

The Commonwealth of Massachusetts
Office of the Inspector General

December 12, 2001

Luke E. Thompson
Executive Director
Massachusetts Water Pollution
Abatement Trust
One Ashburton Place; 12th Floor
Boston, Massachusetts 02108

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Dear Mr. Thompson:

This Office issued a report in June 2001 entitled *Privatization of Wastewater Facilities in Lynn, Massachusetts*. This report reviewed and offered an opinion about the efficacy of a design-build type procurement used by the Lynn Water and Sewer Commission (Commission). Currently, the Commission has an application for \$10,223,510 in funding before your agency for the East Lynn Combined Sewer Outflow Abatement Project. This Office did not intend for this report to be used to penalize the ratepayers of Lynn by compromising the Commission's ability to obtain outside funding through the Massachusetts Water Pollution Abatement Trust.

While this Office stands by its findings, based upon information submitted to this Office by the Commission subsequent to issuance of the report and in consideration of the fact that the Commission acted with expressed statutory authority granted to it by the legislature in using alternative procurement methods for the project, I encourage you to proceed without prejudice and to give due consideration to the Commission's funding request.

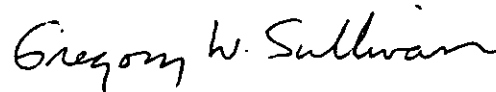
This Office continues to believe that the Commonwealth should proceed cautiously with the use of alternative procurement methods, including design-build procurement. For more than ten years, this Office has voiced concern about the use of design-build procurement, and this concern was echoed strongly in our report. But, the Massachusetts Legislature on several occasions has chosen to waive the state's public construction bidding laws to allow for the use of design-build and other procurement methods on a trial basis for specific construction contracts. In this instance, after Lynn filed legislation to authorize the use of design-build construction methods, our Office provided comment and offered amendments to the legislature concerning the proposal. The Legislature considered these recommendations, incorporated several, and provided the Commission with a set of modified design-build procurement methods to employ in this project. In consideration of this fact, I suggest that it would be unfair to penalize

the city of Lynn on the basis of this Office's general criticism of design-build construction methods, to the extent that the Commission acted with legislative authority in using such methods.

Recently, the Commission submitted detailed data to this Office about unit costs of other public construction contracts that had been awarded by other municipalities subsequent to issuance of the report in which the municipalities used standard construction procurement methods. This data argued that the unit costs in these contracts were comparable to those on the Lynn project.

In consideration of this data and the fact that the Commission acted with full statutory authority in the award of the contract, I do not believe that the ratepayers of Lynn should be denied a fair share of Abatement Trust funding. I urge you to proceed without prejudice when considering this funding application. Thank you for considering this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan
Acting Inspector General