappropriate or illegal behavior on the part of public officials. By extending contracts past the allowable three-year period, without board approval, MCCA cannot regularly ensure that it receives services from the most appropriate vendors that offer the required goods or services at the lowest available price. Additionally, by not requesting new proposals or inviting new bids for these contracts, MCCA may have missed opportunities to hire and work with diverse vendors. Failing to secure appropriate approvals for contract extensions, particularly those that exceed the \$250,000 threshold, may also place contractors at risk of not receiving

payment, because these contracts may be unenforceable. Not only does this cause potential harm to contractors, it also places taxpayer funds at risk.

Authoritative Guidance

Section 12(b) of Chapter 30B of the General Laws states, "Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option." We consider this to be a best practice.

Additionally, Section 35 of Chapter 190 of the Acts of 1982, as well as MCCA Bylaws, require board approval for any contract over \$250,000.

Reasons for Issue

While Chapter 30B of the General Laws recommends that state agencies not enter into contracts that extend past three years, MCCA's "Procurement, Purchasing and Payment Policy and Guidelines" states that it "has elected to generally follow, Chapter 30B . . . of the Massachusetts General Laws." Additionally, this policy does not have a limit on the number of renewals or length of a contract term that would indicate a departure from Chapter 30B of the General Laws. Furthermore, it appears that inadequate monitoring controls at MCCA also contributed to this issue.

Recommendations

1. MCCA should request and secure approval from its board of directors for vendor contract extensions to ensure compliance with Section 35 of Chapter 190 of the Acts of 1982, as well as MCCA Bylaws.
2. MCCA should always follow Chapter 30B of the General Laws relative to the number of extensions and maximum term length for contracts, regardless of the contract's dollar value instead of only "generally" following Chapter 30B, which leaves room for potential waste, fraud, and abuse. As such, MCCA should modify its "Procurement, Purchasing and Payment Policy and Guidelines" to require compliance in full with Chapter 30B of the General Laws.

Auditee's Response

The MCCA believes that the contract extensions from 2018 to 2021 aligned with existing MCCA procurement policies. These policies indicate that the MCCA "has elected to generally follow Chapter 30B" but also specifically permit the MCCA procurement officer to extend contracts beyond three years if they: 1) serve the best interests of the Authority, 2) include the specific language required in the solicitation regarding the contract terms and conditions for contract extensions per Chapter 30B, section 12(a), and 3) are approved by the Board, as the contract amounts necessitate Board approval per the Authority's internal policy.

The MCCA appreciates that its existing procurement policies would benefit from additional clarity regarding when MCCA complies with Chapter 30B, and when MCCA's specific procurement policies are intended to control. As a result, the MCCA is currently redrafting its procurement policies to further clarify rules and regulations related to various procurement processes, including this example. This specific case will be addressed in the new policies being developed. In addition, the MCCA will be scheduling Chapter 30B training from the State's Inspector General's Office. Independent of this audit, the Purchasing Department was reviewed and was reorganized into the MCCA's Finance Department.

Auditor's Reply

The development and implementation of stricter procurement policies may address the underlying issues cited in our audit. We will review progress on this issue, including the sufficiency of any new policies developed by MCCA, in our post-audit review in six months.

5. The Massachusetts Convention Center Authority could not ensure that it sent and retained pre-event security surveys to meet client needs in a consistent, fair, and equitable manner.

MCCA was unable to provide documentation that it sent pre-event security surveys to all clients. For 17 out of the 20 ballroom events (85%) in our sample and 38 out of the 40 non-ballroom events (95%) in our sample, MCCA could not provide evidence that it sent and retained pre-event security surveys.

If MCCA does not send and retain pre-event security surveys, there is an increased risk, actual and/or perceived, that MCCA may not be addressing client needs consistently, fairly, and equitably. Of note, organizers and attendees of at least three events, and in some instances, MCCA employees themselves, expressed concern of disparate security presence at "Black-sponsored events."¹³ These instances were each investigated as part of the Prince Lobell Tye investigation of MCCA, which concluded that there was no racism or racist intent behind the security presence at these events.¹⁴

Authoritative Guidance

Section 2.0 of MCCA's "[Public Safety Department] Standard Operating Procedures Event Security Assessment Program" states, "Public Safety Managers will send the Pre-Event Survey that coincides with its initial security level to the client, to be returned as soon as possible."

13. See the [Boston Globe](#) article regarding allegations of Race Discrimination at the Massachusetts Convention Center Authority, March 4, 2023.

14. See the [Report on Prince Lobell Tye's Investigation into Allegations of Race Discrimination at the Massachusetts Convention Center Authority, October 13, 2023](#), pages 15-21.

Reasons for Issue

MCCA did not have sufficient monitoring controls in place to ensure that pre-event security surveys were sent to clients and that it retained documentation that clients had been provided security surveys. MCCA officials stated that the former intelligence analyst sent the pre-event security surveys to the clients by email. Despite multiple requests for this information by the audit team, MCCA did not provide it, citing that the analyst no longer works for MCCA.

Recommendations

1. MCCA should ensure it sends pre-event security surveys to clients and retains this documentation.
2. MCCA should retain all pre-event security surveys completed by its clients in a central, accessible location.
3. MCCA should ensure that its information technology systems support record retention and retrieval to facilitate data analysis, audit, investigations, and other required business processes.
4. MCCA should engage with the Secretary of the Commonwealth's supervisor of public records on this matter to ensure compliance with the Commonwealth's public records laws and applicable records retention schedules.

Auditee's Response

The MCCA asks our clients to provide a "pre-event" survey so that they can highlight aspects of their event our public safety team should be aware of before creating the security and safety plan. As the MCCA explained to the [Office of the State Auditor], many clients do not return these completed surveys. . . . The critical information for development of such a plan consists of multiple conversations and meetings with our clients in the months prior to an event detailing overall security staffing proposals, police details, and other security measures when and where appropriate. Since 2023, the MCCA has modified how it tracks the completion of client surveys and adjusted policies to reflect the reality that clients may not always fill out a survey.

Auditor's Reply

Our audit found that MCCA could not produce records indicating that it sent and retained responses to pre-event security surveys to 85% of ballroom events and 95% of non-ballroom events in our sample. We remind MCCA that records should be retained in compliance with public records laws and applicable records retention schedules.

We acknowledge that MCCA may have secured critical security-related information through other means, such as interviews with clients. However, Section 2.0 of MCCA's "[Public Safety Department] Standard Operating Procedures Event Security Assessment Program" states, "Public Safety Managers will send the

Pre-Event Survey that coincides with its initial security level to the client, to be returned as soon as possible." MCCA is certainly welcome to update its policies; however, we audited MCCA's compliance with its written policies that were in place during the audit period. MCCA did not retain sufficient records that pre-event security surveys were sent to clients and retained in accordance with its own written policies and procedures. We reiterate that not sending and retaining pre-event security surveys increases the risk of miscommunications and the potential that client needs may not be addressed in a consistent, fair, and equitable manner.

6. The Massachusetts Convention Center Authority did not have an adequate process for handling employee complaints.

MCCA did not retain a centralized list of employee complaints that was readily available for us to use to identify a testing population for non-union employee complaints. If MCCA does not have an adequate process for handling employee complaints regarding personnel issues, it may not identify trends in employee complaints or ensure that all employee complaints are addressed and handled in a consistent, timely, and appropriate manner.

Authoritative Guidance

The US Government Accountability Office's Standards for Internal Control in the Federal Government, known as the Green Book, sets internal control standards for federal entities. It is known as a best practice for state agencies. The Green Book defines internal controls in the following way:

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

The Green Book also states, "Management should design control activities to achieve objectives and respond to risks. . . . Management should implement control activities through policies."

Additionally, an article in the National Law Review, "Six Best Practices of Human Resource Documentation," states,

There are a number of opportunities where creating effective documentation can later serve to protect the company if a conflict arises: (1) counseling, discipline and termination of employment; (2) discrimination and harassment complaints; (3) promotions and demotions; (4) events that could lead to adverse employment actions (e.g., attendance, co-worker altercations, customer

complaints, insubordination or layoff/RIFs); (5) the interactive process for ADA accommodation requests; (6) EEO or harassment training provided to employees; and (7) other situations - use business judgment and common sense.

Employment-related documentation should be created contemporaneously to the event (at or very near the time the event occurs). Documentation can also be in the form of a supervisor's log that may involve more frequent, brief entries. Any follow-up discussions on issues previously documented should also be memorialized. For the destruction of documentation, it is important to have a well-organized, well-publicized (to managers and HR) document retention policy and timeline, which addresses exceptions for the receipt of a claim, litigation, a government investigation or audit or the instruction of legal counsel.

It is an appropriate internal control to document, in writing, important issues to ensure they are not lost or forgotten due to competing priorities.

Reasons for Issue

MCCA's now-previous director of human resources told us in an interview that, while MCCA's "Non-Discrimination/Non-Harassment Policy" outlined the steps that the Human Resources Department should take to handle an employee complaint, the department handled each case differently. Additionally, the Human Resources Department did not retain a list of employee complaints because the now-previous human resources director stipulated that they were able to remember who had filed the complaint because of the small number of MCCA employees.

Recommendations

1. MCCA should develop, document, and implement internal controls over the process of handling employee complaints that would include the tracking and documentation of complaints.
2. MCCA should create and retain a centralized list of complaints to ensure that all complaints are addressed in a consistent, timely, and appropriate manner.

Auditee's Response

The MCCA agrees that it did not adequately track employee complaints during the audit period. The MCCA acknowledges the importance of establishing robust internal controls for tracking employee complaints and grievances at the MCCA for nonaffiliated employees. The MCCA historically had a practice that governed all employee complaints during the audit period which involved human resources documentation, referral to legal counsel if necessary, and follow up correspondence with employees. That said, the MCCA did not have a central system in which all these matters were officially recorded for purposes of record keeping.

Under current leadership, the MCCA has conducted several reviews of existing policies and procedures to further examine how they align with our broader goals of our organization, and this

has included review of existing policies and procedures for the handling of employee complaints. The MCCA is currently working to:

- Define clear objectives for grievance and complaint handling, focusing on fairness, timeliness, and confidentiality.*
- Establish clear guidelines and timelines for initiating investigations upon receiving grievances and complaints, ensuring that responsible personnel promptly assess and prioritize grievances and complaints based on their severity and legal implications.*
- Develop a comprehensive grievance policy outlining employee rights, procedures for filing grievances, and escalation paths.*
- Specify roles and responsibilities of [human resources] personnel, supervisors, and employees in the grievance and complaint process.*
- Implement a grievance and complaint tracking system to record grievances and complaints, track progress, and document outcomes.*
- Enhance our record-keeping processes to maintain comprehensive records of all complaints, including whistleblower letters or anonymous complaints, with a focus on documenting the date received, nature of the complaint, parties involved, investigation findings, and actions taken.*
- Conduct regular reviews of grievance and complaint handling procedures to identify areas for improvement.*

Additionally, the MCCA has scheduled a new, comprehensive training for [human resources] staff and supervisors on the topic of responding to employee complaints. This training has been scheduled to occur prior to September 30, 2024. The MCCA is committed to fostering a fair and supportive work environment where employee complaints are addressed promptly, fairly, and in accordance with clear policies and internal controls.

Auditor's Reply

Based on its response, MCCA has taken measures to address our concerns in this area.

7. The Massachusetts Convention Center Authority did not have a transparent or accountable process related to non-union employee settlement agreements, including those containing non-disclosure, non-disparagement, or similarly restrictive clauses.

MCCA did not have a documented process for reviewing, entering into, and finalizing its non-union employee settlement agreements during the extended audit period (January 1, 2018 through December 31, 2022). MCCA also did not obtain approval from its board of directors about these employee settlement

agreements. The table below summarizes the dates, amounts, and payment methods of the five non-union employee settlement agreements MCCA entered into during our audit period.

Were Allegations Specified in the Settlement?*	Date Signed	Amount	Method of Payment	Did the Settlement Include NDA or Other Restrictive Language? **	Was the Settlement Approved by the Board?
No	March 26, 2019	\$7,500	Payroll	Yes	No
Yes [†]	November 29, 2019	\$1,200,000	Insurance [‡]	Yes	No
No	April 5, 2020	\$9,000	\$5,883.83 vendor payment to claimant; \$3,116.17 paid to claimant's attorney to distribute to the claimant	Yes	No
No allegations [§]	July 23, 2021	\$844	Payroll	Yes	No
No	December 15, 2021	\$12,500	\$5,000 through payroll; \$5,000 taxable 1099 payment to claimant and \$2,500 paid to claimant's attorney to distribute	Yes	No

* For each "No" answer in this column, the court cases or administrative actions that precipitated the settlement were referenced, but no reasons for the settlement were included in the settlement itself.

** In this instance, "restrictive language" includes non-disclosure, non-disparagement, confidentiality, or similar clauses.

† The allegations associated with this settlement were for claims of alleged racial discrimination and retaliation.

‡ MCCA pays an insurance premium in exchange for coverage that guarantees financial compensation for the damages or losses it incurs. MCCA spent \$353,484 in public liability insurance premiums for the policies that covered the audit period. In this instance, MCCA's insurance paid the settlement amount.

§ There were no allegations associated with this settlement. The employee chose to separate from MCCA in lieu of receiving discipline.

If MCCA does not have a transparent and accountable process to handle employee settlement agreements, especially with those containing non-disclosure, non-disparagement, confidentiality, or similar clauses, it cannot ensure that employee settlements are handled in an ethical, legal, or appropriate manner. If the MCCA board of directors does not ensure appropriate oversight regarding employee settlements, the well-being and financial stability of MCCA and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, and other forms of misconduct, while protecting perpetrators of abuse in MCCA.

Authoritative Guidance

Section 5.09 of Title 815 of the Code of Massachusetts Regulations states:

- (1) Responsibility of assigned attorney or staff person: Preparation of Reports. When litigation involving a monetary claim against the Commonwealth covered by these regulation terminates in a final Settlement or judgment with regard to such a claim, the agency attorney or staff person assigned to handle or monitor the claim shall do the following:*
- (a) Prepare a report indicating:*
- 1. the principal amount of the settlement or judgment;*
 - 2. the amount of any attorney's fee award;*
 - 3. the amount of any interest award or accrued, and whether the interest continues to accrue post-judgment;*
 - 4. a request for payment of the amount;*
 - 5. a description of the basis for the request, (e.g., Court order or settlement agreement); and*
 - 6. whether the assigned attorney desires to award the payment check to the claimant;*
- (b) Forward the report with a copy of the settlement or judgment just described to the General Counsel of the [Office of the Comptroller of the Commonwealth] within the time frames set forth in [Section 5.09(2) of Title 815 of the Code of Massachusetts Regulations]. . . .*
- (2) Time for preparation of reports. The report . . . shall be sent by the agency attorney to the General Counsel of the Comptroller:*
- (a) if based on a settlement agreement, within 15 days of signing of the final settlement papers; or*
- (b) if based on a judgment against the Commonwealth or any agency, within fifteen days of the Commonwealth's decision not to appeal; or*
- (c) if based on a judgment against the Commonwealth or an agency, where the Commonwealth decides to take an appeal from the judgment, within fifteen days of any final order on appeal or in remand proceedings, if such remand proceedings are ordered.*

We consider this to be a best practice, since this regulation outlines the procedures required by the Office of the Comptroller of the Commonwealth for executive branch agencies.¹⁵

Reasons for Issue

MCCA officials stated that non-union employee settlements were infrequent, varying in nature, and handled on a case-by-case basis.

Recommendations

1. MCCA should develop, document, and implement a policy related to employee settlement agreements.
2. To help increase transparency and accountability, MCCA should track and document all complaints that result in payments and the use of non-disclosure, non-disparagement, or similarly restrictive clauses in employee settlement agreements. This should be done both within respective personnel files and a centralized list.
3. To help increase accountability, MCCA should assign an agency attorney or staff member to handle and monitor claims and employee settlement agreements.
4. To help increase transparency and accountability, MCCA should seek and obtain approval from its board of directors prior to executing employee settlement agreements and any non-disclosure, non-disparagement, or similarly restrictive clauses in its agreements.
5. As a best practice, MCCA should file all monetary employee settlement agreements with the Office of the Comptroller of the Commonwealth, in accordance with Section 5.00 of Title 815 of the Code of Massachusetts Regulations.

Auditee's Response

The MCCA is currently developing a new policy for non-union employee settlements, which will implement appropriate legal and non-legal review and approval processes for such settlements. The MCCA is also working to implement new processes for tracking non-union employee settlements. The MCCA notes that the [Office of the Comptroller of the Commonwealth] regulations cited by the [Office of the State Auditor], [Section 5.00 of Title 815 of the Code of Massachusetts Regulations], do not apply to the MCCA.

15. In Section 5.02 of Title 815 of the Code of Massachusetts Regulations, an agency is defined as "any agency, department, office, commission, committee, council, board, division, bureau, institution (including institutions of higher education), office or section within any executive or legislative department of the Commonwealth. Authorities established by statute such as the Massachusetts Bay Transportation Authority, the Massachusetts Turnpike Authority, the Massachusetts Water Resources Authority, the Massachusetts Port Authority and local housing authorities are not included within the definition of agency."

Auditor's Reply

Based on its response, MCCA is taking measures to address our concerns in this area. We will review progress on this issue in our post-audit review in six months. Considering the challenges we identified during the audit period, we strongly recommend that the MCCA follow Section 5.00 of Title 815 of the Code of Massachusetts Regulations in order to increase accountability and transparency, while helping to ensure future issues do not arise in these areas again.

8. The Massachusetts Convention Center Authority executed an employee settlement agreement exceeding \$250,000, in violation of Chapter 190 of the Acts of 1982 and Massachusetts Convention Center Authority Bylaws.

MCCA executed multiple non-union employee settlement agreements that included non-disclosure, non-disparagement, or similarly restrictive clauses. None of these settlement agreements were presented to MCCA's board for review and approval. One settlement agreement exceeded the \$250,000 threshold, which requires approval from the MCCA board of directors, according to Section 35 of Chapter 190 of the Acts of 1982, as well as the MCCA Bylaws.

If MCCA does not have a transparent and accountable process to handle employee settlement agreements, especially with those containing non-disclosure, non-disparagement, or similarly restrictive clauses, it cannot ensure that employee settlements are handled in an ethical, legal, or appropriate manner. If the MCCA board of directors does not ensure appropriate oversight regarding employee settlements, the well-being and financial stability of MCCA and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, and other forms of misconduct while protecting perpetrators of abuse in MCCA.

Authoritative Guidance

Section 35 of Chapter 190 of the Acts of 1982 states:

In addition to all powers otherwise granted to the Authority by law, the Authority shall have the following powers: (a) To adopt by-laws for the regulation of its affairs and the conduct of its business and to issue rules, regulations and policies in connection with the performance of its functions and duties. . . . (e) To make and execute all contracts and all other instruments necessary or convenient for the exercise of its power and functions.

Section 4.15 of the Massachusetts Convention Center Authority Bylaws, amended as of March 12, 2020, states,

*Delegated Powers. Each of the administrative officers of the Authority shall have such powers as shall be delegated to such officer by the Authority, and shall perform such duties as shall be directed by the Authority or the executive director. Except where limited by the Enabling Act, by these bylaws or by resolution of the Authority, any power delegated to the executive director may be delegated to any other administrative officer of the Authority. In addition to all other powers provided by law or these bylaws, unless otherwise directed by resolution of the Authority, the executed director without further vote of the Authority shall have the power for and on behalf of the Authority to execute and deliver any contract deemed by the executive director necessary or convenient for the conduct of the affairs of the Authority **up to a limit of \$250,000 per contract**, and to pay any amount due under any such contract or under any other contract approved by the Authority without limit. [emphasis added]*

Reasons for Issue

MCCA officials stated that non-union employee settlements were infrequent, varying in nature, and handled on a case-by-case basis.

Recommendations

1. MCCA should develop, document, and implement a policy related to employee settlement agreements.
2. To help increase transparency and accountability, MCCA should seek and obtain approval from its board of directors before executing employee settlement agreements and any agreement that includes non-disclosure, non-disparagement, or similarly restrictive clauses.
3. To help increase transparency and accountability, MCCA should track and document all complaints that result in payments and the use of non-disclosure, non-disparagement, or similarly restrictive clauses in employee settlement agreements. This should be done both within respective personnel files and a centralized list.
4. To help increase accountability, MCCA should assign an agency attorney or staff member to handle and monitor claims and employee settlement agreements.
5. MCCA, its executive director, and its employees should comply with the law and all agency bylaws.
6. MCCA's board of directors should provide appropriate oversight of personnel and the powers it has delegated to its employees.

Auditee's Response

The MCCA agrees with the [Office of the State Auditor's] finding. This execution of this settlement occurred under prior executive and Board leadership. The MCCA agrees that, under Chapter 190 of the Acts of 1982, this settlement should have received review and approval by the MCCA's Board

prior to execution. As noted above, the MCCA is currently developing a new policy for non-union employee settlements, which will implement appropriate legal and non-legal review and approval processes for such settlements.

Auditor's Reply

Based on its response, MCCA is taking measures to address our concerns in this area. We will review progress on this issue in our post-audit review in six months.

9. The Massachusetts Convention Center Authority is missing certain information system general controls over its procurement system.

We identified the following issues in our testing of MCCA's information system general controls:

1. One out of nine users (11%) who were newly provided with access to the procurement system during the audit period was not recorded as being in attendance for an initial cybersecurity awareness training.
2. MCCA was unable to produce any attendance records or certificates of completion to verify that procurement system users received annual refresher cybersecurity awareness training.
3. MCCA does not document supervisor reviews of user access rights.

If MCCA does not conduct reviews of user access rights, it has an elevated risk of exposure to unauthorized access. If MCCA does not ensure that its employees complete initial and annual refresher cybersecurity awareness trainings, it is exposed to an increased risk of cyberattacks and financial and/or reputational losses.

Authoritative Guidance

Section AT-2 of MCCA's "Information Security Policy" states:

Prior to a user being granted access to MCCA's business information systems or corporate network, security awareness training must be provided for all level of users within MCCA. Users must also be trained following the implementation of changes to information systems, and periodically thereafter.

Section 6.1.10.2 of the Executive Office of Technology Services and Security's Access Management Standard IS.003 states, "A review of **user** access must be conducted, at a minimum, semiannually, and all unauthorized accounts and access must be removed."

We consider the Executive Office of Technology Services and Security's policies and standards to be a best practice.

Reasons for Issue

MCCA officials told us that supervisors review user access rights annually and monthly; however, the reviews are not documented. MCCA did not give a reason it could not provide documentation of attendance for annual refresher cybersecurity awareness training.

Recommendations

1. MCCA should maintain certificates of completion of cybersecurity awareness training for all of its employees in their respective personnel files and/or on a centralized list.
2. MCCA should conduct and document user access reviews at least twice per year.

Auditee's Response

While the MCCA has a comprehensive cybersecurity training program that includes annual cybersecurity training, quarterly phishing training, and annual vendor cybersecurity training, it acknowledges that some official attendance records for participants in the annual training were missing. To address this issue, the MCCA has implemented a centralized online learning management system (LMS). This new system will ensure that official records of attendance and training completion are accurately maintained each year and stored for future review.

The MCCA conducts annual reviews of user access to the MCCA financial management system which is independently verified each year by our annual audit. These reviews encompass the onboarding and offboarding of employees, as well as an evaluation of all users with elevated access rights. Additionally, the MCCA performs an annual license review of users in the system. During the audit period, in conjunction with the State Auditor's Office audit team, it was identified that the MCCA should maintain a documented record of each system user to verify that no official user roles have changed. The MCCA accepted this recommendation and has implemented the necessary changes as part of its annual review of system users, access, and roles.

Auditor's Reply

In its response, MCCA indicates that system user access is tested annually by its independent auditors. However, as noted above, MCCA was unable to demonstrate that user access rights to its procurement system were reviewed during our audit period. In addition, MCCA was unable to provide evidence that it provided annual cybersecurity awareness training to its procurement system users during our audit period. We reiterate our recommendation that MCCA should maintain a record of completion of cybersecurity awareness training for each employee. Further, MCCA should ensure that it conducts and documents periodic access reviews (at least semiannually) to ensure that users' access rights to its procurement system are limited to their individual job requirements. Based on its response, MCCA is taking measures to address our concerns.

OTHER MATTERS

1. The Massachusetts Convention Center Authority did not post bid invitations for art commissions in areas that were readily accessible to the art community.

We determined that bid invitations for art commissions were not posted in areas typically used by the art community.

Specifically, the “Calls to Artists” Section of the “City of Boston Public Art Policies & Processes and Boston Art Commission Bylaws” highlights best practices. Bid invitations for art commissions should be posted in more accessible areas, such as in public art / art-related publications or newsletters, media accounts, and other public art platforms.

Additionally, we found that one major call for art was only posted for two weeks. While this falls within MCCA’s “Procurement, Purchasing and Payment Policy and Guidelines,” the Americans for the Arts’ “Public Art Network Best Practices Goals and Guidelines” states:

Commissioning bodies should not assume that artists will have sufficient time and information to develop site-specific proposals that are informed by substantial client interaction unless the proposals and/or competition affords at least four to six weeks of preparation time.

By not posting bid invitations for art commissions for four to six weeks, per the Americans for the Arts’ recommendation, MCCA does not give sufficient time for these bid invitations to reach a larger portion of the art community or for artists to brainstorm ideas, research costs, and put together comprehensive bids.

MCCA should review its call for art practices, specifically where MCCA posts its bid invitations for art commissions and the length of time that they are posted.

Auditee’s Response

This art installation in question was commissioned by the prior gubernatorial administration and, as the State Auditor indicates above, was properly bid in accordance with both Chapter 30B [of the General Laws] as well as the Authority’s own internal procurement policies.

While the Authority understands the suggested recommendations, the recommendations must be balanced with the need to support local artists in Massachusetts along with potential time requirements.

When posting future art contracts, the Authority will consider extending the time for advertising such [requests for proposals] as well where the bids are advertised and will continue to comply with Chapter 30B [of the General Laws] and our own policies. While the "City of Boston Public Art Policies & Processes and Boston Art Commission Bylaws" may be considered "best practices" the Authority believes following Chapter 30B [of the General Laws], our own internal policies and procedures and the Americans for the Arts "Public Art Network Best Practices Goals & Guidelines" to be adequate to ensure future art commissions are properly advertised in a fair and equitable manner to the entire art community.

Auditor's Reply

Based on its response, MCCA is taking measures to address our concerns in this area.

2. The Massachusetts Convention Center Authority did not ensure that all board members and employees signed conflict of interest material acknowledgment forms or completed biennial conflict of interest training.

We reviewed all conflict of interest material acknowledgment forms for all 14 board members during the audit period, as well as a sample of 50 out of the 772 employees who were employed by MCCA during the extended audit period, January 1, 2018 through December 31, 2022. MCCA did not ensure that all board members or all employees signed conflict of interest material acknowledgment forms, in accordance with Section 27 of Chapter 268A of the General Laws, as outlined in the tables below.

	Number of Board Members Who Signed Conflict of Interest Material Acknowledgment Forms with MCCA	Total Number of Board Members	Percentage of Completion*
2018	9	14	64%
2019	13	14	93%
2020	10	14	71%
2021	9	14	64%
2022	8	14	57%

* In this instance, the percentage of completion relates to the number of individuals with a signed conflict of interest material acknowledgement form on file with MCCA.

	Number of Employees from Our Sample Who Signed Conflict of Interest Material Acknowledgment Forms with MCCA	Total Number of Employees in Our Sample Employed During the Corresponding Year	Percentage of Completion*
2018	27	32	84%
2019	23	32	72%
2020	20	29	69%
2021	18	27	67%
2022	13	27	48%

* In this instance, the percentage of completion relates to the number of individuals with a signed conflict of interest material acknowledgement form on file with MCCA.

We then reviewed biennial conflict of interest training completion forms for all 14 board members who were on the board of directors during our audit period and for each of the employees in our same sample of 50. We found that board members and employees did not complete conflict of interest training during the audit period, in accordance with Section 28 of Chapter 268A of the General Laws, as outlined in the tables below.

	Number of Board Members with Documentation of Conflict of Interest Training on file with MCCA	Total Number of Board Members Required to Complete Conflict of Interest Training	Percentage of Completion*
2018	1	3	33%
2019	5	11	45%
2020	0	3	0%
2021	0	11	0%
2022	0	3	0%

* In this instance, the percentage of completion relates to the number of individuals with a signed conflict of interest material acknowledgement form on file with MCCA.

	Number of Employees in Our Sample with Documentation of Conflict of Interest Training on file with MCCA	Total Number of Employees in Our Sample Required to Complete Conflict of Interest Training During the Corresponding Year	Percentage of Completion*
2018	2	12	17%
2019	21	27	78%
2020	0	6	0%
2021	5	18	28%
2022	1	11	9%

* In this instance, the percent of completion relates to the number of individuals with a signed conflict of interest material acknowledgement form on file with MCCA.

MCCA's assistant general counsel told us in an email dated May 2, 2024, "At the time the guidelines provided that proof of delivery was sufficient to demonstrate receipt of the summary of the conflict of interest law." However, Section 3d of the State Ethics Commission's "Education and Training Guidelines" states,

If an employer distributes the summary electronically, a return email from the employee will satisfy the statutory requirement of a written acknowledgment of receipt. If an employer distributes the summary electronically to employees using the employees' work email accounts, the employer can request "read receipts" for its emails to employees, and the "read receipts" will satisfy the statutory requirement of a written acknowledgment of receipt.

MCCA should provide conflict of interest law materials to its board members and employees every year and collect acknowledgement forms regarding those materials. MCCA should also provide biennial conflict of interest law training to its board members and employees. Failure to do so can result in an elevated risk, as employees, including board members, may not be sufficiently trained to identify and avoid inappropriate and unethical behaviors.

Auditee's Response

The MCCA provides the Summary of Conflict-of-Interest Laws to its employees and board members each year. The MCCA also notifies employees and board members of their obligation to complete the ethics training requirements on a biannual basis. The MCCA will send additional reminders to employees and board members regarding their obligations to acknowledge receipt of the Summary of Conflict-of-Interest Laws and training requirements.

Since the audit period, the MCCA has implemented the State Ethics Commission's new online training system which allows the MCCA to better track employee and board member compliance with the training requirements. In addition, the MCCA is scheduling a State Ethics Commission Ethics Seminar for its employees.

Auditor's Reply

Based on its response, MCCA is taking measures to address our concerns in this area.