

Performance Audit Report

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Video Lottery Operation Licensees  
Minority Business Participation

April 2016

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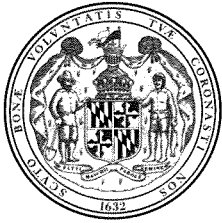
**OFFICE OF LEGISLATIVE AUDITS**  
DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux  
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April 5, 2016

Thomas J. Barnickel III, CPA  
Legislative Auditor

Senator Guy J. Guzzone, Co-Chair, Joint Audit Committee  
Delegate C. William Frick, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

As required by Section 9-1A-34 of the State Government Article of the Annotated Code of Maryland, we audited the information submitted to the Maryland Lottery and Gaming Control Commission (MLGCC) through the Governor's Office of Minority Affairs (GOMA) by video lottery operation licensees on the attainment of minority business participation goals, and the licensees' efforts to maintain those goals. Our performance audit covered the licensees' construction and procurements for the Hollywood Casino Perryville, the Casino at Ocean Downs, the Maryland Live! Casino, the Horseshoe Casino Baltimore, the Rocky Gap Casino Resort, and the MGM National Harbor Casino for calendar year 2013.

Our evaluation of the minority business participation data, which were published in MLGCC's November 3, 2014 report for calendar year 2013 activity, indicated that the expenditure data provided by the licensees was not always accurate and complete. Further, processes were not in place to detect such inaccuracies by GOMA upon submission by licensees or by MLGCC upon receipt of GOMA's compilation of this data. For example, one licensee submission contained two separate undetected errors, a misclassification of architectural and engineering expenditures as construction expenditures, and an erroneous recording of the same expenditure twice. These errors resulted in an understatement of that licensee's architectural and engineering costs and overstatement of construction costs of \$17.8 million and \$24.5 million, respectively. These errors affect the ability to properly assess the licensee's achievement of minority participation goals. Also, an undetected miscalculation on the part of GOMA resulted in a \$1.3 million understatement of the same licensee's construction expenditures.

MLGCC had not established specific amended minority participation goals for each licensee as recommended by the Attorney General of Maryland. Although State law and the contracts with each licensee established minority participation goals, the Attorney General recommended that these goals not be enforced due to constitutionality concerns. The Attorney General recommended that amended goals be established for each licensee based on the availability of minority businesses to perform the work at each VLT facility. Each of the six licensees should have three amended goals established (one each related to architectural/engineering, construction, and operational procurement activities). Of the collective 18 amended goals required among the 6 licensees, MLGCC had only established one goal for the calendar year 2013 reporting period, even though licensees reported expenditures for 9 other activities.

As of February 4, 2016, MLGCC had only established 8 participation goals. Of the remaining 10 goals, MLGCC, at a minimum, needs to establish four goals (one each for four licensees) based on current expenditure (calendar year 2016) activity.

Although all required participation goals had not been established, we did find that efforts were taken by the licensees to find and encourage minority business participation. A similar condition regarding the lack of goals has been commented upon in our two preceding audit reports, and in response to our prior audit report dated May 14, 2014, MLGCC advised that it has been working since September 2011 to establish all required goals.

MLGCC's and GOMA's responses to this audit are included as an appendix to this report. We wish to acknowledge the cooperation extended to us during our audit by MLGCC and GOMA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "TJ Barnickel III", with a stylized flourish at the end.

Thomas J. Barnickel III, CPA  
Legislative Auditor

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\* Denotes item repeated in full or part from preceding audit report



## **Background Information**

### **Video Lottery Facilities**

The General Assembly passed legislation to license video lottery terminal (VLT) gaming in Maryland at six locations in the State (Anne Arundel County, Baltimore City, Cecil County, Allegany County, Worcester County, and Prince George's County). Current law authorizes 16,500 VLTs with a maximum of 4,750 VLTs at any one location, and allows VLT licensees to operate certain table games such as roulette, baccarat, blackjack, and poker. VLT equipment is owned or leased by either the Maryland Lottery and Gaming Control Commission (MLGCC) or the VLT licensees.

The video lottery operation licenses required by law to operate a VLT facility were awarded by the Video Lottery Facility Location Commission. The MLGCC oversees VLT facility operations, and is required to ensure that licensees comply with the regulatory framework of the VLT program, including minority business participation.

### **Minority Requirements Studies**

Section 4 of Chapter 4, Special Session, and Laws of Maryland 2007 required the Maryland Department of Transportation (MDOT), in consultation with the General Assembly and the Office of the Attorney General, to initiate two studies to evaluate the continued compliance of the minority participation requirements of Section 9-1A-10 of the State Government Article with any federal and constitutional requirements. The studies were also to evaluate race-neutral programs or other methods that could be used to address the needs of minority investors and minority businesses. The first study was submitted to the Legislative Policy Committee by the Secretary of MDOT with a letter (dated August 9, 2011), to address the aforementioned Special Session requirements. In response to the completion of the first study, the Attorney General of Maryland advised on August 11, 2011 that a minority business participation program for VLT licensees could now be implemented in compliance with the VLT law.

The report of the second study was due to the Committee by September 30, 2013. In a letter dated November 20, 2013, the Secretary of MDOT notified the Committee that the second study would not be completed. The letter stated that the 2011 study fulfilled the obligations for the studies outlined in the law.

## **Minority Participation Requirements**

Section 9-1A-10 of the State Government Article of the Annotated Code of Maryland specifies that, for construction and procurements related to the operation of VLTs, video lottery operation licensees must meet, at a minimum, the same minority participation requirements specified for State agencies in Title 14, Subtitle 3 of the State Finance and Procurement Article. According to this law, if the Governor's Office of Minority Affairs (GOMA) reports that a licensee is not in compliance with the minority participation requirements, MLGCC may take immediate action to ensure compliance of the licensee.

The request for proposals (RFP) issued in December 2008 by the Video Lottery Facility Location Commission delineated the minority participation goals, with overall goals of 25 percent for Allegany, Cecil, and Worcester counties, and 35 percent for Anne Arundel County and Baltimore City, and sub-goals for African-American and women-owned businesses. However, because of constitutionality issues, the Attorney General advised, on August 11, 2011, that the RFP provisions relating to these goals needed to be amended to set separate goals for each VLT facility and, where appropriate, for each separate contract of significant duration, scope, and size entered into by licensees. This advice also stated that these goals need to be based on the availability of minority businesses to perform the work at each location, and waivers must be available for instances in which a licensee is unable to meet the goals after making good faith efforts.

To address the requirements and prior legal concerns noted in the Attorney General's August 2011 memorandum, MLGCC worked collaboratively with other State agencies and stakeholders, including GOMA and MDOT, to develop an amended Minority Business Enterprise (MBE) goal-setting process. In May 2013, MLGCC established a minority participation goal for the Horseshoe Casino Baltimore in accordance with the Attorney General's August 2011 letter. That is the first time that an amended minority participation goal was established.

## **Status of Licenses**

For each casino, Table 1 provides the dates that the license was awarded and when VLT gaming operations began. In accordance with Section 9-1A-04 of the State Government Article of the Annotated Code of Maryland, MLGCC granted MGM National Harbor (MGM) in Prince George's County a six-month extension to open its VLT gaming operations, which will require MGM to open no later than August 14, 2016 unless an additional extension is granted.



Table 1 Video Lottery Facility License and Operations Data			
Casino	Local Jurisdiction	Date License Awarded	Date Operations Began
Hollywood Casino Perryville	Cecil	10/21/2009	9/27/2010
Casino at Ocean Downs	Worcester	9/23/2009	1/4/2011
Maryland Live! Casino	Anne Arundel	12/7/2009	6/6/2012
Rocky Gap Casino Resort	Allegany	4/26/2012	5/22/2013
Horseshoe Casino Baltimore	Baltimore City	7/31/2012	8/26/2014
MGM National Harbor	Prince George's	8/14/2014	Future

Source: Governor's Office of Minority Affairs October 7, 2014 MBE Compliance Report and MLGCC Licensee Information

### **Governor's Office of Minority Affairs (GOMA)**

Section 9-1A-10 of the State Government Article of the Annotated Code of Maryland requires GOMA to monitor licensees' compliance with minority business participation requirements and to report at least every six months to the MLGCC on the licensees' compliance with the requirements. MLGCC uses the information obtained from GOMA to prepare an annual report to the Governor and the General Assembly on the attainment of the minority business participation goals by the licensees and their efforts to maintain those goals. MLGCC's report for calendar year 2013 was issued on November 3, 2014.

### **Status of Findings From Preceding Audit Report**

Our audit included a review to determine the status of the three findings contained in our preceding audit report, dated May 14, 2014. We determined that one of these findings was satisfactorily resolved. The remaining two findings are repeated as three findings in this report.



## Audit Scope, Objectives, and Methodology

### Scope and Objectives

Section 9-1A-34 of the State Government Article of the Annotated Code of Maryland requires the Office of Legislative Audits to annually audit and evaluate the information submitted by video lottery operation licensees to the Maryland Lottery and Gaming Control Commission (MLGCC) on the attainment of minority business participation goals specified for construction and procurements related to their operations and the efforts to maintain those goals. We conducted a performance audit to assess the accuracy of the calendar year 2013 information reported by the six video lottery operation licensees identified in Table 2. We also assessed whether MLGCC established procedures to monitor the efforts of licensees to achieve minority participation goals.

**Table 2**  
**Licensee VLT Data as of December 31, 2013**

Licensee	Casino	Number of VLTs Initially Authorized	Number of VLTs Authorized as of 12/31/13
Penn Cecil Maryland, Inc.	Hollywood Casino Perryville	1,500	1,158
Ocean Enterprise 589, LLC	Casino at Ocean Downs	800	800
PPE Casino Resorts Maryland, LLC	Maryland Live! Casino	4,750	4,270
Evitts Resort, LLC	Rocky Gap Casino Resort	850	558
CBAC Gaming, LLC	Horseshoe Casino Baltimore	3,750	2,500
MGM National Harbor, LLC	MGM National Harbor	3,600	3,600

Source: MLGCC Licensee data reports

Our audit was performed 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.

## **Methodology**

To accomplish our objectives, we interviewed employees of the licensees, MLGCC, and the Governor's Office of Minority Affairs (GOMA). We reviewed GOMA's and MLGCC's data collection process and reporting. We also evaluated the minority participation calculations for accuracy, and reviewed and tested the records of the licensees, including contractor classifications, expenditure data, invoices, and reports of minority participation levels and outreach efforts.

Our audit fieldwork initially commenced during May 2014; however, GOMA requested that we defer our audit to a later date because it had not completed a review of licensee data that it uses to prepare its annual report to MLGCC on the attainment of licensees' minority business participation goals. GOMA advised us that a primary factor attributable to the delay in the completion of its review of the licensee data was that it was no longer using the services of an outside contractor to assist with collection and reporting of minority participation data and outreach efforts. GOMA solicited assistance from the Department of Budget and Management to complete the necessary review and organization of information from the licensees, which required additional time to complete. Our fieldwork resumed during September 2014 and continued through February 2015, with subsequent fieldwork undertaken to update the status of amended minority participation goals through February 2016.

A copy of the draft report was provided to MLGCC and GOMA. Their responses to our findings and recommendations appear as an appendix to this report. As prescribed in State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MLGCC and GOMA regarding the results of our review of their responses.

## Conclusions

The Maryland Lottery and Gaming Control Commission (MLGCC) had not established certain amended minority participation goals related to architectural and engineering, construction, and operations for four of the six video lottery terminal (VLT) licensees, as formally advised by the Attorney General of Maryland. Without properly established goals, MLGCC will be unable to encourage and assess licensee achievement of those goals, or for a licensee failing to achieve those goals, take appropriate action to ensure compliance.

MLGCC's statutorily required calendar year 2013 report to the Governor and General Assembly on VLT licensee minority participation (dated November 3, 2014), contained erroneous information due to both Governor's Office of Minority Affairs (GOMA) and licensee errors that were undetected. This situation was due to MLGCC not having a process in place to ensure that the minority participation results it received from GOMA were reasonably complete and accurate.

Specifically, GOMA inadvertently miscalculated construction costs related to one licensee resulting in a \$1.3 million understatement of these amounts. MLGCC did not detect the error due to a lack of a review of the licensee's information initially submitted to GOMA. Additionally, certain licensee information provided to GOMA during calendar year 2013 was inaccurate. For example, one licensee misclassified architectural and engineering costs as construction costs and listed the same payment twice in its construction costs. The net result was an understatement of architectural and engineering costs and an overstatement of construction costs of \$17.8 million and \$24.5 million, respectively. Because GOMA did not verify the accuracy of the expenditure data used to determine licensees' minority participation levels reported to MLGCC, the information in GOMA's October 7, 2014 report to MLGCC was inaccurate.

Finally, in its report to MLGCC, GOMA did not obtain certain expenditure data as required related to the achievement of minority participation goals for construction and operations for two VLT licensees resulting in GOMA omitting the data from its annual report to MLGCC for those licensees. Specifically, GOMA disclosed that operations expenditures totaling \$14.4 million for one licensee were not reported due to the licensee's inability to segregate its casino activity from its other non-casino related activities and that expenditure data provided by a second licensee totaling \$13.2 million was not reported because it was not complete and had not yet been verified.

Although not all goals had been established, GOMA and MLGCC monitored the efforts taken by the licensees to find and encourage minority business participation by requiring the licensees to submit documentation to substantiate their efforts, which we verified on a test basis. MLGCC subsequently listed the efforts, by licensee, in its 2013 report to the Governor and General Assembly. While the report disclosed many strategies to attract minority business participation, one common example we noted was that nearly all of the licensees attended Minority Business Expos in which minority business enterprises showcased their products and services.

## Findings and Recommendations

### Establishment of Minority Participation Requirements

#### **Finding 1**

**The Maryland Lottery and Gaming Control Commission has not established certain amended minority participation goals for four of the video lottery terminal licensees.**

#### **Analysis**

As of February 4, 2016, the Maryland Lottery and Gaming Control Commission (MLGCC) had not established certain amended minority participation goals for four of the six video lottery terminal (VLT) licensees. Each of the six licensees should have three goals established – one each related to architectural/engineering, construction, and operational procurement activities.

MLGCC had only established 8 of the 18 VLT licensees' minority participation goals. Table 3 presents the current minority participation goals for the VLT licensees and the dates those goals were established. Regarding the 10 goals that had not been established, it is our understanding that there are no significant current expenditures (calendar year 2016) pertaining to 6 activities; however, there are 4 open casinos (licensees) functioning without operational procurement goals.

For the period covered by this audit (calendar year 2013), only the goal for construction procurement activity for the Horseshoe Casino Baltimore had been established. There were calendar year 2013 expenditures incurred in nine other categories for which goals had not established (see Table 4 in Finding 2).

The law specifies that if the Governor's Office of Minority Affairs (GOMA) reports that a licensee is not in compliance with the minority participation requirements, MLGCC may take immediate action to ensure compliance of the licensee. Consequently, without properly established goals, MLGCC will be unable to encourage and assess achievement of those goals and take appropriate actions against licensees that fail to achieve those goals.

Although State law requires VLT licensees to meet the same minority participation requirements specified for State agencies, the Attorney General of Maryland formally advised in August 2011 that, to address constitutionality issues, MLGCC should amend the goals to set separate goals for each

licensee, and perhaps for each contract, and consider the proposed contract work and the availability of minority businesses to perform the work. The Attorney General also advised that waivers must be available for instances in which a licensee is unable to meet the goals after making a good faith effort. The waiver provisions are in place.

A similar condition was commented upon in our preceding audit report. In our prior report dated May 14, 2014, we commented that goals had not been established for most licensees, and that MLGCC advised it has been working since September 2011 to establish goals for the remaining licenses.

**Table 3**  
**Current Video Terminal Licensee Amended Goals as of February 2016**  
**(Date Licensee Notified by MLGCC of Current Minority Participation Goal)**

Casino	Licensee Activity Type		
	Architectural and Engineering	Construction	Operational Procurements
Hollywood Casino Perryville	Not Established❶	Not Established❶	Not Established❷
Casino at Ocean Downs	Not Established❶	Not Established❶	Not Established❷
Maryland Live! Casino	19% (May 30, 2014)	Not Established❶	Not Established❷
Rocky Gap Casino Resort	12% (November 30, 2015)	17% (November 30, 2015)	Not Established❷
Horseshoe Casino Baltimore	22% (May 30, 2014)	24% (May 7, 2013)	20% (August 25, 2014)
MGM National Harbor	19% (June 4, 2014)	26% (December 5, 2014)	Not Established❶

Source: MLGCC

- ❶ - No goal has been established, but there were either no expenditures incurred during calendar year 2016 related to the specific activity at the casino or the expenditures were insignificant.
- ❷ - No goal has been established even though there is expenditure activity during calendar year 2016.



## Recommendation 1

We recommend that MLGCC establish amended minority participation goals for all categories in which VLT licensees have expenditures (repeat).

## Reported Minority Participation

### Finding 2

GOMA did not have a comprehensive process to verify that the expenditure data reported by VLT licensees was accurate, complete, and in the proper format, and did not initiate follow-up action to obtain the required information not reported by certain licensees.

### Analysis

GOMA did not have a comprehensive process in place to verify that the expenditure data reported by the VLT licensees was accurate, complete, and in the proper format, nor take follow-up action to obtain the required information that certain licensees failed to report during calendar year 2013. Since State law requires GOMA to monitor licensees' compliance with minority participation requirements and report on that compliance to MLGCC, this condition resulted in inaccurate and incomplete GOMA-reported data being included in MLGCC's related report of 2013 activity to the Governor and General Assembly.

All activities reported by the licensees to GOMA and MLGCC, and verifications by the Office of Legislative Audits (OLA) in calendar 2013 are included in Table 4. For the period reported, our tests concluded these data were not always accurate, as certain reported net expenditures (total expenditures less excludable expenditures<sup>1</sup>) were improperly omitted, excluded, or classified.

- GOMA did not verify the accuracy of the expenditure data reported by the licensees for calendar year 2013 that was used to determine minority participation levels. Specifically, GOMA did not perform a comprehensive review of licensee submitted information for obvious errors nor request independent supporting documentation (such as bank statements and vendor invoices) from the licensees to verify the completeness and accuracy of the submitted total and minority-related expenditure data. Our

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<sup>1</sup> Excludable expenditures are those amounts (for example, taxes and licenses, utilities) that licensees are permitted to deduct from their total expenditures when calculating their minority business enterprise percentage in accordance with Title 36 Subtitle 03 of the Code of Maryland Regulations.

review of the calendar year 2013 licensee submissions and GOMA reported expenditure data to MLGCC disclosed that the Horseshoe Casino Baltimore misclassified \$17.8 million of architectural and engineering costs as construction costs and listed the same payment totaling \$6.7 million twice in its construction costs. We also found that the Maryland Live! Casino improperly excluded \$900,000 of non-employee insurance costs from its operations costs. None of the three aforementioned conditions were detected by GOMA.

- Specific requirements regarding the content and format of expenditure and related minority participation information data to be submitted by licensees had not been established, which resulted in the omission of this data for two licensees in GOMA's calendar year 2013 report to MLGCC. Specifically, Rocky Gap Casino Resort's 2013 operations expenditures, which totaled \$14,424,376 with related minority business enterprise (MBE) expenditures of \$21,283, were not reported because the licensee was unable to segregate expenditures related to its casino operations from those expenditures attributable to its hotel, convention center, and golf course operations. Also, calendar year 2013 expenditures reported to GOMA by MGM National Harbor for architectural/engineering were \$6,022,404 and for construction were \$7,220,302, with related MBE expenditures of \$1,987,659 and \$361,461, respectively; however, GOMA omitted these from its 2013 report as some of the information submitted was not complete or verifiable. For example, GOMA had not received confirmation of MBE payments directly from the MBE firms.

**Table 4**  
**Comparison of GOMA Reported Data and OLA Verifications**  
**For Calendar Year 2013**

Casino	Type of Activity Reported	Data Reported By/ Verified By	Net Expenditures to All Vendors For Period Reported	Total Expenditures to MBEs for Period Reported	Licensee MBE Participation For Period Reported
Hollywood Casino Perryville	Operations	GOMA	\$6,657,298	\$271,312	4.08%
		OLA	\$6,657,298	\$271,312	4.08%
Casino at Ocean Downs	Operations	GOMA	\$4,693,695	\$335,980	7.16%
		OLA	\$4,693,695	\$335,980	7.16%
Maryland Live! Casino	Operations	GOMA	\$71,700,515	\$7,645,505	10.66%
		OLA	\$72,601,190	\$7,645,505	10.53%
Rocky Gap Casino Resort	Architectural/Engineering	GOMA	\$524,398	\$0	0.00%
		OLA	\$524,398	\$0	0.00%
	Construction	GOMA	\$17,850,840	\$1,530,927	8.58%
		OLA	\$17,850,840	\$1,530,927	8.58%
	Operations <sup>❶</sup>	GOMA	Not Reported	Not Reported	Not Reported
		OLA	-	-	-
Horseshoe Casino Baltimore	Architectural/Engineering <sup>❷</sup>	GOMA	\$6,715,149	\$89,226	1.33%
		OLA	\$24,520,757	\$89,226	0.36%
	Construction	GOMA	\$57,000,610	\$10,212,657	17.92%
		OLA	\$33,733,845	\$10,212,657	30.27%
MGM National Harbor <sup>❶</sup>	Architectural/Engineering	GOMA	Not Reported	Not Reported	Not Reported
		OLA	-	-	-
	Construction	GOMA	Not Reported	Not Reported	Not Reported
		OLA	-	-	-

**NOTE:** With the exception of the Horseshoe Casino Baltimore construction activity, minority participation goals had not been established for the remaining nine activities with licensee reported calendar year 2013 expenditures (see Finding 1).

- ❶ - MLGCC's 2013 annual report did not provide 2013 licensee expenditure data related to the activities that began during calendar year 2013; therefore, the data was included in and/or combined with the corresponding licensee data reported by GOMA for calendar year 2014.
- ❷ - MLGCC's 2012 annual report did not provide 2012 licensee expenditure data related to the activities that began during calendar year 2012; therefore, the data was included in and/or combined with the corresponding licensee data reported by GOMA for calendar year 2013.

Similar conditions were commented upon in our preceding audit report. Section 9-1A-10 of the State Government Article of the Annotated Code of Maryland requires that GOMA monitor each licensee's annual compliance with the minority participation requirements.

## **Recommendation 2**

**We recommend that GOMA**

- a. establish a formal process to verify the accuracy and completeness of expenditure data reported by the licensees (repeat);
- b. in conjunction with MLGCC, require licensees to submit all required expenditure data in the proper format and ensure that it includes the required content to facilitate its verification; and
- c. report to MLGCC the complete licensee minority participation information, including architectural and engineering, construction, and operations activity (repeat), and provide notification in writing of any licensees that have not complied with the aforementioned requirements.

## **Finding 3**

**MLGCC did not review the reported VLT licensee information received from GOMA to ensure that it was complete and accurate.**

## **Analysis**

MLGCC did not review the reported VLT licensee information received from GOMA to ensure that it was complete and accurate. Specifically, in addition to the unidentified errors attributable to incomplete or inaccurate licensee expenditure data submissions noted in Finding 2, we noted an undetected miscalculation by GOMA during our verification of the VLT licensee data GOMA used in preparing its 2013 annual report to MLGCC. This GOMA miscalculation was not detected by MLGCC and resulted in an omission of approximately \$1.3 million in Horseshoe Casino Baltimore's construction expenditures (the impact of this omission is included in OLA's related net expenditure total in Table 4). Because MLGCC did not review the information initially submitted by the licensees to GOMA supporting GOMA's subsequent report to MLGCC, errors went undetected and were included in MLGCC's annual report of calendar year 2013 participation activity to the Governor and General Assembly on the VLT facilities dated November 3, 2014.<sup>2</sup> Similar conditions were commented upon in our preceding audit report.

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<sup>2</sup> MLGCC only receives information on minority participation through the information the licensees provide to GOMA. MLGCC did not receive any minority participation information directly from any licensee.

Title 9 Subtitle 1A of the State Government Article of the Annotated Code of Maryland requires that MLGCC submit an annual report to the Governor and the General Assembly on licensees' minority participation goals and efforts to maintain them. MLGCC, as part of the license requirements, can require licensees to provide information in specific formats and to have the information audited by an independent certified public accounting firm.

### **Recommendation 3**

**We recommend that MGLCC**

- a. ensure the minority participation results it receives from GOMA are reasonably complete and accurate (repeat); or**
- b. as an alternative, consider requiring licensees to provide audited information in a format that presents the minority participation levels achieved for construction and operational procurements (repeat).**

APPENDIX

**Maryland Lottery and Gaming Control Agency**

Larry Hogan, Governor • Gordon Medenica, Director



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March 31, 2016

Mr. Thomas J. Barnickel III, CPA  
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*RE: MLGCC's Responses to Performance Audit*

Dear Mr. Barnickel:

Enclosed are the Maryland Lottery and Gaming Control Commission's (MLGCC) responses to the Video Lottery Operation Licensees - Minority Business Participation Performance Audit for the period January 1, 2013 through December 31, 2013.

If you should have any questions or require additional information, please contact James Butler, Director of Legislative & Policy Affairs, Maryland Lottery and Gaming Control Agency (MLGCA) at (410) 230-8781 or [jbutler@maryland.gov](mailto:jbutler@maryland.gov).

Sincerely,

Gordon Medenica  
Director

cc: Kimberly Robertson Pannell, Chair, Maryland Lottery and Gaming Control Commission  
Commissioners, MLGCC  
Gina M. Smith, Deputy Director & Chief Financial Officer, MLGCA  
Jim Nielson, Assistant Deputy Director & Chief Operating Officer MLGCA  
Jaclyn L. Vincent, Managing Director, Policy and Planning, MLGCA  
Robert T. Fontaine, Principal Counsel, MLGCA

**Maryland Lottery and Gaming Control Commission (MLGCC)**  
**Responses to Performance Audit on Video Lottery Operation Licensees -**  
**Minority Business Participation for Calendar Year 2013**

**Establishment of Minority Participation Requirements**

**OLA Finding 1**

**The Maryland Lottery and Gaming Control Commission has not established certain amended minority participation goals for four of the video lottery terminal licensees.**

**OLA Recommendation 1:**

We recommend that MLGCC establish amended minority participation goals for all categories in which VLT Licensees have expenditures (repeat).

**MLGCC Response 1:**

MLGCC agrees with the recommendation to establish amended Minority Business Enterprise (MBE) participation goals for all categories in which VLT Licensees have current expenditures.

As noted by the auditors, the request for proposals for the video lottery facilities delineated minority participation goals for each VLT Licensee. In August 2011, the Attorney General issued an advice letter recommending that these goals not be enforced due to constitutionality concerns and recommended that amended goals be established for architectural/engineering, construction and operational procurement activities. However, when the advice letter was issued in August 2011, two VLT Licensee locations had already opened and were operating and a third VLT Licensee location opened 10 months later. By this time, the architectural/engineering and construction activities at these VLT Licensee locations had already been completed or were almost completed.

Moving forward, MLGCC plans to establish MBE participation goals for VLT licensees' ongoing operations expenditures. MLGCC has issued or will be issuing MBE goals for other Licensee projects. On December 14, 2015, for example, MLGCC sent the Architectural and Engineering budget and Construction budget for the Casino at Ocean Downs' planned addition to the Maryland Department of Transportation (MDOT) for its input in MLGCC's goal setting methodology. We have not received MDOT's final analysis. Meanwhile, MLGCC is in the process of reviewing Licensees' ongoing operating budget submissions and will be issuing these MBE participation goals for the ongoing operations phase in the very near future.

## Reported Minority Participation

### **OLA Finding 3**

**MLGCC did not review the reported VLT licensee information received from GOMA to ensure that it was complete and accurate.**

### **OLA Recommendations 3(a)-(b):**

We recommend that MLGCC

- a. ensure the minority participation results it receives from GOMA are reasonably complete and accurate (repeat); or
- b. as an alternative, consider requiring licensees to provide audited information in a format that presents the minority participation levels achieved for construction and operational procurements (repeat).

### **MLGCC Responses 3(a)-(b):**

MLGCC agrees to ensure that minority participation results it receives from GOMA are reasonably complete and accurate by documenting its review and by having its internal auditors independently verify, on a test basis, the data contained in the report.

MLGCC did review the information submitted by GOMA but agrees that the review should have been adequately documented and more comprehensive. MLGCC receives vendor spending data on a monthly basis from existing Licensees for licensing purposes. This vendor spending data captures mainly ongoing operations data from all vendors doing business with the respective Licensee. MLGCC has been and continues to review the data submitted by the Licensee and compiled by GOMA to ensure that it is reasonably complete and accurate. MLGCC will continue to compare and verify the Licensee's overall spending and MBE data that is submitted to GOMA with the Licensee's vendor spending data that is submitted to MLGCC for licensing purposes and will adequately document this review. Furthermore, MLGCC has developed its own audit process to review and test the Licensees' overall spending and MBE data submitted to GOMA in order to help improve our verification process of ensuring that the data reported is complete and accurate.

As an additional measure, MLGCC and GOMA have developed a certification form that each Licensee must complete when submitting annual overall spending and MBE data to GOMA. MLGCC and GOMA implemented this form in January 2016, and VLT Licensees will be required to submit this form to GOMA every six months for its reporting requirements to MLGCC. The Licensee will be affirming that the data submitted to GOMA and MLGCC is complete and accurate.





LARRY HOGAN, Governor  
BOYD K. RUTHERFORD, Lt. Governor

JIMMY RHEE, Special Secretary

March 29, 2016

Mr. Thomas J. Barnickel III, CPA  
Department of Legislative Services  
Office of Legislative Audits  
301 West Preston Street  
Baltimore, Maryland 21201

Dear Mr. Barnickel:

The Governor's Office of Minority Affairs (GOMA) has reviewed the draft audit report on the Video Lottery Operations Licensees- Minority Business Participation dated February 2016. Please find attached the office's itemized responses to the findings and recommendations.

GOMA was audited on information submitted to the Maryland Lottery and Gaming Control Commission regarding the attainment of minority business participation goals in calendar year 2013 by the following video lottery operation licensees: Hollywood Casino Perryville, Casino at Ocean Downs, Maryland Live! Casino, Rocky Gap Casino Resort, MGM National Harbor and Horseshoe Casino Baltimore.

An electronic version of this response has been submitted to your office via e-mail at [response@ola.state.md.us](mailto:response@ola.state.md.us) under file name – "GOMA VLT Audit Response 2013."

If you or members of your staff have any questions or need additional information, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in dark ink, appearing to read "JRhee", followed by a small flourish.

Jimmy Rhee  
Special Secretary

Enclosures:

cc: Craig Williams, Ph.D., Chief of Staff, Office of the Governor  
Chris Shank, Deputy Chief of Staff, Office of the Governor

## **Finding 2**

**GOMA did not have a comprehensive process to verify that the expenditure data reported by VLT licensees was accurate, complete, and in the proper format, and did not initiate follow-up action to obtain the required information not reported by certain licensees.**

### **GOMA Response to Finding 2**

GOMA concurs with the auditor's recommendation. For the 2014 reporting period, GOMA has established a three-pronged review process, which includes comprehensive monitoring, numerator analysis and denominator analysis. Within the three prongs, there are specific procedural steps, which include scheduling periodic meetings with licensees to review reporting information, site visits to review records and verification of information reported on Forms D5 and D6.

### **Recommendations**

- a. Establish a formal process to verify the accuracy and completeness of expenditure data reported by the licensees.**

GOMA concurs with the auditor's recommendation noting that such a process has been implemented and became effective for the 2014 reporting period. Additionally, GOMA, in conjunction with the MLGCC, is requiring all Licensees to sign an affidavit attesting to the accuracy and completeness of their expenditure and minority participation data. This mandate became effective for the 2015 reporting period and applies to Licensees' semiannual and annual reporting submissions.

- b. In conjunction with MLGCC, require licensees to submit all required expenditure data in the proper format and ensure that it includes all the required content to facilitate its verification;**

GOMA concurs with this recommendation. As stated in response to Recommendation A, procedures have been implemented to ensure the completeness and accuracy of the expenditure and minority business participation data reported by Licensees. Furthermore, for the 2014 reporting period, GOMA performed random sample testing for each Licensee to test the veracity and completeness of required data.

- c. Report to MLGCC the complete licensee minority participating information, including architectural and engineering, construction, and operations activity (repeat), and provide notification in writing of any licensees that have not complied with the aforementioned requirements.**

GOMA concurs with this recommendation. However, for clarification, GOMA's 2013 report to MLGCC cited the delayed receipt of required data from certain licensees (i.e., MGM National Harbor and Rocky Gap Casino). Thus, this data was ultimately not included in the final report as it was pending testing and verification. GOMA has since reported on 2013 MBE participation data from the previously omitted licensees. Going forward, reports include complete architectural and engineering, construction, and operations activity from all licensees. GOMA regularly communicates with MLGCC any activity by Licensees that may hinder efforts to report participation information.

AUDIT TEAM

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