

**Testimony of Inspector General Jeffrey S. Shapiro, Esq., CIG
Regarding Best Practices for Procurement and Contract Management
Before the Senate Committee on Post Audit and Oversight
February 3, 2026**

Chair Montigny, Vice Chair Collins, Ranking Member Fattman, members of the Committee,

Good day.

Thank you for the opportunity to testify before you today about the unsuccessful Service Plaza Procurement conducted last calendar year by the Massachusetts Department of Transportation (MassDOT).

I have three goals with my testimony today.

- (1) First, to share with you, at a high level, what you can expect from the Office of the Inspector General (OIG) in the coming weeks.
- (2) Second, to tell you about our past work related to the Service Plaza Procurement.
- (3) And third, to talk about what the OIG expects to see in large-scale public procurements such as this one.

After I conclude my testimony, I will gladly take your questions and answer them as best as I can.

First Point – Upcoming OIG Investigatory Letter

To begin.

As you know, by statute, OIG investigations and reviews are confidential. We take this confidentiality very seriously. In addition to this being the law, our confidentiality ties directly to the core tenant of OIG independence. This is important for us to do our work without any concern around fear or favor. At the same time, Chapter 12A grants me, as the Commonwealth's Inspector General, the authority or discretion to disclose information that I deem necessary in the performance of my responsibilities.

I utilize this discretion with a high bar in mind. While I would not in the ordinary course disclose a confidential matter before we issue an investigatory letter or report, because of the timing of this hearing, the public nature of the matter, and how close we are to issuance, I believe that it is

appropriate to share with you publicly today that the OIG will be issuing an investigatory letter on the Service Plaza Procurement within the coming weeks.

As your work continues with this matter, I thought it was important for you to know this fact. Equally important, I did not want my silence to be misconstrued to mean that our office either agreed with how the procurement was conducted or had no position on the matter.

You will appreciate that it is premature for me to say too much about the results of our review. I am comfortable sharing the scope with you. We have reviewed the procurement process and how it was executed. With investigations like this we don't look exclusively for wrongdoing, such as fraud; we look at the totality of the process, including how the procurement was designed and executed. We will share our findings in the public investigatory letter that issues. But it won't surprise anyone for me to say that there are plenty of lessons to be learned on how to do this procurement better next time.

To suggest that this procurement in its totality was a model procurement would simply be inaccurate. Many factors likely contributed to the apparent successful bidder walking away before the contract was negotiated and executed, resulting in MassDOT's decision to cancel the procurement. It is troubling that many factors could have caused this result. On the other side, had that bidder's proposal resulted in a contract, the agreement would have been in place for decades. As Inspector General, I believe that the Commonwealth is fortunate that this procurement was canceled, simply because a contract of this size and for this duration should be done in a manner that mitigates such risk factors.

I understand that MassDOT has been doing its own assessment of lessons learned in the hopes of avoiding similar pitfalls with its renewed Service Plaza Procurement and with other procurements in the future. MassDOT will also have the benefit of our findings and recommendations. While I know that MassDOT is likely making changes to the process, I believe that since it is their procurement, it is best for you to ask them about this directly when they appear before this Committee.

Second Point – Past Work on Service Plaza Procurement

This leads me to my **second** goal for today: to tell you about our past work on the Service Plaza Procurement.

This procurement was always going to be a significant one for the Commonwealth. The Service Plaza Procurement involved 18 service plaza locations, with a potential value of close to \$1 billion and for a duration of at least 35 years. So, by any measure, this was a major procurement.

My office, and particularly our transportation division, keeps an eye on massive procurements like the Service Plaza Procurement. The procurement process is only the first part of any large investment like this one. After the procurement, the key stages are:

- (1) Developing the contract or lease terms; and
- (2) Long-term management practices.

We had been following this procurement from the beginning and, after the successful bidder was announced, I sent a letter (attached) to then-Secretary Tibbits-Nutt with recommendations for long-term lease elements and successful lease management practices. This was a precautionary letter based upon shortcomings we identified in an unrelated matter involving MassDOT and its role managing other long-term lease contracts.

I was dismayed to find that others mischaracterized the letter as containing a finding that the OIG found no flaws in the procurement process. I expressly stated in the letter that it contained no findings about the procurement process, **not that there were no findings about the procurement**. There is a significant difference in these meanings.

My letter highlighted ways for MassDOT to avoid or mitigate the risk of repeating prior enforcement and management issues in long-term leases so as to be a better steward of public property and funds.

In the letter, I focused on lease terms that MassDOT should and should not include to make sure it could effectively enforce and manage this particular long-term lease for the service plazas. Our recommendations were based on our prior reviews of other MassDOT leases and the deficiencies our team identified in enforcement and management of lease terms. We have seen MassDOT include overly complex contract terms that are difficult to enforce and manage, and we have then seen MassDOT fail to hold its business partners to the terms, seemingly uncertain of the strength of their position.

This was a concern that I felt warranted a letter directly to the secretary before the service plaza contract was finalized. This is in line with my view as Inspector General that my office has both an obligation to report on what has not gone well and to proactively seek to mitigate risk to avoid waste and abuse from happening in the first place.

Third Point – Large-Scale Public Procurements

In that vein, I will turn to my third goal today: to tell you what the OIG expects to see in large-scale public procurements, the resulting contracts, and contract management. With this, I hope to

give you a framework for your expectations for MassDOT and other public agencies in this space, based on how the OIG looks at procurements.

We can all agree that successfully procuring and managing complex, long-term deals is important for providing top-level service to the public, as well as increasing public confidence in government.

The Commonwealth is looking at a number of transportation megaprojects in the coming years, including the Cape Cod bridges, the Allston Multimodal Project, the MBTA North Station Draw Bridge, and another major operating procurement with the commuter rail operator. I know that the public expects these to be properly managed from start to finish. Period.

A poorly run procurement can lead to a poorly managed contract. And a poorly managed contract devalues even a well-run procurement.

What I am talking about not only applies to transportation megaprojects. Other hot-button proposals like the Massachusetts Convention Center's proposed expansion, the Steamship Authority's reservation system, and local-municipal level proposals should also be monitored.

Whether the procurement is governed by Chapter 30B for cities and towns, Chapter 7 for state level contracts, or special legislation, policies, or procedures for other public entities, the public should have confidence that the process was fair, open, and transparent; that the contract terms are clear and enforceable; and that the contract management is consistent, reliable, and in the public interest.

I will walk through some of the key questions the OIG asks at each of those stages.

For the procurement, the OIG is looking for a fair, open, and transparent process.

This really starts with planning. What was the contract intended to accomplish? There is a great deal of risk at this stage – in the best-case scenario, a risk of waste, and in the worst-case scenario, for fraud and abuse. You want to see that the need has been identified and the procurement designed to accomplish the need.

The OIG looks at how agencies plan. Have they asked the right questions, and do they have the right information? Did they ask:

- (1) When do we need to have the new contract in place and for how long should it be?
- (2) Have our needs or requirements changed since the last time we procured this good or service? Has the industry or product changed? What does the market look like?

- (3) Were there issues with our last procurement or contract we should address?
- (4) What expertise will we need to procure this?
- (5) What laws, regulations, or policies must we follow?

When an agency has done its pre-procurement homework about the immediate impact of the contract, what its needs are, and how the procurement will work, it is better able to conduct the actual procurement and manage the resulting contract.

Once the agency defines the need, how has it approached the procurement? In other words, how well has it articulated the need and contract parameters in its solicitation? The OIG looks at solicitation elements, including:

- (1) What is the procurement timeline and what are the steps?
- (2) How does the agency handle questions and answers from respondents? (the agency should require that all questions and answers be in writing)
- (3) Does the solicitation clearly identify the evaluation criteria, weight, and process?
- (4) Is the solicitation drafted to meet the needs, while also not being too narrow to unnecessarily reduce bidders?
- (5) Has the solicitation been advertised to the broadest market and with adequate time for interested parties to respond?

The solicitation should clearly spell out everything the awarding authority is looking for as well as the process the awarding authority will use to award the contract. And the agency should be trying to reach the broadest market for it.

The selection committee plays a critical role in the procurement process. The OIG expects the committee to be created early in the procurement process, and certainly before bids are opened. The OIG wants to know:

- (1) Does the selection committee have the expertise for the job?
- (2) Has the selection committee been instructed on its role and responsibilities?
- (3) Have selection committee members disclosed actual and potential conflicts of interest?
- (4) What rules are in place for selection committee members when it comes to communicating with bidders? Are there periods with no contact? What does avoiding even an appearance of conflict mean?
- (5) How has the selection committee been instructed to evaluate criteria and document their criteria? How have they been instructed to keep such records to comply with record retention and future oversight review?
- (6) What process is in place for the selection and award?

It is important that the members of the selection committee understand their role and what they are trying to accomplish. The committee should be kept to a manageable number. Members must be able to dedicate appropriate time to the procurement and to follow the terms as presented in the procurement.

For public agencies that are governed by boards or have oversight boards, the OIG will look at what role the board is required to play and has played in the procurement. For instance, the OIG will ask:

- (1) Did the board need to approve the procurement and at what stage?
- (2) Did the agency present adequate information to support the board's action?
- (3) Did the board ask enough questions to support its action?
- (4) Do board members have the training or expertise for the types of decisions they need to make?

We have seen numerous boards fail in their fiduciary and oversight responsibilities. The Steamship Authority and Brockton School Committee are recent examples. Unfortunately, you can't legislate a board member to ask a question. Board members must understand their duties, take these duties seriously, and provide appropriate oversight. Board members should not overstep, but nor should they abdicate their responsibilities.

Once the apparent successful bidder has been selected, the resulting contract should be clear and enforceable. The OIG expects the agency to adhere to the solicitation rules on which terms are non-negotiable. These are expected to be the major, significant terms that may in fact have kept some potential bidders from participating in the procurement. These should certainly be limited to lesser terms related to logistics and execution. The OIG expects the agency to:

- (1) Avoid overly complex formulas for payments, including escalation clauses, penalties, and incentive payments.
- (2) Include clear terms related to change orders, amendments, and extensions.
- (3) Insist upon explicit triggers for payment and reporting obligations for noncompliance.
- (4) Provide access to information to parties, oversight entities, and those engaged by oversight entities, and be clear about what Commonwealth reconciliation and oversight costs (*i.e.*, outside audit costs) bidders may be responsible for.

Most of the terms should have been clearly identified within the solicitation documents. This should leave very few items or terms to be negotiated prior to signing the contract.

If there are material non-negotiable terms, they should have been made clear in the procurement documents. And all members of the negotiating team should be clear on what those non-

negotiables are and what they mean. These terms should also be reviewed at the point of award. It is important to say what you mean and mean what you say. If a term is non-negotiable, it's not a suggestion.

When the procurement has been completed and the contract awarded and signed, the OIG looks at contract management. The OIG has conducted numerous reviews of contract and lease management at state agencies. The OIG is looking for contract management practices that are consistent, reliable, and in the public interest. When conducting a review, the OIG might ask:

- (1) Has the agency identified the departments with key roles and responsibilities to manage the contract or lease? How do departments communicate?
- (2) What are the systems that the agency uses to track payments, invoices, renewal dates, contact information, and other key data points?
- (3) Is there communication between the procurement team and the contract management team and the accounts receivable/accounts payable teams?
- (4) Is the agency actively managing the contract or is it on autopilot?
- (5) What are the related internal controls, including who can override contract provisions?
- (6) Is the agency tracking key performance indicators and accurately calculating penalties and incentive payments?
- (7) What are the processes to amend or extend the contract?

In the past, the OIG identified two MassDOT lessees that had outstanding balances due or missed payments on multiple leases. We brought the issue to MassDOT, which recovered \$1.5 million from those two lessees. But that was hundreds of thousands of dollars less than the OIG calculated the lessees owed. These leases and the issues we identified with the leases and management of them were top of mind for me while MassDOT was conducting the Service Plaza Procurement.

Given that, I felt it was important to identify best practices for contract management in my August letter. I will provide the Committee with that letter for the record. For now, I will briefly summarize the key recommendations here. The OIG identified similar concerning conduct in a recent letter to the Department of Conservation and Recreation and the New Bedford Port Authority with the management and operation of a long-term lease involving the Pope's Island Marina.

- (1) Include clear rent and revenue-sharing terms and implement consistent rent calculations.
- (2) Develop clear construction and revitalization commitments and terms that account for non-performance.
- (3) Adhere to strong recordkeeping requirements to document and define project milestones, key decisions, and project developments.
- (4) Utilize audit clauses that define clear audit and investigative rights.

- (5) Develop a resilient contract management team that endures through the end of the agreement.

In our OIG Academy classes and in our reviews and investigations, we take the same approach to contracts. The time to think about the final contract is not at the end of the procurement, but at the beginning. When identifying relevant criteria to include in the procurement evaluation, it should relate to how success or failure of the contract will be measured. Adequate thought must be given to contract management throughout the procurement process to ensure appropriate safeguards are built into the final contract.

Conclusion

Each review we undertake is tailored to the circumstances. As I shared at the outset, we will be issuing findings on the Service Plaza Procurement in the coming weeks. Nothing that I have said here in outlining how the OIG generally looks at procurements should be construed as implicit of any findings related to this procurement. This investigative letter, once issued, will speak for itself about the canceled Service Plaza Procurement. I do hope that my comments have been instructive to the Committee in a broader sense and also informs the Committee as it performs its work on this and other procurements.

With the permission of the chair, I am happy to answer any questions. I cannot answer any questions specific to the original MassDOT Service Plaza Procurement. I hope that you understand why.

Thank you.

August 22, 2025

Via Electronic Mail

Monica Tibbits-Nutt
Secretary of Transportation and Chief Executive Officer
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**Re: Highway Service Plazas Lease and Concessions Agreement -
Key Aspects for Final Agreement**

Dear Secretary Tibbits-Nutt,

The Massachusetts Department of Transportation (MassDOT) Board of Directors recently voted to approve the award and execution of the Transition Agreement and Lease and Concessions Agreement (agreement) with Applegreen MA Investments, LLC (Applegreen), effective January 1, 2026. The new agreement will create a partnership between MassDOT and Applegreen for 35 years to revitalize, operate, and maintain service plazas along Massachusetts roadways. At present, the unsuccessful bidder is challenging the award. This letter contains no findings related to MassDOT's procurement, evaluation or operator selection processes.

In light of past performance issues with long-term lease management, I write with observations and recommendations for you as you commit the Commonwealth to a new long-term agreement for the service plazas. State-owned property is a public asset, and leasing it generates revenue that should benefit the public. MassDOT, like other state agencies, must negotiate leases for public property that include well-drafted provisions for fair market rent, clear-cut revenue-sharing provisions, escalation clauses, late fees and penalties, and explicit triggers for payment and reporting obligations for noncompliance. To accurately carry out the provisions, MassDOT must ensure internal processes and personnel are in place to monitor payments received for timeliness and accuracy and to take prompt action for non-compliance. The OIG has reviewed many prior public leases, including leases between MassDOT and private entities, where imprecise, vague or hard-to-enforce provisions result in direct financial losses that constitute a waste of public assets.

In addition to drafting clear provisions and monitoring payments, MassDOT must review, approve, and track construction and revitalization efforts. Each service plaza must have a detailed written construction and maintenance contract with enforceable action for noncompliance. The OIG has reviewed Commonwealth leases – both as lessee and lessor – that have resulted in the waste of public funds because the property, including betterments, has not been adequately constructed or maintained.

The OIG's Internal Special Audit Unit for transportation (ISAU) has examined MassDOT leases and lease management practices and rent collection efforts, as well as MassDOT's draft lease and concessions agreement for this partnership. As MassDOT proceeds with finalizing the concession agreement, best practices and lessons learned can inform MassDOT of key aspects to include in the final agreement.

Rent and Revenue-Sharing Provisions

1. Include clear rent and revenue-sharing terms and implement consistent rent calculations.

The final agreement must include firm, legally sound, well-defined provisions detailing how revenue-sharing amounts are calculated and by whom for accuracy of rent collection. MassDOT must consistently ensure that rent increases are implemented timely and accurately and that revenue-sharing reports are clear and timely received. MassDOT must include clear conditions under which late fees, penalties, and noncompliance with requirements will apply. Additionally, MassDOT must establish a process to track and monitor upcoming and overdue rental statement reports to ensure they are accurate, submitted timely, and fees are applied in the event of noncompliance.

MassDOT has a significant portion of the state's most valuable asset – land – under its control. MassDOT must track and continuously monitor revenue-sharing amounts and the schedule of increases, especially during federal economic and budget uncertainty. Creating clear payment terms that include defined payment due dates with late fee penalties for noncompliance is the foundation of any lease agreement. Penalties and late fee provisions for non-compliance should be direct, proportionate, and not-overly complicated to apply or calculate for either party.

Relatedly, MassDOT must be prepared to hold the lessee accountable to the terms and conditions, including imposing fees and penalties when applicable. It is not enough for MassDOT to write such terms and conditions into the agreement – it must also be committed to exercising its full rights in the event of non-performance by the lessee.

Construction and Revitalization Commitments

2. Develop clear construction and revitalization commitments and terms that account for non-performance.

A well-defined scope of work with clearly articulated performance standards, a system for monitoring progress, and a schedule for regular inspections must be thoughtfully developed before construction begins. MassDOT must establish monetary fines and corrective action procedures in the event of a default with the agreed-upon construction milestones or performance standards and specifications. By developing strong construction metrics, MassDOT can define exactly what is expected, ensure quality and timelines are met, and may avoid unnecessary or additional future revitalization efforts.

Because this agreement extends for 35 years, operations and maintenance monitoring are equally important to construction monitoring. MassDOT should ensure that it is capable of monitoring the operation and maintenance of each service plaza by tracking repairs, completing inspections, and applying penalties and fees for noncompliance.

MassDOT can further its stewardship of its public assets by ensuring that construction and maintenance are viewed as long term investments with value beyond the contemplated long-term lease agreement if done correctly and with deliberate intentionality.

Records Retention and Access Requirements

3. Adhere to strong recordkeeping requirements to document and define project milestones, key decisions, and project developments.

The agreement must include details of what records must be kept, who is responsible for maintaining them, and how long they should be kept. MassDOT can define the types of records to be retained, the duration of their retention, and the procedures for inspection or audit (discussed further below). The purpose of centralized, systemic recordkeeping ensures transparency, accountability, and ease of verification of contract compliance. Particular to this agreement, revenue records will be especially important over the length of the contract period because they determine monies owed to MassDOT, and in essence the public whom it serves.

In addition to requiring the vendor to maintain records throughout this agreement, MassDOT must establish and maintain a centralized repository for the lease agreement, amendments, correspondence, payment records, and all required reports outlined in the final agreement. The OIG has conducted reviews that found poor records retention practices, indicating insufficient oversight, improper payments, and potentially inadequate service delivery. By maintaining an internal tracking system with organized rent and revenue-sharing records, construction records, operations and maintenance records, MassDOT reduces the risk of noncompliance with oversight requirements. This also ensures business continuity, so information is not lost, destroyed, or unattainable due to staff turnover, which is inevitable over the course of the 35-year life of this lease agreement.

4. Audit clauses that define clear audit and investigative rights.

Include an audit clause in the final lease agreement which allows access by state and federal oversight agencies, and those working on behalf of an oversight agency. With recordkeeping requirements, audit and records access clauses are critical for a large-scale contract like this and general vendor management.

Strong audit clauses foster transparency and accountability, and provide oversight agencies with direct access to a vendor's records, employees, and activities when needed. Such audit and records access clauses should include access to the vendor's subcontractors and suppliers.

Continuity Planning

5. Develop a resilient contract management team that endures through the end of the agreement.

It is critical that MassDOT builds a strong contract administration team, having such a team is as important as having a solid procurement team, to ensure it receives all the promised services outlined in the contract. The team should include MassDOT staff from all relevant

disciplines and divisions that may be involved in service plaza operations and maintenance. This includes staff with expertise in construction management, revenue and rent collection, performance metrics and vendor accountability, among other areas.

Over 35 years, personnel will change, systems will improve, and business demands may shift. Succession planning should be a top priority. MassDOT must have and maintain a staff of qualified and experienced professionals to manage the vendor and monitor lease compliance, internal systems and processes to track financial and operational obligations, and oversight mechanisms to promptly address violations or disputes. Rather than rely upon outside experts and counsel after a violation has occurred, MassDOT must build and maintain its internal capacity at the start of the agreement.

MassDOT must commit to unparalleled excellence in the management of this long-term lease over the next three decades. The service plaza agreement will impact the traveling public and commuters, commercial transportation and tourists for the foreseeable future. At the heart of its experience is MassDOT's commitment to ensuring that the lease and concession agreement it enters now fulfills its promise of delivering a dramatic improvement of the service plazas with a significant investment of capital to create best in class service plazas that reflect the character and values of Massachusetts.

The OIG's goal is to ensure all agreements involving public assets and funds reflect the highest standards of accountability and value for taxpayers. If this office can provide further assistance by reviewing best practices with MassDOT or other such matters, please contact the Director of the ISAU, Ms. Emily Pedersen at Emily.Pedersen@mass.gov.

Thank you for your attention to this matter.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

The Hon. Kim Driscoll, Lieutenant Governor of Massachusetts
Kate Cook, Chief of Staff, Office of the Governor
Carrie Wicker, MassDOT/MBTA General Counsel
Meghan Haggerty, Chief Operating Officer, MassDOT
Scott Bosworth, Chief of Transit Oriented Development, MBTA
Gregory Rooney, Executive Director for Property – Leasing & Real Estate Management, MassDOT
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