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Thomas Tinlin, Highway Administrator
Massachusetts Department of Transportation
10 Park Plaza
Boston, MA 02116

Re: Massachusetts Turnpike Emergency Towing Services Procurement

Dear Mr. Tinlin:

The Office of the Inspector General (“OIG”) received a complaint alleging flaws and favoritism in Massachusetts Department of Transportation’s (“MassDOT”) procurement process for towing services on the Massachusetts Turnpike (“Turnpike”) that began in 2013.

Pursuant to its statutory authority under Chapter 12A of the Massachusetts General Laws, the OIG reviewed MassDOT’s procurement process for emergency towing and related services on the Turnpike. MassDOT issued a Request for Responses (“RFR”) in November 2013. In April 2014, MassDOT put the procurement on hold and issued a series of contract extensions for two years. MassDOT issued a new Request for Responses (“2016 RFR”) for towing services on the Turnpike in July 2016.

Based on its review of the procurement process related to the RFR issued in 2013, the OIG found that:

- MassDOT violated its procurement rules by appointing a procurement team whose members lacked adequate experience, training and preparation to write specifications and evaluate bids.
- MassDOT appointed individuals to the Procurement Management Team (“PMT” or “team”) who had had prior interactions with bidders and appeared to lack impartiality.
- MassDOT’s RFR and its subsequent Amended RFR contained many confusing, imprecise and contradictory specifications.

- MassDOT’s score sheets for evaluating bids did not conform to the RFR, ignored or downplayed significant criteria, and exaggerated the importance of minor specifications.
- MassDOT’s decision to issue an Amended RFR violated its procurement rules.
- Procurement officials’ handling of bidders’ references had serious flaws and irregularities that showed favoritism to one company and a bias against that company’s competitors.
- Procurement officials showed favoritism toward one company by allowing it to submit supplemental information after bids had been opened, violating MassDOT’s procurement rules.
- The PMT lacked impartiality and took actions to exclude or disadvantage a specific vendor.
- MassDOT and MSP’s towing procedures on the Turnpike provided a favored vendor with preferential treatment.
- MassDOT has failed to properly administer and manage its existing towing contracts, resulting in lost revenue.
- The existing contract exempts revenue that towing companies receive for certain services from the requirement to pay a percentage to MassDOT, passing up a source of additional revenue.

Background

In July 2013, MassDOT’s Purchasing Department assembled a PMT to procure emergency towing and related services¹ along the Turnpike. The team consisted of three MassDOT employees and three Massachusetts State Police (“MSP”) lieutenants assigned to Troop E. Troop E patrols the Turnpike under a MassDOT contract funded from Turnpike revenue. Silvio Petraglia, MassDOT’s chief procurement officer at the time, oversaw the process. Marie Luskin, his assistant and a buyer for MassDOT, served as Procurement Team Leader (“PTL”).² As PTL, her role included drafting the RFR, coordinating the PMT’s meetings, communicating with prospective bidders and maintaining all bid-related documents.

¹ “Emergency towing and related services” is described in MassDOT’s RFR as responding to accidents, removing disabled vehicles and providing roadside assistance to motorists when requested by a MassDOT employee or a Massachusetts State Police Officer.

² Petraglia and Luskin retired in 2015.

I. Original RFR

The team met on July 30, 2013 and October 17, 2013 before issuing its RFR for towing services on November 25, 2013. During these two meetings, PMT members never discussed several essential aspects of the contract in advance of posting the RFR. For example, members of the team never discussed the issue of pricing and MassDOT's financial goals for the towing services contracts, nor did they discuss how to evaluate references or how much weight to place on references. Instead, members of the PMT spent much of their time discussing logistical matters, such as what kind of reflective vests tow company personnel should wear and whether to require contractors to carry absorbent material on their vehicles for oil and other spills.

In almost all respects, the RFR mirrored the prior RFR for towing services, which was awarded in 2009 when the Massachusetts Turnpike Authority ("MTA") operated the Turnpike. As in the earlier RFR, the new RFR divided the Turnpike into eight geographical sections (Road Sections 1-8), with MassDOT awarding a single company the exclusive rights to perform towing services in each section. The RFR stated that companies awarded a towing contract would be required to pay MassDOT 15% of all revenues from tows originating on the Turnpike, the same percentage towing firms paid under the contracts awarded in 2009. The RFR also did not change language from the 2009 contracts mandating that towing firms remove a disabled vehicle within 20 minutes of being called by the MSP or MassDOT. The RFR required bidders to submit itemized prices for different types of service – towing, mileage, roadside services (changing a flat tire, providing fuel, etc.) and vehicle storage – with those rates further broken down for passenger and commercial vehicles.³

The RFR specified a handful of changes in the new contracts. For instance, the new contracts could be in place for up to seven years at MassDOT's discretion. The prior contracts had a five-year maximum duration. Also, the new RFR asked bidders for references from three commercial or governmental clients; the RFR for the 2009 contracts did not ask for references. The new RFR also included this specification: "It is preferred that the Contractor be affiliated with the AAA Auto Club," a reference to the American Automobile Association ("AAA"). The solicitation for the 2009 contracts required bidders to be affiliated with at least one nationally recognized automobile club but did not state a preference for a particular company. A fourth difference, regarding pricing, is described in Finding 3 below.

On January 14, 2014, MassDOT publicly opened the bids submitted in response to the RFR. One bidder, Perfection Towing of Watertown ("Perfection"), proposed a price of \$1 per tow for passenger vehicles in the two easternmost sections of the Turnpike (Road Sections 7 and 8). The extremely low bid surprised MassDOT officials, who immediately contacted Perfection to see if the \$1-per-tow price was a typographical mistake. Because the RFR required towing

³ The tow rate set in the new contracts would apply to a vehicle transported to the towing firm's place of business or to the nearest roadway exit. If a motorist wanted his vehicle towed elsewhere, the tow company and the motorist would negotiate a flat fee. MassDOT would also receive 15 % of the revenue from all tows, including these negotiated, flat-fee tows.

companies to give MassDOT 15% of their Turnpike towing revenue, MassDOT stood to make just 15 cents per tow. Officials at Perfection confirmed their \$1 per tow bid. They believed that, while the firm would lose money on each \$1 tow, a sufficient number of the towed vehicles' owners would choose to have work done at the firm's repair shop to make the contract profitable.⁴ MassDOT would not receive any portion of the revenue from repairs.

MassDOT assembled four of the six PMT members on February 6, 2014 to evaluate and score the bids for each roadway section. The score sheet had seven categories in which the evaluators could award points. Bidders could receive up to 100 points overall. A maximum of 20 points could be awarded in each of four categories – pricing, response time, references and equipment. Bidders could receive up to 10 points for the quality of the background checks they performed on their tow truck drivers. Finally, PMT members could award up to 5 points in two additional categories: properly completing the bidding paperwork and having a facility within 20 minutes of the roadway section being bid on.

After each of the four team members in attendance completed the scoring, Luskin prepared a chart showing the cumulative score for each bid in each section. The following companies received the highest score for each road section:

Highest Scoring Bidder in Each Road Section	
Section 1	R.W.'s Inc. (only bidder)
Section 2	Interstate Towing Inc.
Section 3	CJ's Towing Unlimited (only bidder)
Section 4	Sturbridge Service Center Inc.
Section 5	Ted's of Fayville Inc.
Sections 6, 7 and 8	Perfection Towing

On February 18, 2014, Petraglia sought advice from officials inside MassDOT about how to handle issues related to the towing procurement. The issues centered around Perfection's \$1 per tow bids and a letter from Negoshian's Towing Service ("NTS" or "Negoshian's"), a competitor of Perfection, pointing to several "brazen deficiencies and inadequacies" in Perfection's proposals, including the minimal revenue generated for MassDOT by Perfection's low bid.

II. 2014 Amended RFR

A week later, Luskin notified the team that MassDOT would soon issue an amended RFR for emergency towing and related services ("Amended RFR"). MassDOT released the Amended

⁴ Perfection also bid on Road Section 6, which runs from Westborough to the MSP's Weston barracks and is the portion of the Turnpike the company currently services. In response to the RFR, Perfection bid \$10 per tow for passenger vehicles in Road Section 6, a level below its price on the current contract but not as aggressive as the \$1 bids on Road Sections 7 and 8.

RFR on March 14, 2014, making a small number of changes to the original RFR. Bidders had to respond to the Amended RFR by April 11, 2014. The Amended RFR limited bidding to the firms that had submitted a proposal for the original RFR and only for the roadway segments the firms had bid on initially. MassDOT notified bidders that there would not be a public bid opening.

The Amended RFR had three noteworthy changes. First, it added a requirement that the towing company's office and storage facility be located within 20 miles of the entire road section. Second, the Amended RFR removed the preference for vendors affiliated with AAA; instead, the Amended RFR stated MassDOT preferred vendors affiliated with a nationally recognized automobile club, not exclusively AAA. Third, the Amended RFR modified the language about pricing, which is described in detail in Finding 3 below.

At the same time, Luskin changed the scoring sheet dramatically. The team could now award points in eight different categories, with a maximum of 62 points available overall. Bidders could receive up to 30 points – 48% of all available points – for references. A second category – affiliation with a nationally recognized automobile club – was worth two points. Scorers could also only award up to five points in each of the six other evaluative categories, including whether the bidder had the mandated equipment, met the 20-mile requirement and had submitted the proper paperwork.

The Amended RFR's score sheet dramatically lowered the number of points available in the pricing section to five. The new score sheet asked PMT members to grade each firm's price proposal in two ways: Category A for customer cost and Category B for MassDOT revenue. Each PMT member had to rate both Category A and Category B on a scale of one to five, but the combined score could not exceed five.

In early April 2014, MassDOT cancelled the Amended RFR and suspended the procurement process. The agency issued a series of temporary extensions to the existing contract. On July 14, 2016, MassDOT issued a new RFR for towing services on the Turnpike. MassDOT cancelled that RFR and issued a new RFR ("2016 RFR") on July 25, 2016. On August 11, 2016, MassDOT issued an Amended RFR ("Amended 2016 RFR").

Findings

I. MassDOT violated its own policies by appointing a procurement team whose members lacked adequate experience, training and preparation to write the RFR and evaluate the bids.

MassDOT's procurement manual⁵ required each RFR to have a clear description of the product or service, clear and specific evaluation criteria, and a score sheet that would determine

⁵ MassDOT's procurement manual, "How to Conduct a MassDOT Procurement, Volume 1: Goods & Services Over \$150,000," prepared by MassDOT's legal department in November 2011, described the rules and procedures applicable to the towing procurement.

which bid represented the best value for MassDOT. MassDOT's manual invested much of the responsibility for the RFR and the scoring with the PMT, composed of the PTL and subject matter experts.⁶ The PTL's duties included assembling the rest of the PMT, helping to develop the RFR and the score sheet, and guiding the PMT through the procurement process. The rest of the team, according to the manual, needed to be subject matter experts. "They are your Procurement Management Team. Subject Matter Experts have a unique understanding of the need for and use of a required product and/or service."⁷ Subject matter experts' duties included helping to develop the RFR's specifications, voting to approve the RFR, and evaluating each bid numerically using a score sheet.

Luskin, a MassDOT buyer and the PTL for the towing contract, had never overseen a procurement prior to being assigned the towing RFR. Of the remaining six team members, five had never been involved in procuring goods or services through a bid process. One MassDOT employee had had some experience selecting contractors for Turnpike construction projects between 1997 and 2001, but he said towing contract procurement bore no similarity to construction bidding and therefore his prior experience was not useful. Also, members of the team did not receive any training or instruction about the state's or MassDOT's procurement rules or policies.

All of the MassDOT team members acknowledged that they had little, if any, relevant knowledge about the towing business or the Turnpike's towing needs. None considered himself a "subject matter expert," as called for by MassDOT's procurement policies. Some said they deferred to Petraglia and Luskin rather than suggest changes to the RFR. As a result, the MassDOT employees on the PMT offered minimal input on the RFR.

The MSP team members had extensive personal experience with towing companies and dealing with accidents, disabled vehicles and other situations requiring roadside assistance. None of the MSP members, however, had experience procuring or managing a competitive towing contract. Like the MassDOT members of the PMT, the three MSP lieutenants did not have an expertise in the towing industry or knowledge of MassDOT's overall needs and objectives for the towing contracts. The three lieutenants also made very few suggestions for the RFR. The MSP members restricted their participation and comments about the RFR to two issues: ensuring the RFR required vendors to respond within 20 minutes and establishing a preference for towing companies affiliated with AAA.

With regard to evaluating the bids, MassDOT's procurement manual stated that bids should be evaluated using a score sheet developed by the PTL and approved by the PMT, using the same objective criteria that are set out in the RFR. "All PMT members must use the same

⁶ *Id.* p. 5.

⁷ MassDOT's procurement manual, pp. 4, 8. The manual allowed the PMT to use outside experts to augment the PMT. "Additional Experts may be brought in by the PMT where the procurement is very technical in nature. These Experts however do not participate in the voting or scoring process," the manual stated. However, the PMT did not use outside experts.

factors (and the same weight) for scoring each bid, and those factors must follow the evaluation criteria in the RFR.”⁸

The PTL drafted a score sheet for the original RFR and PMT members approved the score sheet without proposing any changes; however, their acceptance reflected a lack of engagement, not a shared understanding of MassDOT’s financial priorities for the towing contracts or universal agreement on the importance of references.

In fact, the PMT members held significantly different, and in some cases conflicting, opinions on how to value key parts of the bids. For example, PMT members had divergent views on pricing. One MassDOT employee said that the team wanted vendors charging “on the higher end” for tows in order to maximize revenue from the contract. Another MassDOT representative said the PMT emphasized low towing charges to minimize the cost to motorists. The third MassDOT employee said that the RFR needed to be “fair” to the motorist while not shortchanging MassDOT, thereby avoiding both the maximum and minimum rates. The MSP members of the team had no opinion about the contract’s financial aspects.

PMT members also had dramatically different views about the value of references supplied by the bidders and how much weight to give them. One PMT member said weighting the “References” category with almost half the points, as the Amended RFR’s score sheet did, was justified. Others, however, felt that references hand-picked by the bidders had little value. As one team member said, “You can get anybody to write a reference.” The dissimilar opinions reflected the fact that the PMT members met only twice before issuing the RFR, never discussed key elements of the bids and did not participate in developing the score sheets.

In essence, the PMT failed to prepare properly for this procurement. The procurement manual stated, “**Remember: the goal is to select a bidder, based upon a fair and impartial decision documented in the procurement file, that best meets the concept of best value as defined in the procurement.**” [bold in original] In this case, the PMT never defined or even talked about what represented “best value”⁹ for MassDOT. The PMT issued an RFR, approved a score sheet and rated bids – all without discussing core issues, such as pricing and the importance of references.

⁸ *Id.* at p. 8.

⁹ The RFR was issued pursuant to the Executive Office of Administration and Finance’s procurement regulations, 801 CMR 21.00, “Procurement of Commodities or Services, Including Human and Social Services.” This regulation defines “Best Value” as: “The result of common sense Procurement decision-making consistent with the State’s Procurement Principles, which are to balance and support the achievement of: required outcomes, best quality economic value, timely performance, minimizing the burdens on administrative resources, expediting simple or routine purchases, flexibility in developing alternative Procurement and business relationships, encouraging competition, encouraging the continuing participation of quality Contractors and supporting State and Department Procurement planning and implementation.”

The OIG found that MassDOT appointed individuals to the PMT who were not subject matter experts, contrary to the rules expressed in the procurement manual. Also, PMT members received inadequate training and guidance about their responsibilities as PMT members. Because the PMT members lacked the proper expertise and background, they were unable to produce a clear and specific RFR, to develop a useful score sheet and to effectively evaluate bids. These were critical responsibilities that the PMT failed to fulfill, violating MassDOT's procurement policies.

II. MassDOT appointed individuals to the PMT who had had prior interactions with bidders and appeared to lack impartiality.

Two MSP members of the PMT had had prior dealings with towing companies bidding on the RFR and held negative opinions about two of the companies. In addition, one company named the PTL as one of its references. These factors called into question the impartiality of the PMT.

On July 18, 2013, just as MassDOT was getting ready to start the procurement process for towing services, Lt. Drew Kalton, MSP's Operations Officer and the MSP liaison to the Turnpike, forwarded two complaints about NTS to MassDOT officials. Along with the complaints, Lt. Kalton wrote, "With the upcoming renewal of the tow contract, and hearing many negative comments about some tow companies, I ask that all tow complaints be documented in writing. These recent complaints on Negoshian[']s stem from them losing their affiliation with AAA. I'm sure AAA had a good reason for stripping them of their AAA status. Maybe we need to take a closer look at them to make sure they are worthy of the MassPike contract."

A few minutes later, Steve Jacques, a senior MassDOT official, replied, "Negoshian[']s ongoing issues need to be reviewed carefully up [to] and including should they be able to even submit a bid." Less than an hour later, Luskin, who had received the email exchange, invited Lt. Kalton to serve on the PMT.

Later that day, at Lt. Kalton's request, Luskin invited the Weston barracks commander, Lt. David Keefe, to also serve on the PMT. As Weston barracks commander, Lt. Keefe had had direct experience with the towing companies serving the three easternmost sections of the Turnpike: Perfection, NTS and Todisco Towing. Lt. Keefe told the OIG that he disapproved of NTS because its former owner had called the Weston barracks and directed profanity at MSP staff. In addition, he said troopers had lodged a number of complaints about the company's performance.

On July 26, 2013, Lt. Kalton forwarded to Jacques two recent emails he had received from MSP personnel complaining about Todisco Towing. He added, "I don't want it to seem like we're piling on here with all the recent complaints (6 in 2 weeks). A few weeks ago I asked that troopers document deficiencies with tow companies due to the upcoming renewal of the contract.

I don't think Todisco is doing anything different that they were doing before, we're just finally documenting it."

Jacques forwarded Lt. Kalton's email to Petraglia and David Fenton, who oversaw towing and Emergency Service Patrol services for the Turnpike and who had been appointed to serve on the PMT. Jacques wrote, "Cut the comedy, have an explanation from these clowns by Noon. Look at contract ck with Marie [Luskin] how to Not give this clown our work and go to Perfection, who can handle it. Jump on this."

Three weeks before the PMT's first meeting, Luskin sent an email to Perfection's owner, Susan Penta, commending two of the company's employees for their "outstanding service" assisting a disabled truck at MassDOT's Weston location earlier that day. When Perfection submitted its proposal in response to the RFR six months later, company officials included that email as one of a dozen letters of reference. [See Finding 6 for more details about this.]

MassDOT's procurement manual did not require that the PMT exclude anyone who had had contact with bidders; however, it did set a standard of fairness, openness and impartiality. For example, in its section on scoring, MassDOT's procurement manual stated:

Scores should not be based on the subjective opinion of a PMT member. If a PMT member has information that may significantly affect the selection or non-selection of a bidder, that member should submit written documentation of this information to the Project [*sic*] Team Leader A PMT member's opinion (both positive and negative) of a bidder, based on his or her own personal prior experience, should not be used to evaluate bidders unless the information about past experience is shared in writing with the PMT and prior experience of other bidders is considered as well....¹⁰

The manual explained that written disclosures about a PMT member's prior experience were important because "**the goal is to select a bidder, based upon a fair and impartial decision documented in the procurement file....**"¹¹

No PMT members filed written disclosures concerning prior personal experience with, or other information about, bidders. The appointment of lieutenants who had pre-existing negative opinions about two bidders undermined MassDOT's goal of fairness and impartiality.

Luskin also did not file a written disclosure. As PTL she played a central role throughout the procurement process, including the evaluation of references. When Perfection submitted its bid with Luskin's email as a reference, MassDOT and Luskin should have taken steps to ensure that the procurement was – and would be perceived as – fair and objective.

¹⁰ *Id.* at p. 8.

¹¹ *Id.* at p. 9 [bold in original].

III. The original RFR and the Amended RFR contained confusing, imprecise and contradictory specifications.

Under MassDOT's policies governing this procurement, an RFR must have "a clear description of the product or service" as well as "clear and specific evaluation criteria."¹² The OIG identified weaknesses and flaws in the original RFR and the Amended RFR, defects that led to complaints from bidders and confusion among the procurement officials.

A. Pricing

The most glaring example of flawed specifications involved pricing. Page 5 of the RFR stated that MassDOT could award the contract based on "best value overall." On page 12, the RFR stated, "MassDOT will make an award for the most economical, reasonable source of acceptable service." On page 10, the RFR stated, "for MassDOT this will be a Revenue Producing contract."¹³ These statements and the requirement that Turnpike towing contractors pay MassDOT 15% of all towing and mileage charges was repeated in several sections of the RFR.

The language emphasizing MassDOT's financial benefit from the contracts understandably led some companies to believe that a bid providing more revenue to MassDOT would be ranked higher. However, on page 22, the RFR stated that "contracts will be awarded to the lowest responsive and responsible bidders for each MassDOT Road Section." The score sheet for the original RFR reflected this language. It awarded the most points to the company that provided the least revenue.

Perfection's \$1-per-tow bid revealed the ambiguity of the RFR's pricing language. It also caused problems for MassDOT officials, both internally and externally.

Ultimately, the chief procurement officer chose to issue the Amended RFR. MassDOT changed the language to read that the contracts would be awarded on a "best value" basis and that prices for towing, mileage and storage "should not be less than 10% of the maximum rates allowed by Statute and Regulation." This attempt to correct the original RFR was itself ambiguous and required MassDOT to issue a clarification to bidders instructing them that all bids should be within 10% of the state-approved maximum of \$90 per tow¹⁴ (*i.e.*, between \$81 and \$90); however, the RFR did not indicate whether MassDOT preferred pricing on the higher or lower end of the range.

¹² *Id.* at p. 5.

¹³ MassDOT procurement officials knew of no special significance attached to the term "Revenue Producing contracts." State transportation bonds contain language providing that revenue from the agency's "Revenue Producing contracts" can be used to pay bondholders rather than being transferred to the General Fund.

¹⁴ *See* 220 CMR 272.03.

The Amended RFR's language on pricing introduced a new contradiction in the specifications. The Pricing section of the Amended RFR required contractors to charge a minimum of \$81 per tow for a passenger vehicle. This language contradicted the section of the Amended RFR about affiliation with a national auto club, which stated: "[T]he Contractor, when servicing a motorist that is affiliated with the Contractor's auto club, is required to invoice the motorist the lesser of service rates between this contract and the auto club rates." AAA and other companies providing roadside assistance have contract rates much lower than \$81 per tow.

B. Mileage requirement

In late February, MassDOT officials decided to prepare an Amended RFR to address issues encountered in responses to the original RFR. One issue was that some MassDOT officials felt the response time standard of "20 minutes...under normal traffic conditions" was too imprecise and subjective. To address this, Petraglia and Luskin discussed requiring that a bidder's facility be within a 20-mile radius of the entire road section for which the company was submitting a proposal.

Prior to issuing the Amended RFR, MassDOT personnel computed the distance of each bidder's facility to the eastern and western boundaries of the road sections for which the firm had submitted a proposal. MassDOT's analysis showed that no bidders could meet the 20-mile standard in four of the eight road sections. Two other road sections had only one bidder that met the 20-mile standard. On February 25, 2013, Luskin emailed the PMT asking whether the 20-mile requirement was "realistic." MassDOT's procurement file contained no record of any responses from the rest of the PMT.

When issued in mid-March, the Amended RFR contained a geographic specification: "All Contractors must have a facility that is located within a 20-mile radius of the entire Roadway Section that you are bidding on."

At the same time, MassDOT also added a new restriction: Only companies that had responded to the original RFR could respond to the Amended RFR, and only for the road sections for which they had initially bid. As noted above, for four of the eight road sections, MassDOT did not receive a bid from any company that met the 20-mile requirement. Taken together, the two new rules – adding the 20-mile requirement while prohibiting new bidders from submitting proposals – left MassDOT without any eligible bidders for half of the highway.

IV. MassDOT's score sheets for evaluating bids did not conform to the RFR, ignored or downplayed significant criteria, and exaggerated the importance of minor specifications.

The OIG found that the score sheets did not always correspond to the evaluation criteria described in the RFR. In addition, the score sheets sometimes ignored or minimized the importance of crucial specifications and exaggerated less significant ones.

A. Supplier Diversity Program

To comply with Executive Order No. 524, MassDOT's procurement policies require bidders to submit a completed Supplier Diversity Program ("SDP") Plan as part of their bid.¹⁵ "The SDP Plan must be evaluated at 10% or more of the total evaluation," according to MassDOT's procurement manual. The original RFR contained the language requiring submission of an SDP Plan, stating it would count for 10% or more of the total evaluation of the bid.

Despite the mandate in MassDOT's procurement policies and the language in the RFR, neither the score sheet for original RFR nor the score sheet for the Amended RFR provided any points for SDP participation. In fact, the SDP program was never mentioned in any PMT meeting minutes. MassDOT records show that more than half the bidders indicated they would have 0% participation in the Supplier Diversity Program; a few listed 1% participation, and two bidders listed 10% participation.

MassDOT's records show that the PMT took no notice of the bidders' responses to this specification, in violation of Executive Order No. 524, MassDOT's procurement manual and the RFR itself. While Executive Order No. 524 allowed agencies to seek a waiver of the SDP requirements, MassDOT's procurement file contained no record showing that it waived or intended to waive the SDP Plan requirement. If MassDOT had followed its policy and valued SDP plans at 10% or more of the available points, it could have had a material effect on the ranking of bidders.

B. References

The original RFR, the Amended RFR and their respective score sheets gave unwarranted weight to bidders' references.¹⁶ The RFR required each bidder to give MassDOT three commercial or governmental client references, listing the name, contact information, and the type and duration of service provided to the client. The original RFR's score sheet gave the PMT the choice of awarding 20 points for good references, 10 points for fair references, or five points for poor references. With 100 points available overall, the score sheet assigned 20 points – one-fifth – to references, giving this category equal weight with pricing, equipment and response time.

Predictably, every reference who responded offered a positive assessment. (Several people listed as references did not respond to MassDOT's emailed inquiries.) Allowing bidders to hand-pick references virtually ensured that all of the feedback would be favorable. This process produced no information useful in evaluating a bidder.

¹⁵ MassDOT's procurement manual, p. 4.

¹⁶ The OIG also describes other problems related to bidders' references in Findings 1, 2, 6 and 9.

For the Amended RFR, the Procurement Team Leader changed the score sheet. The new score sheet had 62 points available overall, with 30 of those points – 48% – allocated to references. This scoring structure made references almost as important as all the other categories combined. According to Luskin, the MSP members of the PMT wanted more weight given to references for the Amended RFR so she changed the score sheet to magnify the importance of that category. Seven of the 10 bidders listed MSP personnel as references, with some bidders listing more than one officer.

The OIG found that the PMT’s treatment of references, as expressed in the score sheets, was badly flawed. For example, it is baffling that the score sheet for the original RFR awarded any points at all for poor references. Bidders should receive zero points for poor references. In addition, the OIG believes that in this case, basing 20% of each company’s score on three references hand-picked by the bidder was unwarranted; basing almost half the score on references, as the Amended RFR’s score sheet did, was unreasonable.

C. Pricing

MassDOT’s procurement manual stated, “Cost is a very important part of all bids.”¹⁷ In the case of the towing RFR, the financial component was the revenue MassDOT would receive (rather than an expense it would pay out to a vendor). The underlying principle, however, remained the same: the financial aspect of the RFR was important. Despite that, the score sheet for the Amended RFR made bidders’ price proposals essentially irrelevant, the OIG found.

When the PTL issued the Amended RFR, she also posted a new score sheet that differed dramatically from the score sheet for the original RFR. As noted above, the new score sheet lowered the number of points available overall from 100 to 62. The number of points available in the pricing category was lowered from 20 on the original RFR’s score sheet to just five points on the Amended RFR’s score sheet. The new score sheet directed PMT members to split the grade for each firm’s price proposal into two parts: Category A for customer cost and Category B for MassDOT revenue. Each PMT member had to rate both Category A and Category B on a scale of one to five, but the combined score could not exceed five.

Under this scheme, a bidder who offered the lowest allowed cost – \$81 per tow – would presumably have gotten high marks in Category A (customer cost) but low marks in Category B (MassDOT revenue). Another bidder could have pursued the opposite strategy and proposed charging customers the maximum allowed rate of \$90 per tow. This bidder would presumably have gotten low marks in Category A but high marks in Category B. A third bidder could have proposed a price in the middle of the allowed range. With a scoring system set up as a trade-off between customer cost and MassDOT revenue, all three bidders could expect to receive the same number of points. Essentially the scoring system would not draw distinctions between any of the bidders no matter where they bid within the required range.

¹⁷ MassDOT’s procurement manual, p. 9.

The PTL's scoring system for the Amended RFR did not reflect the fact that motorists are often charged an amount very different from the bid rate. Companies providing roadside assistance have contract rates with towing companies well below the state's \$90 maximum charge. Towing companies report that most motorists are affiliated with a roadside assistance company. Also, for a significant number of tows, the motorist directs the towing company to deliver the vehicle to a location other than the towing company's storage yard. In those cases, the bid price does not apply; the company and the motorist agree on a negotiated price. The PMT's scoring system did not recognize that many tows involve charges different from the bid price.

The purpose of scoring is to distinguish between proposals and rank them objectively. By offering so few points for pricing and structuring the scoring in this way, the Amended RFR's score sheet provided no way to differentiate between bidders' price proposals. As noted above, MassDOT's procurement manual recognized that the financial terms of contracts are important. The Amended RFR's score sheet treated pricing as immaterial.

V. MassDOT's decision to issue the Amended RFR violated its procurement policies.

As discussed in the Background section and in Finding 3, the RFR's language about pricing confused some bidders. It also produced an undesirable outcome for MassDOT, as officials realized when they opened Perfection's \$1 bids for Road Sections 7 and 8. Petraglia, MassDOT's chief procurement officer, felt MassDOT's revenue from those sections – 15 cents per tow – would not cover the cost of administering the contract. In effect, MassDOT would lose money by awarding the contracts for Road Sections 7 and 8 to Perfection.

MassDOT's procurement manual provided direction when errors, ambiguities, confusion or unfavorable outcomes occur. The manual stated that if procurement officials detect an error in an RFR before bidders submit responses, officials could post a correction on Comm-PASS, which was the state's on-line procurement portal when the procurement manual was published. However, the manual further stated that MassDOT must withdraw the bid if the error is of "true significance," such as when a specification is completely wrong:

If the error is in a material factor, such as the term, submission requirements, specifications, cost estimate, then you can amend the RFR by putting the corrections on Comm-PASS and if necessary increase the response dates for questions and submissions. If the error is of true significance, and an amendment would not be sufficient (i.e. the specification is completely wrong), put a notification on Comm-PASS that the bid solicitation has been withdrawn and it will be re-submitted. In fact, anytime prior to selection, you can retain the right to cancel the bid....¹⁸

MassDOT's procurement manual also provided direction when the bidders' responses reveal a problem. In particular, officials could correct ambiguities that were not significant. If

¹⁸ MassDOT's procurement manual, p. 6.

the clarification was significant or would substantially change the RFR, however, MassDOT must cancel the procurement:

[The PMT] may want clarification if the responses indicate that the RFR itself was unclear. Ambiguities that are not identified during the RFR inquiry period ... may be clarified, but **do not allow clarification that is significant or that results in a substantially different RFR from the original. Under those circumstances, you should cancel and re-issue the procurement.**¹⁹

Pricing for the towing contract was unquestionably significant. The pricing category counted for 20% of the overall evaluation for the original RFR. Moreover, MassDOT changed the pricing standard from “lowest responsive and responsible bidder” in the original RFR to a range between \$81 and \$90 – the state’s legal maximum – in the Amended RFR. This represented a significant change. Under MassDOT’s rules, therefore, officials should have cancelled the procurement and re-issued a new RFR. By issuing the Amended RFR, MassDOT officials failed to follow the agency’s procurement rules.

Also, MassDOT’s procurement manual provided no basis for Petraglia’s decision to restrict bidding on the Amended RFR to the bidders who submitted proposals for the original RFR. MassDOT’s procurement manual permitted issuing an amendment to an RFR before bids have been opened. The policies had no provision for issuing an Amended RFR after bids have been opened. The manual also did not have a provision allowing MassDOT to prohibit everyone other than the original bidders from responding to an Amended RFR.

VI. Procurement officials’ handling of bidders’ references had serious flaws and irregularities that showed favoritism to Perfection and a bias against that company’s competitors.

The original RFR required firms competing for the contract to fill out a one-page “Bidders Reference” form, listing three commercial or governmental clients as references. The form asked for each client’s name, address, contact person, telephone number, a description of the service provided to the client and the length of that service. All references had to be clients to whom the company provided services within the three years of the bid deadline (January 14, 2014). Client references also had to demonstrate the bidder’s ability to handle the range and complexity of towing services described in the RFR.

The RFR’s section on references also required bidders to “include a listing of any accounts that were terminated in the last two (2) years and describe the reason for termination.” No bidders listed any accounts that had been terminated.

After MassDOT received the bids, Luskin created a spreadsheet with each vendor, its references, and separate columns labeled Excellent, Good, Fair and Poor. Luskin put an “x” in

¹⁹ *Id.* at p. 7 [bold added].

the column she felt reflected the feedback she received from the reference. The spreadsheet also had a column labeled Comments, where Luskin could insert brief notes explaining the grade. Luskin intended this spreadsheet to be the basis on which the PMT members awarded points for each bidder's references.

A. Favoritism toward Perfection Towing

The manner in which MassDOT treated Perfection's references showed extraordinary favoritism.

First, Luskin rated Perfection's three references as "excellent," even though she never spoke with any of them. Specifically, Perfection's "Bidders Reference" form listed three references – two Newton automobile dealerships, Clay Nissan and Clark & White Lincoln Mercury ("Clark & White"), and the Brookline Police Department. MassDOT's records indicate that Luskin never contacted the Brookline Police Department or Clark & White. And while MassDOT's procurement file contained an email from Luskin to Clay Nissan, Luskin received no response.

Although Perfection also included a letter from each reference, these did not justify the "excellent" score. The car dealerships' letters were dated August 15, 2008 and were addressed to "To Whom It May Concern." The Brookline Police Department's letter was undated but was written several years before the RFR was issued. In addition, the letters did not demonstrate Perfection's ability to handle the range and complexity of towing services needed on an interstate highway.

Moreover, the RFR did not provide for written references. Further, even if letters had been permissible, Perfection's letters were generic and unauthenticated; one was undated and the other two were clearly beyond the three-year timeframe in the RFR.

This was a notable departure from how MassDOT handled every other bidder's references. For the other bidders, Luskin – or, in the case of four State Police references, a lieutenant on the PMT – contacted each reference. In most cases, Luskin received a reply. If the listed reference did not reply, Luskin did not put an "x" in any of the rating columns on the spreadsheet. No grade was given and she entered "did not respond" in the comments column.²⁰

Second, MassDOT also showed favoritism to Perfection by considering – and ranking as excellent – nine additional written references. Even though the RFR did not call for written references, Perfection included eight more letters and an email as additional references. Of the nine extra communications Perfection submitted, most dated back to 2007 or 2008 and included letters from individual motorists complimenting the one-time service provided to them by a tow truck driver – or in two cases, for the quality of the firm's auto body repairs. These letters had

²⁰ For Perfection, Luskin did indicate that she received "no response" from Clay Nissan but also graded the reference as excellent.

little or no useful information about Perfection's ability to respond to the "size, nature and complexity" of the services described in the RFR.

One of the nine extra communications submitted by Perfection stood out because Luskin wrote it herself. On July 9, 2013, Luskin sent an email to Perfection's owner, Susan Penta, commending two of the company's employees for their "outstanding service" at MassDOT's Weston location earlier that day. Luskin sent this email shortly before she began assembling the PMT and preparing for its first meeting on July 30.

Luskin listed each of the nine references, including her own, on the spreadsheet provided to the PMT. She entered a rating of excellent next to each, including her own and the two letters praising repair work done by Perfection's affiliated body shop. Unsurprisingly, the PMT members awarded the company with almost perfect scores for references (20 points).

MassDOT's treatment of Perfection's additional references was unique. A PMT member personally contacted and received oral or written feedback from references for every bidder except Perfection. No other bidder submitted written references. Further, while one other bidder provided the names of four references, Luskin only listed three of them on the references spreadsheet; however, Luskin listed all 12 of Perfection's references on her spreadsheet.

In summary, MassDOT officials did not apply the agency's procurement rules or the RFR's standards to Perfection's references, which violated MassDOT's policies. MassDOT accepted references from Perfection that did not comply with the RFR's requirements and MassDOT did not contact the references to verify their authenticity. Nevertheless, MassDOT rated Perfection's references as excellent. This conduct showed favoritism to Perfection that had a material effect on the scoring.

B. Bias against Perfection Towing's competitors

At the same time that it awarded Perfection excellent ratings for non-compliant references, the PMT gave very poor grades on references to NTS and Todisco Towing, Perfection's two competitors. The low grades were not supported by documents in the procurement file or by the ratings on Luskin's spreadsheet.

For example, two of Todisco's three references responded to Luskin's emailed inquiry. She rated both references as excellent on her spreadsheet. However, three of the PMT members gave Todisco poor grades for references (5 points) and one member gave Todisco a fair grade (10 points). By contrast, six other bidders had the exact same ratings on Luskin's spreadsheet – two excellent references and one reference who did not respond. All six received perfect scores from the PMT (20 points).

NTS's references followed a similar pattern. Luskin emailed all three references, and received responses from two, both MassDOT employees. One reported he had had no problems with NTS, which had "held up [their] part of the contract." Luskin rated this as an excellent

reference. The second respondent wrote to Luskin that “experience is ok.” Luskin rated this reference as good. Despite having positive references, NTS received almost uniformly poor scores (5 points) from the PMT members.

As discussed in Finding 2, MSP members of the PMT had negative opinions about these two companies. For example, Lt. Kalton’s July 18, 2013 email suggested that the complaints he received about NTS might be grounds for disqualifying the company from bidding on the new contract. Shortly afterwards, he informed MassDOT officials preparing the procurement that MSP personnel were dissatisfied with Todisco’s performance. Lt. Kalton directed MSP troopers to document incidents in which any towing companies failed to live up to their contracts.

According to MassDOT’s procurement manual, Lt. Kalton’s personal experiences with bidders and complaints filed by MSP personnel against towing companies could have been shared with the PMT, but only if the information was documented.²¹ MassDOT’s procurement file did not contain any such documentation, nor did it have any records that would account for the very low scores PMT members gave Todisco and NTS in the References category.

MassDOT’s procurement manual stated that scoring had to be based on objective criteria and the selection of a bidder had to be “based upon a fair and impartial decision documented in the procurement file.”²²

It is evident that undocumented factors influenced the PMT to downgrade NTS and Todisco scores, in violation of MassDOT’s procurement manual. The OIG believes it is likely that MSP members of the PMT influenced the PMT to award low scores to Todisco and NTS. Regardless of whether the MSP improperly influenced the scoring, allowing undocumented factors to affect the evaluation of bidders was a serious violation of MassDOT’s procurement policies and undermined a fair and open competitive process.

²¹ Contrary to Lt. Kalton’s email, MSP records did not show an above average number of complaints against NTS or evidence of any other performance-related reason for the MSP to prevent the company from towing on the Turnpike. MSP personnel reported four complaints against NTS during a two-year period beginning in early 2013. None of the complaints concerned poor response times. Three complaints involved NTS responding to disabled vehicles owned by AAA members on its roadway section. The fourth related to a customer complaint about tow costs. If NTS failed to respond promptly to dispatches or in some other respect provided poor service, MSP personnel did not document the problem. By comparison, MSP personnel filed three complaints against Perfection (two for poor response times), three complaints against Sturbridge Service Center (two for poor response times), and seven complaints against Ted’s of Fayville (four for poor responses). Perfection, Sturbridge Service Center and Ted’s of Fayville all received the maximum points for references. NTS received very low scores for references, the same points as Todisco’s Towing, which had had 31 complaints filed against it, nearly all of them for poor response times.

²² MassDOT’s procurement manual, p. 9.

VII. MassDOT procurement officials showed favoritism toward Perfection by allowing it to submit supplemental information regarding its bid, material that raised its score.

As noted above, MassDOT’s procurement manual stated, “Please remember that correction or clarification of response prices, terms and conditions or the submission of supplemental information prejudicial to other bidders shall **not** be permitted.”²³ MassDOT violated this rule when it allowed Perfection to add two subcontractors to its proposal, enabling the company to get additional points during the scoring.

The original RFR mandated that the bidder own a piece of heavy-duty equipment called a rotating boom wrecker or “show access to this piece of equipment through a sub-contractor.” Whether and how a bidder could supply a rotating boom carried significant weight on the original score sheet. The score sheet read in the Vehicles category:

Specifications #9.1 Vehicles Maximum points assigned = 20

Vendor owns all of the necessary vehicles and equipment to service this section = 20 pts. _____

Vendor owns all of the necessary vehicles and equipment to service this section w/ exception of rotating boom which will be supplied by an acceptable Subcontractor when needed = 15 pts. _____

Vendor owns all of the necessary vehicles and equipment to service this section w/ exception of rotating boom which will be supplied by an unacceptable Subcontractor, (location of subcontractor is to [sic] far from section) = 10 pts. _____

Vendor owns all equipment with exception or [sic] Rotating boom. Owned equipment is not sufficient to service this section and no subcontractor is available = 5 pts. _____

Perfection did not own a rotating boom wrecker, an expensive piece of specialized equipment. Its bid included a letter from Coady’s Towing agreeing to provide a rotating boom wrecker as needed and act as Perfection’s subcontractor. Coady’s was located in Lawrence and its response time would have been well over the 20 minutes called for in the RFR. Because of that, Perfection’s proposal stood to receive at most 10 points in the Vehicles category. Instead, weeks after bids were submitted, MassDOT officials allowed Perfection to submit supplemental information – new subcontracting agreements with companies located closer to the Turnpike. By having “acceptable” subcontractors, Perfection was able to boost its score in this category to 15 points.

²³ *Id.* at p. 7. [bold in original]

The details of how MassDOT handled this situation were highly unusual and improper. Two hours before the scoring was set to begin on January 14, 2014, Luskin and Laroche, Perfection's controller, exchanged emails about Perfection obtaining documentation of a subcontracting relationship with additional "acceptable" subcontractors. Laroche told Luskin that Perfection had "verbal" confirmation that two other companies would act as subcontractors. "I am awaiting both of them to provide me with their documents and insurance certificates," Laroche wrote in an email. Two hours later, each of the PMT members scoring the bids gave Perfection 15 points in the category, based only the company's verbal assurances that the subcontracting documents were being assembled. Perfection provided the subcontracting documentation the following day.

In sum, MassDOT officials violated the procurement manual by accepting supplemental information from Perfection. MassDOT officials compounded the violation by awarding Perfection additional points based on verbal representations by company officials. The extra points could have had an impact on the contract awards if the procurement had proceeded. These actions demonstrated significant favoritism by the PMT towards Perfection.

VIII. Members of the Procurement Management Team lacked impartiality and took actions to exclude or disadvantage a single bidder, NTS.

The agency's 2009 solicitation for towing services required bidders to be affiliated with at least one nationally recognized automobile club, but it did not include a preference for a particular company. MassDOT changed this specification in the RFR, and stated that it would give preference to bidders affiliated with AAA. The OIG found that MassDOT had no legitimate reason for this preference and included it to disadvantage a specific towing company, NTS.

At its first meeting on July 30, 2013, the PMT discussed whether bidders must be affiliated with AAA. The meeting minutes read, "The current contract states that vendor must be affiliated with at least one Automobile Club, the team would like to have it be AAA preferred as the requirement." The minutes did not include any basis for giving preferential treatment to towing companies affiliated with AAA, such as data regarding the percentage of Massachusetts motorists who were members of AAA. Instead, Luskin's handwritten notes from the meeting have the following entries: "Negoshian's lost AAA" and "make sure says must be affiliated with AAA." The two notes are linked with connecting arrows. The MSP members of the PMT advocated most strongly for the AAA requirement, which all participants knew would affect only one incumbent bidder, NTS.

When MassDOT released the RFR on November 25, 2013, it included a preference for bidders affiliated with AAA. Section 8 of the Scope of Services stated, "It is preferred that the Contractor be affiliated with the AAA Auto Club."²⁴ MassDOT's RFR did not identify any reason for the preference for towing firms affiliated with AAA. The team members provided no sound basis for including the specification establishing a preference for AAA-affiliated firms.

²⁴ MassDOT's RFR for towing services, p. 17.

Based on this, the OIG found that the procurement team included the specification favoring AAA-affiliated vendors knowing it would negatively affect one bidder, NTS. It was improper to create a specification with the goal of disqualifying or disadvantaging a vendor. Among other things, it violated MassDOT's procurement manual as well as the principles of objectivity, transparency and fair competition.

IX. MassDOT officials took other actions that violated policies or instructions in the agency's procurement manual.

The OIG identified other ways in which MassDOT officials violated the agency's rules on procurement and, in some cases, the terms of the RFR itself.

A. Clarification of pricing

As noted in the Background section above, Luskin telephoned Perfection officials about the company's \$1 per tow bids on Road Sections #7 and #8. Luskin said she made the call at Petraglia's suggestion to clarify whether the extremely low price-per-tow was a mistake. She spoke with Perfection controller, George Laroche, who confirmed that the \$1 bids were correct. He also wrote a letter explaining the rationale for the low bids and offering "further clarification or documentation" if MassDOT wanted.

Section 4.80 of the RFR stated, "**No corrections will be allowed to bid pricing offered.**"²⁵ MassDOT's procurement policies state, "Please remember that correction or clarification of response prices, terms and conditions or the submission of supplemental information prejudicial to other bidders shall **not** be permitted."²⁶ The procurement manual also states, "Ambiguities and discrepancies involving cost should cause the PMT to consider disqualifying bidders who submitted an unclear cost proposal, or require a clarification and possible amendment to the bid."²⁷

B. Failure to document the PMT's process

The PMT failed to document decisions made and steps taken during the course of its procurement process. MassDOT's procurement manual required the PMT's process to be "based upon a fair and impartial decision documented in the procurement file."²⁸ MassDOT's manual required the procurement file to contain "a complete record of all documents developed during a procurement" and "all materials that the team develop[ed] throughout the procurement."²⁹ The

²⁵ *Id.* at p. 12 [bold in original].

²⁶ MassDOT's procurement manual, p. 7 [bold in original].

²⁷ *Id.* at p. 9.

²⁸ *Id.*

²⁹ *Id.* at p. 3.

PMT's failure to fully document its actions violated MassDOT's procurement rules and exposed the agency to accusations of favoritism and partiality.

For example, as described in Finding 7, MassDOT allowed Perfection to add two new subcontractors with rotating boom wreckers after bids had already been opened, a violation of MassDOT's procurement manual. The decision occurred on February 6, the day the PMT scored the bids, and it enabled Perfection to score higher in the Vehicles category.

MassDOT's decision took place after NTS's owner wrote a letter to MassDOT pointing out that the subcontractor named in Perfection's January 14 bid response could not comply with the 20-minute response time requirement in the RFR. The letter from NTS's owner is undated but was written after bids were opened and before the scoring.

The earliest communication between MassDOT and Perfection about this issue is a Laroche email to Luskin just before scoring began. In the email, Laroche informed Luskin that Perfection's towing manager had verbal confirmation that two companies agreed verbally to be Perfection's new subcontractors for rotating boom wrecker service. It is apparent from the context that there had been prior communications about this matter, but Luskin failed to document any earlier communications. Most importantly, the procurement file contained no record indicating when Perfection and MassDOT first communicated about adding subcontractors, what prompted that effort, and whether NTS's owner's letter played a role.

Another example of the PMT's failure to document its processes related to contacting and scoring references. As described in Finding 6, Luskin had primary responsibility for contacting references; however, she did not document the procedure she followed for contacting and rating references. Luskin said she recorded the responses she received on a spreadsheet, upon which PMT members based their scores in the references category when the PMT met on February 6, 2014 to score bidders' proposals. However, most of the written responses in the procurement file were dated in mid-March, several weeks after the scoring took place.

In an interview with the OIG, Luskin could not account for why the written responses are dated weeks after the PMT scored the references. She said she could not remember whether she first contacted references by telephone and used these responses to generate the spreadsheet used by the PMT. If so, she failed to document when the calls took place and what the reference said. If, however, the spreadsheet was generated later when Luskin received the written responses, the PMT must have based their scores for references on other information that was not documented in the procurement file.

Either possibility represented a failure to properly document the PMT's procedure as required by MassDOT's procurement manual.

X. MassDOT and MSP's towing procedures on the Turnpike provided preferential treatment to Perfection Towing.

For several years, MSP officials routinely diverted tows of AAA members in NTS's section to Perfection Towing. This conduct conflicted with MassDOT's contract language and was inconsistent with MSP's operational practices. The OIG found that MassDOT and MSP provided preferential treatment to Perfection by re-assigning thousands of tows from NTS to Perfection.

The Massachusetts Turnpike Authority awarded the existing contract in 2009 following issuance of an Invitation for Bids ("IFB"). The IFB required contractors to be affiliated with at least one nationally recognized automobile club but it did not name any specific automobile clubs. NTS responded to the IFB, and in its response provided evidence of affiliation with several automobile clubs and roadside assistance companies; NTS was not affiliated with AAA in 2009. The Massachusetts Turnpike Authority awarded NTS the contract for towing services on Road Section 7. MassDOT took control of the Turnpike later in 2009 and assumed the Turnpike's towing contracts.

The existing contract reserved MassDOT and MSP's right to direct a towing company to provide services outside its sector; however, the contract's language suggested that this power would be used only for emergencies or when it was an operational necessity. As stated in Section 25 of the IFB, "Requests for services ... will generally be made for locations within the Contractor's designated roadway segment(s), as designated in this Contract."³⁰

MSP officials said they bypassed NTS for tows of AAA members as a convenience to motorists. For motorists with AAA membership, AAA pays the towing company directly. Because NTS is not affiliated with AAA, a motorist with AAA membership would have to pay NTS directly for the tow, and then submit the receipt to AAA to get reimbursed. MSP officials said diverting AAA tows from NTS to Perfection saved the motorist the extra step of paying NTS and seeking reimbursement from AAA.

MSP's internal towing policies briefly discuss permitting motorists to arrange their own tow. The policies give the officer on scene the discretion to allow a motorist to choose their own towing company only if doing so will not cause a hazard or delay removal of the vehicle.

The OIG reviewed the administrative logs of all four Turnpike barracks for four randomly chosen days each month of 2013. MSP dispatched the Turnpike's contracted towing firms on 1,256 occasions during those 48 days. On 123 occasions (10%), the State Police allowed a firm other than the one under contract for that Turnpike section to tow the vehicle. Of the 123 cases, 108 (88%) were tows in NTS's section that the MSP identified as AAA members' vehicles and diverted to Perfection.

³⁰ *Massachusetts Turnpike Authority Invitation For Bids #655, Emergency Towing and Related Services*, p. 11.

Of the remaining 15 tows, there were 14 in which the MSP allowed the drivers to call their preferred towing companies directly. Most of these situations involved disabled commercial trucks, whose owners have contracts with specialty towing firms. Only one of the 123 tows involved a disabled motor vehicle to which a roadside assistance company other than AAA responded. In this case, the vehicle owner had called his roadside assistance company himself before MSP personnel arrived at the scene.

According to MSP's administrative logs for the 48-day sample, MSP personnel diverted more than half of the tows in NTS's section to Perfection. While Perfection was dispatched to 108 tows in NTS's section, NTS serviced just 92 tows during the sample period.

The OIG found it unlikely that individual troopers' discretion to allow motorists to choose their own towing company explained the frequency with which the MSP diverted NTS's tows to Perfection. On other sections of the Turnpike, troopers do not routinely ask whether the motorist has membership with any other roadside assistance programs or companies. Although most insurance carriers and almost all automobile manufacturers provide roadside assistance services to customers, MSP personnel only inquire about AAA membership. They said AAA is the most widely held provider of roadside assistance. Motorists with other roadside assistance programs have to pay the towing firm and seek reimbursement if the towing company is not affiliated with their roadside assistance program.

MSP's practice of diverting AAA tows from NTS to Perfection was also inconsistent with MSP's general policies and procedures. On Massachusetts' interstates and state highways other than the Turnpike, MSP manages towing. Individual barracks and station commanders maintain a list of towing companies authorized to service that commands' sector. MSP's application form and service agreements do not mention affiliation with AAA or other roadside assistance services, suggesting AAA affiliation is not a criterion. MSP's top priority is to clear the hazard from the roadway as quickly as possible. In most cases, MSP dispatches a towing company on its tow list regardless of whether the motorist belongs to AAA or another roadside assistance program.

Based on the information the OIG obtained, it appeared that MassDOT and MSP gave preferential treatment to Perfection using its AAA affiliation as a pretext. Over several years, MSP directed thousands of AAA tows in NTS's sector to Perfection. MassDOT's predecessor awarded the current contract without requiring affiliation with AAA and with the knowledge that NTS was not affiliated with AAA. The current contract's language suggests that directing a towing company to provide services in another company's sector would be used for emergencies or to serve an operational purpose. The frequency with which MSP personnel diverted tows for the convenience of motorists to Perfection is inconsistent with MSP's practice elsewhere on the Turnpike and on other roadways.

XI. MassDOT has failed to properly manage its existing towing contracts, resulting in lost revenue.

The OIG found that MassDOT should more closely manage its towing contracts. First, the OIG found that two of the eight towing contractors on the Turnpike have underpaid MassDOT for years for the percentage of revenue payments they owed as part of their towing contracts. Second, MassDOT failed to cash checks from the same two towing companies for several months. Third, MassDOT failed to notice that it had not received any checks from a third towing company for several months.

Two contractors – NTS and West Springfield G & S Trucking Inc. (doing business as Red's Towing) – had been paying MassDOT amounts equal to 10% of their monthly contract towing revenue instead of the 15% stated in the contract for several years. In 2015, NTS underpaid MassDOT \$4,090 and Red's Towing underpaid MassDOT \$10,223.

Clearly, MassDOT officials did not review the monthly commission statements submitted by their towing vendors to ensure the companies were complying with the contract. The fact that two vendors computed the commission rate at 10% was plainly visible on the monthly statements. Neither vendor took steps to obscure the commission rate on their paperwork. The other six vendors' statements explicitly stated that they paid MassDOT a 15% commission, so even a cursory review would have revealed the underpayments.

In addition to receiving the wrong towing commission, MassDOT did not cash vendors' checks for several months in a row. The owners of both NTS and Red's Towing said that several months of checks were not cashed last year. The owner of Red's Towing said between January and July, none of his checks were cashed. He contacted MassDOT in August about the uncashed checks. He learned that the problem was that he had included the checks together in an envelope with his monthly commission statements, which were dropped off at the Turnpike's Chicopee office. No one at MassDOT opened the envelopes. He was told to send the commission check to MassDOT's Boston office from that point on.

NTS's owner said MassDOT did not cash the company's checks for the second half of 2015. He said no one from the agency explained why MassDOT did not cash NTS checks for several months nor did anyone contact him to complain NTS had not paid.

Finally, another towing vendor, Sturbridge Service Center, Inc., did not submit a commission statement or a check for several consecutive months beginning in the summer of 2015. The owner said in mid-2015 he hired a new billing clerk, who failed to process the Turnpike commission statement and check. The owner noticed the mistake in early 2016 and notified MassDOT officials, who were unaware of the lapse.

XII. MassDOT has the opportunity to earn additional revenue from towing companies if its new contract requires vendors to pay MassDOT 15% of their revenue from “recoveries,” incidents that are exempt under the current contract.

Historically, MassDOT has not required towing companies to pay the agency a percentage of revenue from complicated towing services involving specialized equipment that the companies perform on the Turnpike. If MassDOT did receive a percentage of these types of tows, the agency could substantially increase the revenue it earns from towing contracts on the Turnpike.

In the towing industry, an incident requiring the use of specialized equipment and/or extra personnel is called a “recovery.” The term encompasses a broad range of services, essentially everything other than hooking up a disabled vehicle and transporting it. Recoveries usually involve large commercial vehicles, such as tractor trailers, or vehicles that left the roadway and need to be winched or hoisted back onto the highway for transport. Recoveries also often involve the removal of spilled fuel or cargo, sometimes requiring the hiring of subcontractors if hazardous materials are present.

The amount towing companies charge for recovery services depends on the type of equipment needed and how long it takes the company to clear away the vehicles and clean up the scene; however, charges of \$20,000 or more are not uncommon. Towing company owners report that a heavy duty wrecker with a rotating boom – required equipment for Turnpike contractors – can cost \$750,000. Company owners report they have to charge high rates in order to pay for the specialized vehicles.

Towing companies have not paid MassDOT’s percentage of revenue payment on revenue earned from recoveries because the contract applies only to towing services and mileage. State regulations define towing services as separate and distinct from recoveries. Regulations promulgated by the state Department of Telecommunications and Energy, which regulates the towing industry, state:

Rates and charges shown herein apply only to the towing of the commercial motor vehicle. Those services necessary to the recovery of a disabled commercial motor vehicle shall be established by the tow company. The term “Recovery” will include, but not be limited, to [sic] the following services: Wrecker working, winching, waiting time, clean up time and the provisions of special equipment needed to place the disabled commercial vehicle in position to be towed.³¹

Incidents classified as recoveries are relatively rare. In 2015, of the 16,000 tows performed by MassDOT’s eight Turnpike towing companies, only 87 were classified as recoveries. However, in terms of revenue, the gap between recovery tows and non-recovery tows is much closer. Towing companies reported approximately \$2 million in revenue from towing

³¹ 220 CMR 272.03 Rates for the Towing of Motor Vehicles, Table 2 (Commercial Vehicles Only)

and mileage charges on the 16,000-plus non-recovery tows originating on the Turnpike in 2015, providing MassDOT with approximately \$300,000 in percentage of revenue payments. Invoices for the 87 recoveries in 2015 totaled \$1.4 million. If MassDOT collected 15% of the revenue from recoveries, the agency would have received an additional \$212,000, a 70% increase.

Recommendations

As noted earlier, MassDOT released a new RFR in July of 2016. The 2016 RFR included significant changes from the prior RFR and Amended RFR. Most notably, MassDOT's new RFR sets fixed prices that contractors can charge for towing services on the Turnpike as well as a fixed dollar amount per tow that contractors must pay to MassDOT. The new RFR also reorganizes towing services along the Turnpike into four districts and allows more than one towing company to provide service in each district.

Based on its review, the OIG developed several recommendations for MassDOT with respect to the new RFR, contract administration and future procurements. Specifically, the OIG recommends the following:

I. Evaluating responses to the new RFR

A. MassDOT should ensure that the PMT's score sheets match the specifications set in the RFR.

As described above, the score sheets for the original RFR and the Amended RFR did not correspond to specifications listed in the bidding documents. For example, the original RFR and Amended RFR stated that a bidder's Supplier Diversity Program plan would count for at least 10% of the bidder's score; however, the score sheets did not provide any points for Supplier Diversity Program plans. The score sheets also exaggerated the importance of minor requirements while downplaying more important aspects of the bids.

The function of the score sheet is to help the PMT draw meaningful distinctions between bid responses and identify the bid that provides best value to MassDOT. For the 2016 RFR, MassDOT should ensure that the score sheet assigns points in categories that correspond to the RFR's specifications.³² In addition, MassDOT should ensure that the respective weight assigned to criteria on the score sheet reflects MassDOT's needs and priorities.

³² This recommendation assumes that MassDOT will use a score sheet to evaluate bids. MassDOT's procurement manual on page 8 briefly describes an "alternative" evaluation method that does not involve score sheets; however, even if the PMT chooses to use this approach, the criteria that the PMT uses to evaluate each bid must match the specifications in the RFR.

B. MassDOT should ensure that the scoring is conducted objectively and impartially based on documented information.

As noted earlier, MassDOT appointed PMT members who appeared to lack impartiality toward the two bidders competing against Perfection Towing. During the scoring, the PMT displayed a bias against those two bidders by giving them low marks in the References category, ratings that were not supported by documents in the procurement file. The PMT also showed favoritism in the manner in which it treated Perfection Towing's references. The PTL also allowed Perfection to submit supplemental information after the bid response deadline, enabling the company to earn additional points during the scoring.

MassDOT should ensure that scoring is conducted in accordance with the standards set in its procurement manual. MassDOT's procurement manual requires scoring to be based on documented information available to all members of the PMT. An individual PMT member's opinion or experience with a bidder should not factor into the evaluation unless that information is documented in the procurement file and shared with the entire PMT. The PMT should not accept supplemental information that could affect scoring.

C. MassDOT and MSP should stop providing preferential treatment to a favored vendor.

As described in Finding 10, MSP personnel routinely diverted tows of AAA members' vehicles from NTS to Perfection for several years. MSP officials said they re-assigned the tows as a convenience to motorists with AAA; however, the practice is not consistent with MSP's practices elsewhere nor do MSP personnel routinely offer this convenience to motorists affiliated with other roadside assistance programs. The OIG found that MSP re-directed thousands of tows in NTS's sector to Perfection Towing.

Section 25 of M.G.L. c. 6C sets standards of conduct for MassDOT's secretary, administrators and directors. Among these are "to render decisions that are fair and impartial and in the public interest; avoid impropriety and the appearance of impropriety in all matters under their jurisdiction; ... [and] require staff and personnel subject to their direction and control to observe the same standards of fidelity and diligence..." MSP's General Order TRF-09 requires station commanders to arrange for towing services in their regions "based upon fair and equitable standards."

Providing preferential treatment to a vendor violates these standards of conduct. Favoritism also undermines companies' willingness to compete for contracts in the future. Moreover, when the favorable treatment brings with it significant financial value to the contractor, it fosters suspicions that the favorable treatment is being or will be reciprocated in clandestine ways by the contractor. For these reasons, MassDOT and MSP should end the preferential treatment of contractors.

II. Contract administration

A. MassDOT should recoup all money that the vendors owe under the existing contract.

For several months in 2015, one vendor failed to pay MassDOT. For years, two other vendors paid MassDOT only 10 percent share of their towing revenue, not the 15 percent called for in the contract. MassDOT also failed to cash a vendor's payments for several months in 2015. MassDOT must recoup all outstanding payments that vendors owe the agency. If the contracts require vendors to pay interest or penalties for late payments, MassDOT should enforce these contract terms with respect to the vendors who underpaid or failed to pay the agency.

B. MassDOT needs to improve its contract compliance procedures.

Processing transactions is a core function of every institution. Every entity needs controls and monitoring systems to ensure that it only pays for the products and services it has purchased. Conversely, every entity needs to verify that it receives the proper payment from its clients, customers and contractors. MassDOT failed to perform this fundamental task for its towing contracts. Although vendors failed to pay – or underpaid – MassDOT for months and even years, MassDOT never detected these errors.

MassDOT therefore should institute contract compliance measures that will alert officials if a towing company has not made a payment within a certain time period. The contract compliance measures should include a review of the monthly statements to ensure vendors are paying the correct percentage and are meeting the terms of the contract. MassDOT should also consider reconciling the towing companies' monthly statements against the State Police towing logs to ensure the towing companies have reported all of their revenue-producing tows.

C. MassDOT and MSP should ensure its new towing contract is administered fairly.

As noted above, MassDOT and MSP regulations require officials to act with fairness and impartiality.

The 2016 RFR allows MassDOT to award towing contracts to multiple towing companies in each of four sections of the Turnpike. Each sector is defined by the patrol area for each Troop E barracks on the Turnpike. MassDOT and MSP should establish procedures that, if a barracks has more than one towing contractor, the tows are assigned on a fair and equitable basis. This is particularly important with respect to "recoveries" – incidents involving the use of specialized equipment, extra personnel and sometimes the clean-up and removal of hazardous material or cargo. The RFR requires each contractor to have several pieces of very expensive equipment, and towing companies are therefore entitled to charge much higher rates for responding to these situations. MSP should ensure that dispatched to recoveries on an equitable basis.

III. Future procurements

A. MassDOT should appoint qualified, impartial individuals to its Procurement Management Teams and ensure the team has the proper background, training and guidance.

As the halted process for new towing contracts demonstrated, an RFR with ambiguous terms and questionable evaluation procedures can lead to confusion, disputes and ultimately a failed procurement.

MassDOT officials should ensure individuals appointed to a PMT are qualified to fulfill the responsibilities outlined in MassDOT's procurement policies. Specifically, the PMT members must act as the agency's "subject matter experts" with regard to supplies or services the agency is procuring.

In addition to their qualifications, it is important that the PMT members understand MassDOT's procurement rules and principles. Among other things, the PMT members must understand the importance of applying objective criteria, remaining impartial and treating all potential bidders fairly. MassDOT should provide procurement training about how to develop a clear RFR and score sheet, check references, and evaluate bids. This will help PMT members fulfill their obligation to select a contractor on an objective basis.

Furthermore, the team must invest the time to understand all of MassDOT's objectives from the contract, to develop an RFR that expresses those goals with precision, and evaluates all bids on an impartial basis. All of these ground rules are reflected in MassDOT's procurement policies.

B. MassDOT should clarify the financial and performance goals for revenue-generating contracts and PMT members should have a common understanding of these objectives.

When MassDOT has a revenue-generating contract, it is critical that the agency and the the PMT clearly understand the financial objectives for the contract *before* drafting the RFR. MassDOT's stated intention for the Emergency Towing and Related Services procurement was to award contracts that would provide "best value" to the Commonwealth; however, the agency had not clearly defined its objectives and priorities before releasing the RFR. As the group conducting the procurement, the PMT needs to have a shared understanding of MassDOT's objectives so that it can develop an RFR that clearly expresses those objectives.

Prior to writing the RFR for a service (such as towing), it is important to understand who will use the services and what their needs are. In the case of towing on the Turnpike, there are three categories of "users:" MassDOT, the State Police and motorists with disabled vehicles. Their needs are relatively easy to identify and in some respects overlap. For example, all three categories of users want a tow company that will rapidly and reliably respond to a disabled

vehicle at any time of the day or night. On the other hand, MassDOT's financial goals may run counter to those of an individual motorist, who wants the least expensive towing service.

Just as the RFR reflects MassDOT's objectives, the score sheet should award points in categories connected to fulfilling the users' needs and the overall distribution of those points should reflect how MassDOT prioritizes diverse aspects of the contract.

C. MassDOT should avoid specifications that favor one or more bidders and ensure that identical standards are applied to all proposals.

As detailed in several findings above, MassDOT's prior procurement process for towing services displayed evidence of favoritism and bias. The RFR included a specification that disadvantaged one bidder. MassDOT officials' handling of references was not uniform and provided preferential treatment toward one bidder.

The Commonwealth, its taxpayers and the public are best served by having an open and fair competition for business with the state. Following applicable bidding rules and adopting best practices for procurements will ensure the state maximizes the use of taxpayer dollars. It also enhances the confidence of bidders and the public in general that state officials are conducting business in an even-handed way.

D. When it procures towing services in the future, MassDOT should consider whether to add recovery services to the contract and should include language in towing contracts specifying how recoveries will be treated.

The OIG's review found that, although recoveries are only a small fraction of the tows performed on the Turnpike every year, they generate a considerable portion of towing companies' revenue. For many years, officials at the Turnpike chose to exempt revenue from recoveries from the revenue sharing requirement. The Massachusetts Turnpike Authority's contracts collected revenue only from "towing services and mileage," which state regulations classify as distinct from "recoveries." MassDOT inherited the Turnpike's towing contracts.

Based on the Turnpike towing contractors' invoices for recoveries in 2015, MassDOT would have received a substantial increase in revenue sharing payments if recoveries had not been treated as exempt.

The OIG recommends that MassDOT require towing companies to pay the agency a portion of their revenue from recoveries. Consistent with this recommendation, MassDOT's 2016 RFR for towing services calls for the agency to receive a flat fee of \$60 per billable hour for heavy duty recoveries. By doing so, MassDOT stands to collect revenue from recoveries as well as towing services and mileage.

Thomas Tinlin, Highway Administrator
Massachusetts Department of Transportation
September 19, 2016
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Thank you for your agency's cooperation with this review. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Eileen M. O'Brien". The signature is fluid and cursive, with a large initial "E" and "O".

Eileen M. O'Brien

Director

Audit, Oversight and Investigations

cc: Stephanie Pollack, Secretary and Chief Executive Officer, MassDOT
Col. Richard D. McKeon, Superintendent, Massachusetts State Police