

Investigations

**Operational
Reviews**

**Financial
Oversight**

**Megaprojects
Monitoring**

**Effective &
Ethical
Contracting**

**Real Estate
Dealings**

**Asset
Management**

**Procurement
Assistance &
Enforcement**

**Commonwealth of Massachusetts
Office of the Inspector General**

**ANNUAL REPORT
1995**

**Robert A. Cerasoli
Inspector General**



ROBERT A. CERASOLI
INSPECTOR GENERAL

The Commonwealth of Massachusetts
Office of the Inspector General

JOHN B. McGRATH
STATE OFFICE BUILDING
ROOM 1311
TELE 727-0140
FAX 727-2334

MAILING ADDRESS:
STATE HOUSE STATION
P. O. BOX 270
BOSTON, MA 02133

April 1996

His Excellency Governor William F. Weld

The Honorable Senate President Thomas F. Birmingham

The Honorable Speaker of the House Thomas M. Finneran

The Honorable Stanley C. Rosenberg

The Honorable William P. Nagle, Jr.

Secretary Charles D. Baker

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

As I complete my first five-year term as Inspector General, I have taken the opportunity to assess this Office's accomplishments and the challenges facing us in the future. The work of this Office is documented in this and my four previous annual reports.

Throughout my first term, many have called for a critical examination of what government does and how it does it. Sometimes these efforts bear labels like "reinvention" and "reengineering." Governmental self-criticism is healthy. Indeed, the very purpose of the Ward Commission's proposal to create this Office more than 15 years ago was to build into government a mechanism for self-criticism and self-correction.

Unfortunately, some "reform" proposals advance private interests at the expense of the public interest or unnecessarily expose the public to fraud, waste, and abuse. In this environment, the major challenge confronting this Office has been and will continue to be promoting responsible change while opposing bad deals for the public.

This Office continually assesses our contribution to the integrity of, and public confidence in, state and local government. We have been vigilant in detecting fraud, waste, and abuse, but our principal objective is to prevent fraud, waste, and abuse before they occur. We have set an aggressive, proactive prevention agenda. Throughout the pages of this report are examples of our activities reflecting our three-part prevention strategy:

- Capacity building -- providing training and technical assistance to public officials.
- Timely intervention -- intervening in transactions before fraud, waste, or abuse occurs.
- Dissemination of lessons learned -- widely distributing information to public officials to prevent the recurrence of problems we have identified in other agencies and jurisdictions.

I was deeply honored to receive the unanimous vote of the Governor, Attorney General, and State Auditor to serve as the Commonwealth's Inspector General for a second five-year term. I continue to be inspired by the task confronting this Office: to help the Commonwealth enter the next century free of the scandal that gave rise to the Ward Commission investigations. All of us in the Office of the Inspector General remain committed to this goal.

Sincerely,

Robert A. Cerasoli
Inspector General

Table of Contents

Introduction	1
Operational Reviews	5
Effective and Ethical Contracting	9
Local Government Procurement Assistance and Enforcement	13
Central Artery/Third Harbor Tunnel Project Monitoring	19
Financial Oversight	33
Investigations	39
Real Estate Dealings	41
Asset Management Board	43
Legislative Reviews	45
Legislative Recommendations: 1996 Session	53

The Office of the Inspector General is located in the McCormack State Office Building at One Ashburton Place, Room 1311, Boston, Massachusetts 02108. The telephone number is 617-727-9140. The fax number is 617-723-3540. The Office also has a 24-hour, toll-free "hot-line" that provides all citizens and government employees with an easy, confidential way of reporting suspected fraud, waste, or abuse in government. This number is 1-800-322-1323.

Publication No. 17820-58-5C-4/96-IGO, approved by Philmore Anderson III, State Purchasing Agent.
Printed on recycled paper.

Introduction

“The basic concept behind the Office of the Inspector General is that any institution . . . must build into itself a mechanism for self-criticism and self-correction. . . . To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste . . . the Commission designed the Office of the Inspector General to be a neutral, impartial and independent office to fulfill that critical function.”

-- Ward Commission
Final Report, Vol. 1, 1980

The Massachusetts Office of the Inspector General was established in 1981 on the recommendation of the Special Commission on State and County Buildings, a special legislative commission which spent two years probing corruption in the construction of public buildings in Massachusetts. The so-called “Ward Commission,” led by John William Ward, produced a 12-volume report documenting its findings of massive fraud and waste and detailing its legislative recommendations for reform. The Office was the first state-wide office of the inspector general established in the country.

The Office has a broad mandate under M.G.L. c.12A: to prevent and detect fraud, waste, and abuse in government. Chapter 12A provides the Office the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and noncriminal violations of law. The Office employs a staff of experienced specialists, including investigators, lawyers, management analysts, and engineers. Special interdisciplinary teams are formed to meet the unique requirements of the Office’s projects. For example, the team assigned to monitor the Central Artery/Third Harbor Tunnel Project is comprised of specialists in contracting, engineering, law, and financial analysis. The Office also has assigned a team of procurement specialists to assist local governments with M.G.L. c.30B, the Uniform Procurement Act.

Preventing fraud, waste, and abuse before they happen is the Office’s principal objective. Throughout the pages of this report are examples of our prevention activities which fall into three broad categories:

Capacity building. The Office provides training and technical assistance to public officials involved in procurement; publishes and widely distributes a quarterly *Procurement Bulletin* with information and advice to promote effective and ethical purchasing; and this year issued an updated manual with step-by-step guides for the procurement of supplies, services, small construction projects, the disposal of surplus supplies, and the acquisition and disposition of real property. The Office also provides technical assistance to the Massachusetts Highway Department’s Central Artery/Third Harbor Tunnel Project, often to suggest improvements to the Project’s management controls. The Inspector General has proposed a major new capacity building project for inclusion in

the Office's fiscal year 1997 budget: a statewide purchasing official certification program.

Timely intervention. Whenever possible, the Office seeks to intervene in situations before fraud, waste, or abuse occurs. For example, the Office may comment on legislation which exposes the state to financial losses, or assist a public agency in devising terms for a request for proposals that will generate robust competition. With increasing frequency the Legislature directs the Office to review, comment on -- and sometimes approve -- real property transactions, economic development projects, and other state activities. Similarly, and also with increasing frequency, public officials seek the Office's assistance and comments on proposals before they are implemented.

Dissemination of lessons learned. Where the Office identifies issues that we believe should interest many public officials, we widely distribute information to prevent problems before they occur. For example, when the Office identified significant problems in one town's completed school renovation project, we directed our recommendations aimed at preventing similar problems in the future to all school districts, and we mailed a copy of the report to each district. We also use the *Procurement Bulletin* to inform local officials about the results of our work in other jurisdictions.

Of course, where fraud, waste, and abuse do occur, effective detection is essential. The Office receives many complaints alleging fraud, waste, or abuse in government. The Office evaluates each complaint to determine whether it falls within the Office's jurisdiction and, if so, whether it merits action by the Office. Some complaints are closed immediately or after a preliminary inquiry fails to substantiate the allegations; others lead to management reviews or investigations. When projects are completed, the Inspector General typically issues a letter or report detailing the Office's findings and recommending reforms to prevent future problems. Information concerning criminal or civil violations of law is reported to appropriate authorities including the Attorney General and the U.S. Attorney.

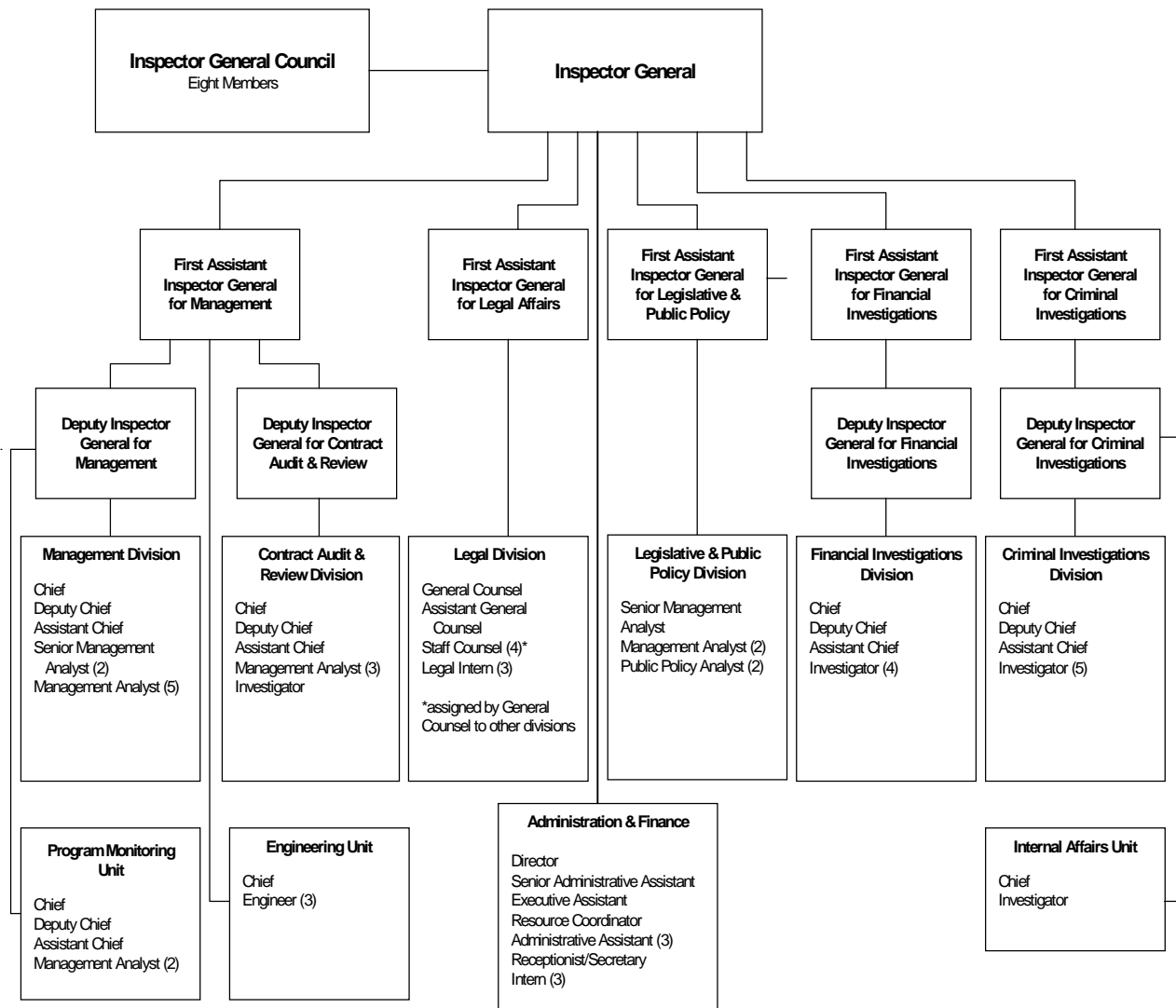
The Office's budget for fiscal year 1996 is \$1,482,232. Although the Office has 78 authorized staff positions, only 42 staff positions were filled in fiscal year 1996 because of budget constraints. The Office's organization and approved staff positions are shown in Figure 1.

**Inspector General's Office
Budget History**

FY	Budget	Staff
96	1,482,232	42
95	1,412,702	36
94	1,293,028	33
93	1,300,000	27
92	1,011,238	23
91	1,011,238	24
90	1,116,504	27
89	1,379,932	32
88	1,357,304	28
87	1,269,626	29
86	1,178,235	30
85	1,056,301	33
84	965,273	31
83	842,000	25
82	440,000	18

Figure 1.

Office of the Inspector General
Organization Chart



This report summarizes the projects and activities completed by the Office during the 1995 calendar year. Related events and follow-up work in 1996 are noted in italics.

Operational Reviews

“[T]he Commonwealth’s system of higher education would benefit from an organizational arrangement that promotes system-wide planning, priority setting, and resource allocation decision-making with respect to the financing and construction of campus buildings.”

-- IG report
February 1995

Higher Education Building Authorities

In February 1995, the Inspector General issued *A Review of the Commonwealth’s Higher Education Building Authorities*. The Commonwealth’s higher education building authorities were created to aid public education by providing dormitories, dining commons, and other buildings and structures for the use of the Commonwealth’s public colleges and universities. As of early 1995 there were four independent higher education building authorities: the University of Massachusetts Building Authority, the University of Lowell Building Authority, the Southeastern Massachusetts University Building Authority, and the Massachusetts State College Building Authority. The Higher Education Reform Act of 1991 incorporated the University of Lowell and Southeastern Massachusetts University into a consolidated University of Massachusetts; it also replaced the Board of Regents with a Higher Education Coordinating Council. However, this legislation specifically exempted the three university-affiliated higher education building authorities from any effects of the university consolidation.

The purpose of the Office’s review was to identify the functions performed by the building authorities and to assess the organizational arrangements in effect at that time. The review yielded the following findings:

- The higher education building authorities had not financed significant new construction of campus buildings in recent years.
- Three of the four higher education building authorities did not perform significant operational functions.
- The memberships of the three university building authorities did not conform to legal requirements.
- Indecision regarding the future of the higher education building authorities prevented the Southeastern Massachusetts University Building Authority and the University of Lowell Building Authority from refinancing their debt at historically low interest rates.

Based on these findings, the report recommended that the Administration and the Legislature consolidate or eliminate the higher education building authorities to promote more cost-effective resource allocation within the higher education system. Legislation consolidating the three university building

authorities into a single University of Massachusetts Building Authority, Chapter 267 of the Acts of 1995, was enacted in November 1995.

Needham Construction Project Management

“We found your report to be thorough, complete, and very helpful. . . . I am sure that, in the long run, your department’s efforts will be a benefit to the Town of Needham.”

-- Response of the
Needham Superintendent
of Schools to draft IG
report
May 1995

The Office received several complaints alleging that mismanagement of a school renovation project had contributed to cost overruns and schedule delays. After conducting an extensive review, the Inspector General released a 75-page report, *The Pollard Middle School Construction Project in Needham: A Management Review* in June 1995. The report focused on four key areas: planning, fiscal control, schedule control, and contractor oversight. The Office’s intent was to examine the question of how some problems might have been prevented and how future municipal construction and renovation efforts can be better managed and controlled. The report findings highlighted the need for effective project management safeguards on public projects at all stages of design and construction.

For example, although the Town of Needham had devoted considerable effort to planning and budgeting for the Pollard School project, the Town did not designate a single manager to serve as the focal point of responsibility and accountability. In the absence of a project manager, the Pollard Building Committee relied on the project designer for policy guidance and contractor oversight as well as design expertise. However, the designer did not effectively manage and control the project on behalf of the Town.

These problems were compounded by procedural lapses by the Town. Because of weak fiscal controls, the Town at one point had overpaid the Pollard School construction contractor by more than \$400,000. The Town also paid the designer more than \$150,000 in fees that were not authorized or reflected in the original design contract or subsequent amendments to that contract.

Over the course of the project, the Building Committee approved a total of 24 construction change orders totalling \$692,742. The report examined two of the largest construction change orders and found that the manner in which they were developed, priced, and monitored reflected the inadequacy of fiscal control, schedule control, and contractor oversight on the project.

Taken as a whole, the report findings suggest that a municipality embarking on a complex, multimillion dollar construction or renovation project should consider investing in full-time, professional project management in order to safeguard the project from excess costs, schedule delays, and design and construction problems. The report recommended a series of management strategies for safeguarding municipal projects.

Oak Bluffs Bathhouse Project

“The report gives an accurate, candid and realistic picture of the Bathhouse project.”

-- Response by the
Chairman of the Oak
Bluffs Board of Selectmen
January 1996

The Office completed a review of the planning and construction of a bathhouse for boaters by the Town of Oak Bluffs in December 1995. The Inspector General's report, *A Review of the Oak Bluffs Bathhouse Project*, concluded that the construction of the Oak Bluffs bathhouse was hampered by poor coordination, erratic planning, lax record-keeping, and disregard for public bidding and municipal finance laws. As a result of these problems, the bathhouse took nearly five years to complete, cost more than the project appropriation, and may accommodate fewer users than anticipated. The report recommended that Oak Bluffs officials involve town counsel in the planning stages of future projects and that all Oak Bluffs officials and employees with project planning and oversight responsibilities receive training in the requirements of state laws governing public construction, procurement of supplies and services, and municipal finance.

Performance Review of the Committee for Public Counsel Services

Chapter 38 of the Acts of 1995 directed the Inspector General to contract with a certified public accounting firm to conduct a performance review of the Committee for Public Counsel Services (CPCS) and submit the final report to the Legislature by March 1, 1996. The legislation specified 16 issues concerning the effectiveness, operation, management, and fiscal affairs of the CPCS to be addressed by the performance review. The Office awarded the contract through a competitive process consistent with the state's service contracting regulations. The Office advertised the request for proposals (RFP) in August 1995 in five publications, including the *Boston Business Journal*, *Northeast Minority News*, and *CPA Review*. Twenty-three individuals and firms requested copies of the RFP, and three certified public accounting firms submitted proposals. In October 1995, the Office executed a contract with Daniel Dennis & Company to perform the study.

In February 1996, the Office filed the final report prepared by Daniel Dennis & Company with the House and Senate Committees on Ways and Means.

Effective and Ethical Contracting

Lowell Hockey Arena

“[T]he design-build process had obviously failed to save the time or money anticipated. . . . [T]he decision to go forward with standard design and construction makes the process far more predictable and reduces the risk of unforeseen obstacles.”

-- Letter to the Office from the City of Lowell
November 1995

During 1995, the Office initiated an inquiry into a project to design and construct a hockey arena in Lowell. Special legislation enacted in 1994 had authorized the City of Lowell to establish a Lowell Arena Commission to oversee the arena project. The same legislation waived the Commonwealth’s designer selection and construction bidding laws for arena design, construction, and management contracts, but required the solicitation of competitive sealed proposals for these contracts in accordance with M.G.L. c.30B.¹ The City contracted for project management services with Gilbane Building Company, which solicited and evaluated design-build proposals for the arena. The Commission subsequently rejected the design-build proposals, all of which exceeded project cost estimates by millions of dollars.

In an October 1995 letter, the Inspector General advised the City of the Office’s preliminary findings regarding the procurement of project management services from Gilbane Building Company and the cancelled procurement of design-build services for the arena. The Office’s review indicated that neither procurement had complied with legal requirements.

Although the City’s contract with Gilbane stated that the contract had been procured pursuant to the state’s designer selection law, the Office found that the process by which Gilbane was selected did not fulfill the requirements of this law nor of M.G.L. c.30B. The Inspector General concluded that the City did not have a valid contract with Gilbane and advised the City to obtain special legislative authorization for any payments to Gilbane beyond those authorized by Chapter 79 of the Acts of 1995.²

The Office also found that the process by which design-build proposals were solicited and evaluated failed to comply with M.G.L. c.30B requirements. The Inspector General advised the City that any design-build contract awarded by the City or the Lowell Arena Commission pursuant to that process would have been invalid.

¹M.G.L. c.30B, the Uniform Procurement Act, governs municipal procurements of supplies and services other than design and construction.

²Chapter 79 of the Acts of 1995 authorized the Lowell Arena Commission to pay Gilbane up to \$1.9 million for services rendered prior to execution of the agreement between Gilbane and the City, subject to certain conditions.

Noting that the design-build process had failed to save the City either time or money, the City decided to complete the arena design and advertise for construction bids in accordance with the Commonwealth's designer selection and construction bidding laws. The Office has provided ongoing technical assistance to the City on procurement issues as the arena project has progressed to the final design stage.

Alternative Design, Construction, and Financing Proposal

The Inspector General reviewed a proposal to use alternative design, construction, and financing methods to build an elementary school in Hopkinton. The proposal had been developed and promoted by private investment and architectural firms seeking business opportunities resulting from alternative design, construction, and financing of public construction projects in Hopkinton and elsewhere in Massachusetts.

In an October 1995 letter to the Town of Hopkinton, the Inspector General outlined the disadvantages of the proposal. The Inspector General noted that design-build methods entail substantially higher risks than the conventional design and construction methods authorized by state law and that these risks would be compounded if the Town were to pursue alternative financing arrangements such as sale/leaseback or lease-purchase of the school. The Town did not pursue the proposal in 1995.

MBTA Consultant Contracting

“The MBTA currently oversees more than \$1 billion in construction contracts and spends over \$30 million annually for consultants. One would expect an agency of this size to institute clear, rational procedures for consultant service procurement and contracting.”

-- IG Report
December 1995

The Inspector General issued a *Review of a Consultant Contract Procured and Administered by the MBTA* in December 1995. The Massachusetts Bay Transportation Authority (MBTA) had entered into an unadvertised \$28,910 agreement with a consultant in late 1992. Over the next two and one-half years, the value of the consultant contract ballooned to more than \$680,000. The Office initiated a review of this contract in late 1994 after receiving a complaint. The report summarized the Office's findings and recommendations regarding the MBTA's consultant selection and contracting practices.

The report revealed that:

- The MBTA's informal, undocumented consultant selection process violated the MBTA's written consultant selection procedures.

- The MBTA executed a series of noncompetitive contract amendments that hiked the value of the \$28,910 consultant contract to more than \$680,000.
- MBTA officials repeatedly authorized work and incurred expenses for services prior to obtaining required approvals.
- The MBTA's administration of the consultant contract reflected an absence of basic public contracting safeguards.

The report noted that the Office had repeatedly recommended, over the past decade, that the MBTA overhaul its consultant contracting procedures. The report urged the MBTA to address longstanding contracting deficiencies. Specifically, the report recommended that the MBTA restrict the size and use of noncompetitive supplemental agreements, establish controls over emergency procurements, adopt procedures governing reimbursement of consultant expenses, and redesign its standard consultant invoice to enable systematic contract monitoring and evaluation of MBTA consultants. In response to a draft version of the report, the MBTA informed this Office that the MBTA had recently instituted several contracting improvements and planned to institute additional measures.

Update: Upper Blackstone Water Pollution Abatement District Design-Build RFP

Chapter 60 of the Acts of 1994 required the Inspector General to review and approve the Upper Blackstone Water Pollution Abatement District's procedures for selecting a design-build contractor to design, supply, construct, and acceptance-test an air pollution control system and related incinerator subsystems. In 1994, the Office provided the District with informal comments and recommendations on the draft version of the design-build RFP. The final RFP incorporated the Office's recommendations. In March 1995, the Inspector General provided the District with written approval of the District's procedures, as set forth in the final RFP and accompanying addenda.

Update: MDC Contracts for Parking Lot Management Services

In 1994, the Inspector General issued a report on the flawed process used by the Metropolitan District Commission (MDC) to select contractors to operate and manage three MDC-owned and -operated parking lots in Hull, Nahant, and Revere. The MDC issued a new request for proposals (RFP) for these contracts in March 1995. Shortly thereafter, the Inspector General provided the MDC Commissioner with a detailed critique of provisions in the new RFP that were

likely to compromise fair competition and undermine the MDC's contracting objectives. The Inspector General urged the MDC to redraft the RFP in accordance with the recommendations set forth in the Inspector General's 1994 report. In response, the MDC Commissioner issued an amended RFP that addressed the Inspector General's concerns.

Update: DEM Contracts for Skating Rink Management and Operation

“My Office generally advises against converting evaluation criteria to points for precisely this reason: although point systems create the illusion of mathematical precision, they often invite arbitrary scoring decisions and irrational outcomes.”

-- IG letter to the DEM
Commissioner
November 1995

The Department of Environmental Management (DEM) first privatized the management and operation of state-owned skating rinks in 1991. At that time, the Inspector General criticized the poorly defined and open-ended nature of the RFP issued by the DEM. During 1995, the DEM requested the Inspector General's comments on two new RFPs for the management and operation of a total of 17 ice skating rinks. In an April 1995 letter, the Inspector General raised concerns about the first RFP, which failed to establish clear, coherent evaluation criteria by which to judge competing proposals. In addition, the RFP did not contain a clear methodology for evaluating fee proposals expressed as a percentage of gross revenues.

The second RFP, a draft of which was forwarded to the Office by the DEM in November 1995, provided proposers with more detailed information. In a November 1995 letter, the Inspector General recommended further improvements to the evaluation methodology contained in the second RFP.

The DEM made minor changes to the second RFP before issuing it in early 1996.

Local Government Procurement Assistance and Enforcement

M.G.L. c.30B Technical Assistance

The Office provides extensive technical assistance to local governments on M.G.L. c.30B, the Uniform Procurement Act. Our objective is to help ensure effective and ethical public purchasing by local governments.

Training. The Office provided local government procurement training at seven locations across the state during 1995. The training sessions, attended by a total of 865 local officials, covered four topics:

- Getting Started: A Primer for New Procurement Officials
- Overview of Quotes and Bids
- Demystifying RFPs
- Tips for Avoiding Bid Protests

The Office solicited written evaluations from the participants, whose response to the training was overwhelmingly positive.

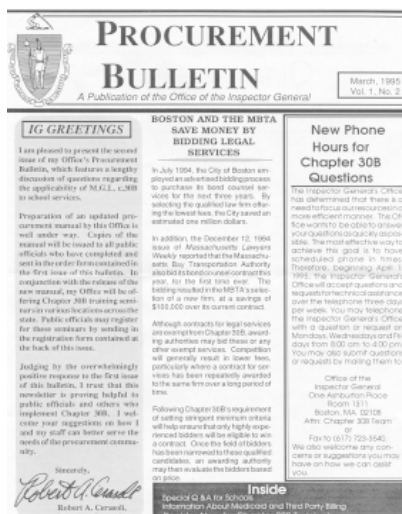
Also in 1995, the Office provided speakers on procurement for conferences sponsored by the District Treasurers Association, the Massachusetts Association of School Business Officials, the Massachusetts Municipal Auditors' and Accountants' Association, the Massachusetts Collectors and Treasurers Association, and the Massachusetts Firefighting Academy.

Publications. In June 1995, the Inspector General released an extensively revised and updated version of the Office's manual, *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*. The 1995 manual provides step-by-step guidance; it also incorporates changes to the law enacted since the original manual was issued in 1990, answers to frequently asked questions, a special section on design and small construction projects, advice on avoiding and resolving bid protests, and an expanded appendix containing sample forms. In preparing the manual, the Office solicited review comments from the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, and the Massachusetts City Solicitor and Town Counsel Association. The Office mailed more than 3,000 complimentary copies of the 1995 manual to every local jurisdiction and every

"As a new superintendent, I found all information and training very helpful, along with the print information. 'Tips for Avoiding Bid Protests' was particularly useful."

"Very helpful and informative. Thanks for coming to the western end of the state."

-- Training participant evaluations



recipient of the Office's M.G.L. c.30B newsletter.

“ . . . [Y]our staff has been extremely helpful when I've made inquiries or had specific questions during the past year.”

-- Training participant evaluation

“I want to convey . . . my commendation for the work of two of your staff for their review and critique of an RFP . . . for a Geographic Information System This work was done by them in a timely and constructive manner”

-- Memorandum from Nantucket Finance Department
November 1995

“It is this Office's view that the scope of services . . . is not impermissibly problem-oriented or open-ended. . . . However, the scheme for evaluating proposals is problematic and renders the process vulnerable to a legal challenge.”

-- Office letter to City of Leominster
October 1995

The Office also issued the quarterly *Procurement Bulletin*, a Chapter 30B newsletter distributed to procurement officials across the state. The *Procurement Bulletin*, which has a mailing list of 2,800, summarizes current procurement-related news and issues, addresses frequently asked questions about M.G.L. c. 30B and highlights special topics such as bid protests, requests for proposals, and municipal construction.

Inquiries, Complaints, and Protests. The Office responded to 1,853 local procurement inquiries that included requests by local officials for assistance with procurements under M.G.L. c.30B, complaints by citizens, and bid protests from vendors. The Office's team of procurement specialists regularly reviews bid specifications and offers recommendations to assist purchasing officials in promoting competition for public contracts and ensuring compliance with the law. The Office has also developed an informal dispute resolution process to resolve bid protests fairly and efficiently without litigation. The Office's policy is to work cooperatively with local government officials to ensure fair competition for public contracts.

The remainder of this section presents examples of the variety of local government procurement issues handled by the Office during 1995.

Leominster Wastewater Treatment Plant Services - Bid Protest

The Office received a protest concerning a request for proposals (RFP), issued by the City of Leominster in April 1995, for a 20-year contract to upgrade the City's water filtration plant and to operate and maintain the City's wastewater and water treatment facilities. The estimated value of the contract exceeded \$30 million. Special legislation enacted in 1994 exempted the contract from the Commonwealth's designer selection and construction bidding laws, but required the City to award the contract using a Chapter 30B procurement process.

The complaint alleged that the City's RFP was impermissibly vague because it invited proposers to take exceptions and make changes to the existing design for improvements to the City's water filtration plant. The Office disagreed and, in an October 1995 letter to the City, reported that the performance standards were sufficiently well defined to permit proposers to submit proposals that could be meaningfully compared. However, the Office advised the City that the RFP's scheme for evaluating proposals was

unclear and rendered the process vulnerable to a legal challenge.

To help ensure that the City's selection process complied with the law and protected the interests of the City's ratepayers, the Office recommended that the City amend and readvertise the RFP.

Agawam Consultant Services - Citizen Complaint

"[T]he process used to award the contract was unacceptably vulnerable to abuse and favoritism and violated basic rules of fairness."

-- Office letter to Town of
Agawam
February 1995

In February 1995, the Office wrote to Agawam Town Council to express the concern with the methods used by the Town of Agawam to contract for services over the previous four years and to make recommendations for its upcoming procurement. For each year from 1991 to 1994, the Town had awarded a contract to the same consultant to review insurance programs at an annual cost of nearly \$10,000. A citizen complained that the Town had violated the law in its award of the contract.

Chapter 30B requires a simple solicitation of oral or written quotations for contracts costing from \$1,000 to \$10,000. The Office found that, for each annual contract awarded by the Town to the consultant, the process used to award the contract was unacceptably vulnerable to abuse and favoritism, and violated basic rules of fairness. For example, the price quotations obtained by the Town did not permit meaningful comparison of the prices offered by competing consultants, and the contract specifications created the appearance of bid splitting by allowing the consultant to bill the Town up to \$9,999 -- just below the threshold at which advertised competition is required. The Office provided a series of recommendations to the Town regarding its forthcoming solicitation of bids for a three-year contract for consulting services to review insurance programs.

Carlisle Cranberry Bog Lease - Citizen Complaint

Citizens of the Town of Carlisle complained to the Office that the Town's RFP to lease a cranberry bog property favored the incumbent lessee at the expense of the Town. The Office's review of the RFP disclosed that it was unnecessarily restrictive and would improperly favor the incumbent. For example, the RFP required that the proposer's site manager live within seven miles of the cranberry bog property and accorded significant advantages to proposers who had already farmed public or not-for-profit property and who lived within the Town. In an April 1995 letter, the Office recommended that the Board of Selectmen

issue an addendum to the RFP. The Office also noted that the RFP called for the proposer to provide capital improvements, a requirement that could violate the state's construction bid laws.

Dukes County Septage Treatment - Request for Assistance

In December 1995, the Dukes County Manager contacted the Office to request assistance in evaluating a complex proposal to improve the County's wastewater treatment facility, construct a septage receiving station sorely needed by the County, and operate and maintain both facilities. The proposal had been proffered by a firm without solicitation. The County Manager intended to award any contract through competition but wanted first to understand all the possible legal dimensions to the deal. The Office concluded that the proposal encompassed three separate and distinct contracts, each of which is subject to competitive procurement laws. Exploring possibilities with the County Manager, the Office was able to recommend an approach that would meet the County's objectives as stated by the Manager through a land lease transaction: County-owned land could be leased for construction of a privately owned and operated septage receiving facility, and the lessee's lease payment would cover the County's costs for capital improvements to its wastewater treatment facility required by the lessee. The County could contract separately under the state's construction bidding law for the needed improvements to the existing wastewater treatment facility, which the County would continue to operate using its own staff.

Westfield Snow Removal Equipment Purchase - Bid Protest

In response to a protest, the Office reviewed the procurement process undertaken by the City of Westfield to purchase snow removal equipment for its municipal airport. After soliciting and opening bids, state officials notified the City that federal grant money had become available for additional snow removal equipment. The City then rejected the first round of bids and readvertised the procurement, hoping to capture a price discount based on the increased quantity. The low bidder from the first round of bidding was not the low bidder in the second round.

In a November 1995 letter to the City, the Office expressed the view that the City had exercised reasonable discretion under the law in rejecting the first round of bids and awarding a contract to the low bidder in the second round.

Everett Police-Ordered Towing Contract - Vendor Complaint

“As a result of its actions, the City forfeited the benefits of a fair, competitive procurement process. . . . These circumstances create the appearance of favoritism and undermine public confidence in the integrity and effectiveness of government.”

-- Office letter to City of
Everett
December 1995

The Office received a complaint that the City of Everett illegally rewrote a competitively procured contract for police-ordered towing services to give the towing contractor a substantial price break. The City bid the contract under M.G.L. c.40, §22D. The complainant competed for the three-year contract in 1992 and lost to the winner who offered the City the highest payment: \$30.25 per tow.

The Office’s review revealed that the complaint was accurate. Three months after the contract took effect, the contractor appealed to the City to reduce his payment to the City to \$15.00 per tow. The City agreed to reduce the payment from \$30.25 per tow to \$15.00 per tow retroactively, starting in March 1993. The tow contractor continued to pay the City \$15.00 per tow through September 1995. The amendment was illegal: the Supreme Judicial Court has made clear that a city may not amend a competitively procured contract so as to effectively create a new and different agreement.¹ The amendment was also bad public policy: the City and its taxpayers were denied the revenue to which they were contractually entitled, and the amendment was unfair to the other tow companies who were denied the chance to compete for the new contract. The Office recommended that the City conduct a new competitive bid process for its police-ordered towing contract to benefit the citizens of Everett.

¹*Morse v. Boston*, 253 Mass. 247 (1925).

Central Artery/Third Harbor Tunnel Project Monitoring

An interdisciplinary team within the Office monitors the design and construction by the Massachusetts Highway Department (MassHighway) of the depressed Central Artery and Third Harbor Tunnel (CA/T Project), scheduled to be completed in 2004 and estimated early in 1996 by the U.S. General Accounting Office to cost \$10.4 billion. The team is funded in part by an interdepartmental service agreement between the Office and MassHighway. The team focuses its efforts on reviews originating primarily from three sources: initiatives based on staff assessment of management systems that are particularly vulnerable to waste and abuse, technical assistance requested by the CA/T Project; and directives from the Legislature. The Office has also undertaken joint projects with other state oversight agencies.

JOINT PROJECTS

Comprehensive Oversight Proposal

“History demonstrates that large, complex projects on the cutting edge of the Commonwealth’s experience are inherently vulnerable to mismanagement, fraud, waste, and abuse. . . . [A]n intense and concerted effort must be launched now, at the front end of CA/T Project construction. . . . Resources are not now available to provide the level of independent, rigorous oversight the public deserves.”

-- Oversight Plan for the
CA/T Project
November 1995

Chapter 102 of the Acts of 1995, also known as the Tunnel Turnover Transportation Bond Bill, was enacted to provide additional financial resources for the construction of the CA/T Project. That legislation included provisions designed to improve Project oversight and ensure that all expenditures are necessary and cost-effective. One such provision, contained in Section 17, provided \$1 million to be divided equally among the Attorney General, the State Auditor, and the Inspector General to promote cost savings and engineering efficiencies on the Project. However, Section 17 also stipulated that transfer of the funds to the three agencies was subject to the approval and participation of the Federal Highway Administration (FHWA). So far, the FHWA has declined to participate, stating that the Commonwealth, not the federal government, should bear the cost of this “aggressive measure . . . [toward] cost containment” for the CA/T Project.

Another provision, contained in Section 21, required the Office to work with other oversight entities on the joint development of a comprehensive state oversight plan for the CA/T Project. Working together in an unprecedented multi-agency effort, representatives of the Attorney General, the State Auditor, the Legislative Post Audit and Oversight Committees, and the Inspector General developed a detailed plan and budget designed to create a strong, independent, coordinated oversight function for the CA/T Project. The plan targeted timely intervention to prevent or, when

necessary, put an end to fraud, waste, and abuse. The goals of the oversight plan were to identify cost-saving measures; target potential management deficiencies that invite fraud and abuse; and pursue, through litigation, civil and criminal instances of fraud or any other illegal activity.

The oversight plan estimated the total budgetary requirements of the individual agency participants at \$3.2 million for FY 1997 and \$2.8 million plus inflation for each succeeding year until construction of the CA/T Project is completed. The oversight plan was presented to the Legislature in November 1995.

“Seconded” Employees

During 1995, the Office reviewed MassHighway’s practice of assigning staff (referred to as “seconded” employees) paid by private firms through MassHighway’s contract with Bechtel/Parsons Brinckerhoff (B/PB), the joint venture selected in 1985 to manage the design and construction of the CA/T Project, to perform functions of MassHighway staff on the CA/T Project. The review disclosed approximately 40 seconded employees who reported directly to MassHighway staff.

In a September 1, 1995 joint letter to the Secretary of Transportation and Construction and the CA/T Project Director, the State Auditor, Attorney General, and Inspector General warned that this arrangement created divided loyalties, resulted in pay and benefit inequities among staff performing similar functions, created the appearance of a conflict of interest, and could violate provisions of state law. To address these concerns, the joint letter recommended the following:

- MassHighway should abandon the practice of paying staff through the B/PB contract and then assigning them to work directly for MassHighway staff.
- Eight top managers funded by B/PB and designated as “key personnel” under the current contract should be informed that they are subject to state conflict of interest laws and provided with training on these laws.
- MassHighway should carefully scrutinize the management ranks of the B/PB organization to ensure that all key personnel are duly designated in the contract.

MassHighway responded, in a letter dated October 1995, that it had promulgated a regulation permitting the arrangement allowing MassHighway employees to be compensated by private parties. According to MassHighway, the seconded MassHighway employees had been made aware that they were subject to state conflict of interest laws and provided with information on these laws. In addition, after receiving the joint

letter, MassHighway had solicited written advice from the State Ethics Commission regarding the use of seconded employees. In a written response, the Commission advised MassHighway that MassHighway's regulation appeared not to violate the state conflict of interest laws; the Commission also informed MassHighway of the conflict of interest provisions applicable to the seconded employees.

OFFICE INITIATIVES

Asset Management

“[I]nternal control weaknesses described throughout this report . . . could lead to theft, fraud, and misuse of the Commonwealth's assets.”

-- IG report
December 1995

The Inspector General issued a 37-page *Report on MassHighway's Asset Management System for the Central Artery/Third Harbor Tunnel Project* in December 1995. The purpose of the Office's review was to determine whether MassHighway had in place the necessary controls, procedures, and policies to safeguard the Commonwealth's fixed assets used by the CA/T Project. As of late 1994, these assets were valued at \$18.6 million by B/PB, acting on MassHighway's behalf.

The report's findings included the following:

- MassHighway does not monitor B/PB's performance in safeguarding the Commonwealth's assets.
- The CA/T Project does not comply with key provisions of state inventory regulations.
- The CA/T Project lacks adequate ongoing controls to monitor the authorization of purchases, the recording of purchases, and the custody of the assets.
- B/PB's internal controls over the CA/T Project's voucher system are not adequate.
- The CA/T Project lacks written procedures for disposition of MassHighway's surplus assets.

The report concluded that these internal weaknesses raised serious questions regarding B/PB's ability to safeguard state assets in its care and custody, that MassHighway had devoted insufficient attention to monitoring B/PB's performance in safeguarding assets, and that MassHighway's inaccurate perpetual inventory system did not comply with regulations issued by the Department of Procurement and General Services. The report recommended that MassHighway take a series of corrective actions, including the following:

- Develop and implement a plan to ensure that all activities involving CA/T assets comply with regulations promulgated by the Department of Procurement and General Services.

- Procure the services of an independent accounting firm to perform tests of B/PB's controls over its internal control structure.
- Amend certain CA/T Project procedures to ensure that financial duties are properly segregated.

In its response to the report, MassHighway noted that steps were being taken to address the internal control weaknesses raised by the report.

Central Register Notification

In a December 1995 letter, the Office informed MassHighway that certain CA/T contract information had not been recorded in the *Central Register*, a publication of the Secretary of State, as required by law and regulation. The Office found that *Central Register* notices published by MassHighway frequently omitted the names of the firms receiving plans and specifications for CA/T Project contracts and those awarded CA/T Project contracts. Noting that MassHighway's failure to publish the required information left the CA/T Project vulnerable to bid protests, the Office strongly suggested that MassHighway investigate this matter and take steps to ensure future compliance.

Update: Change Orders to Sewer Relocation Contract

In 1994, the Office alerted MassHighway to a large number of change orders and contract administration problems on a construction contract to relocate the Porter Street outfall sewer. The Office pointed out that the contract value had increased from \$20.5 million to over \$32 million since 1991, and that CA/T Project records contained 107 pending and approved change orders. The Office also found that B/PB, which managed the contract on behalf of MassHighway, had failed to prepare adequate change order documentation, that the contract had been completed behind schedule despite two change orders to accelerate construction, and that B/PB had failed to act in response to the contractor's noncompliance with contract requirements.

In January 1995, MassHighway transmitted B/PB's response to the Office's findings. B/PB disputed several points, based in part on documents that had not been provided to the Office and undocumented decisions by staff in the field. B/PB agreed that the Porter Street contract "experienced more unknown subsurface conditions than was desirable," but argued that contract safeguards would prevent MassHighway "from paying more than the reasonable costs of a change order." With respect to compaction failures, B/PB replied that all test results had been fully reviewed, revealing "six locations where corrective action had yet to be taken." According to

B/PB, even though the areas were heavily used, they had so far required no remedial work and would be recompacted later under a different construction contract. B/PB also stated that a credit to the Commonwealth was being negotiated with the contractor.

B/PB acknowledged that field staff did not always provide the detailed documentation needed when responding to a contractor's claim of a changed site condition and reported that it had taken several corrective actions to revise and enhance documentation procedures. B/PB stated that more than half the change orders submitted by the contractor were rejected and that B/PB negotiated lower costs for the 107 change orders that were accepted. B/PB contended that its record demonstrated diligence in reviewing change order proposals. B/PB also reported that it was reviewing its procedures and making adjustments to better address contractor performance deficiencies.

Update: Survey Services for the CA/T Project

In August 1994, the Office notified MassHighway that its multimillion-dollar engineering survey service contracts had been awarded in violation of M.G.L. c.81, §8A, which requires that such contracts be awarded to the lowest responsible and eligible bidder. The Office advised MassHighway that under Massachusetts law, MassHighway's agreements for survey services procured in violation of public bidding laws were void and that payments under these invalid agreements were prohibited.

In January 1995, MassHighway informed the Office that the survey services would not be bid until October 1995. The Inspector General sent a letter to MassHighway reiterating his view that the existing survey services agreement was invalid and that no payment could be made under this invalid agreement without specific authorization from the Legislature. The letter noted that MassHighway had not sought an opinion of the Attorney General regarding the applicability of the bid law to survey services for the Project, nor had MassHighway provided the Office with legal arguments supporting the validity of the current contract. Consequently, the Inspector General advised MassHighway to competitively bid the survey services immediately as required by law. Notwithstanding this Office's advice, MassHighway continued its prior, invalid agreement and did not advertise for bids on survey services until May 1995. MassHighway did not award the competitively bid contract until December 1995, in part because of allegations that the apparent low bidder had submitted forged bid documents.

Update: Public Works Bid Law Violation

In 1994 this Office advised MassHighway that its sole-source, negotiated, \$5.5 million procurement of Inverset Technology used in the construction of the Central Artery North Area temporary loop ramps violated M.G.L. c.30, §39M, the state's public works bidding law. In a January 1995 letter, MassHighway expressed disagreement with the Office's position, arguing that the controlling federal law upon which MassHighway had relied was not negated by state competitive bidding laws, even if such laws conflicted with federal law. The Office responded in a March 1995 letter reiterating that MassHighway had no authority under state statute or in the doctrine of federal preemption to circumvent state bidding law by negotiating a sole-source agreement in this instance.

Update: Fireboat Purchase

In 1994 the Office informed MassHighway that MassHighway's procurement of a \$231,526 fireboat for the city of Boston's Fire Department violated M.G.L. c.7, §22, the state's general procurement statute. MassHighway had paid the contractor \$100,000 more than the actual cost of the fireboat, and changes to the fireboat's specifications after the contract was awarded resulted in \$25,376 in additional no-bid work. Because the Federal Highway Administration had declined to participate in funding the fireboat, the full cost was borne by Massachusetts taxpayers.

In a March 1995 letter, MassHighway defended the process by which the fireboat was procured. However, MassHighway agreed to review the Office's recommendations to ensure that the CA/T Project would in the future comply with all applicable laws and regulations.

Update: Value Engineering

Value engineering is a design review process aimed at simplifying designs and reducing design and construction costs. The Inspector General criticized the CA/T Project's value engineering program in a 1994 report entitled *Value Engineering: A Review of a Central Artery/Tunnel Cost Control Program*. MassHighway's response to the report disputed the accuracy of the savings estimates generated by value engineering teams to support their recommended design changes. MassHighway cited 23 value engineering recommendations, accepted by the CA/T Project, which were estimated by the value engineering team to save \$907 million but yielded only \$57,000 in actual savings.

The Office then requested detailed information on the 23 value engineering recommendations cited by MassHighway. In a May 1995 letter, the Office advised MassHighway that the Office's review of this information did not support MassHighway's claims. Instead, the Office had found that the

CA/T Project had not estimated actual savings for 20 of the 23 value engineering recommendations, although these 20 recommendations accounted for \$860 million of the estimated \$907 million in savings projected by the value engineering team. The Office noted that there was no evidence that these recommendations had been implemented, and that implementation was necessary to realize actual savings.

In response, MassHighway acknowledged in a June 1995 letter that its previous statements had been incorrect and that an administrative error had been made. The letter stated that the CA/T Project had estimated actual savings of \$169 million for 20 of the 23 value engineering recommendations that had been accepted for implementation.

TECHNICAL ASSISTANCE

MassHighway regularly requests technical assistance on the CA/T Project to assess the vulnerability of its systems and operations to fraud, waste, and abuse. The Office provides assistance under the terms of its agreement with MassHighway, subject to the constraints of M.G.L. c.12A.

Design Services for the Integrated Project Control System

MassHighway requested the Office's assistance in reviewing a proposed amendment to DeLeuw, Cather & Company's design services contract for the Integrated Project Control System on the CA/T Project. (The Inspector General's 1994 report on *Bechtel/Parsons Brinckerhoff's Management of a Design Contract for the Central Artery/Tunnel Project* criticized B/PB's management of this contract.) In letters to MassHighway sent in March and May 1995, the Office expressed the view that MassHighway's pending plans to add nearly \$7 million in services to the contract with DeLeuw on a sole-source basis would violate state service contracting regulations. Moreover, the Office advised MassHighway that B/PB's characterization of these plans as "reinstating" work that was deleted from DeLeuw's contract in January 1995 was inaccurate and misleading. Documents reviewed by the Office showed that the proposed scope of services for the new design package had been drastically changed from that which DeLeuw was to have performed under its earlier contract. The work thus represented an entirely new contract rather than a modification of an existing agreement. Under state service contracting regulations, major contract amendments must be competitively procured.

In June 1995, the Office sent MassHighway a letter detailing more than 40 findings and recommendations addressing the performance of DeLeuw, B/PB, and MassHighway in the design and management of the Integrated Project Control System, as well as B/PB's recommendation to accept

"[T]he history of cost increases under DeLeuw's contract suggest[s] that the potential for savings may be illusory. . . . [T]he only way to test whether a contract award to DeLeuw is in the best interest of the Project and taxpayers is to have DeLeuw compete with other firms on a level playing field."

-- Office letter to
MassHighway
May 1995

DeLeuw's proposal for additional design services under the contract. The review covered the period from June 1994 through mid-May 1995. The Office's findings included the following:

- In violation of DeLeuw's contract, the majority of DeLeuw's staff and staff of its largest subconsultant are part-time and live outside the Boston area; as a result, travel expenses have far exceeded the amount originally budgeted in the DeLeuw contract.
- DeLeuw had consistently exhibited significant performance problems throughout the contract, yet B/PB had approved merit raises and promotions for DeLeuw staff.
- DeLeuw did not meet the consultant qualifications B/PB had developed for the new design package in areas such as past performance and ability to complete projects on schedule and within budget.
- MassHighway's management role on the DeLeuw contract was not clearly defined.
- The cost to design the Integrated Project Control System had escalated from \$10.9 million to \$26 million, while the special engineering contingency fund showed a shortfall of more than \$16 million needed to complete the contract.

Construction Management Practices

In response to a technical assistance request from MassHighway, the Office examined an allegation of mismanagement made against B/PB and the adequacy of Bechtel Corporation's response to the allegation. In December 1993, MassHighway had received a complaint from a former B/PB employee, alleging deficient construction management practices by B/PB on the Porter Street Outfall Sewer Relocation contract. In April 1994, at MassHighway's request, Bechtel Corporation began two "special audits" investigating these allegations. In the first special audit, Bechtel verified several procedural inadequacies but recommended no follow-up or corrective actions. However, MassHighway criticized the audit for failing to address corrective action measures; consequently, Bechtel and B/PB staff conducted a second "special audit" that revealed poor construction management practices existing across CA/T contracts.

"Although Bechtel found some allegations to have merit, it considered them insignificant. In effect, Bechtel dismissed its own audit findings. Additionally, Bechtel failed to conduct adequate research for the audits and compromised audit independence."

-- Office letter to
MassHighway
May 1995

The Office's review revealed that the special audits conducted by Bechtel had failed to adequately address the issues prompting the audits and MassHighway's concerns. Specifically, the Office found the following deficiencies in Bechtel's two special audits:

- Bechtel failed to conduct adequate research and did not accurately report the information from its audit.
- Bechtel and B/PB failed to address the causes and consequences of their own audit findings.
- Bechtel unnecessarily compromised the independence of the audit by allowing B/PB Project staff to assist.
- Bechtel identified systemic procedural lapses, but concluded the problems were insignificant.

The Office made the following recommendations to MassHighway:

- All future internal audits should be conducted under a MassHighway-approved scope of work in order to ensure that B/PB or Bechtel directs efforts to answer MassHighway's questions and address MassHighway's concerns.
- MassHighway should perform a quality assurance audit to determine if all special audit recommendations have been carried out.
- MassHighway should develop guidelines that address audit independence and use of B/PB staff, and that contain minimal research standards, for all future internal audits for the CA/T Project.

The Office advised MassHighway that the second phase of the Office's technical assistance review would assess Project-wide vulnerability to the deficiencies found on the Porter Street contract.

Construction Contracting Acceleration Pilot Project

MassHighway requested the Office's comments on a proposed pilot project developed by MassHighway and B/PB, to accelerate the bid, evaluation, and award cycle for the CA/T Project. The proposal targeted a 90-day cycle for CA/T construction contracts estimated at under \$20 million as well as early construction contracts associated with the Fort Point Channel crossing.

In May 1995, the Office provided MassHighway with preliminary observations and recommendations. The Office cautioned MassHighway against generalizing any success

“The backbone of any plan to shorten the construction procurement cycle must address the core problem. . . . [T]he CA/T Project must make an unwavering commitment to ensure that its section design consultants prepare and produce full and complete bid packages.”

-- Office letter to
MassHighway
May 1995

on the pilot contracts to other CA/T construction contracts, and noted that the 90-day procurement cycle is only a small slice of the entire construction procurement cycle. The Office recommended that elements beyond the procurement cycle that contribute to contracting delays be identified and analyzed; that CA/T Project procedures be updated to reflect any new rules resulting from the pilot project; and that the pilot project distinguish between building projects, which are subject to more rigorous bidding requirements, and public works projects.

In January 1996, the Office provided MassHighway with further information in response to MassHighway's technical assistance request. The Office reviewed in detail the actual construction bid cycle for each of 14 sample contracts awarded prior to the start of the pilot project and interviewed B/PB staff responsible for five of the 14 contracts. The Office then examined the data for recurring sources of delay and opportunities to save time in the bid cycle. Based on the Office's review, the Office cautioned MassHighway against premising its construction schedule on the radically reduced time frame until it has been consistently demonstrated that the 90-day target can be achieved. The Office warned that achieving this objective will require MassHighway to dramatically curtail its practice of advertising contract packages before finalizing their scopes of services.

Waivers of Service Contracting Regulations

“In the majority of cases, the Project starts with the assumption that a major change to a contract merits a waiver. . . . Even the procedures for waivers . . . are based on the assumption that approval is inevitable. . . . ”

-- Office letter to
MassHighway
May 1995

In 1995 this Office completed an additional review of the CA/T Project's written waiver procedures. During 1994, the Office had reviewed the use by the CA/T Project of waivers to state service contracting regulations.

In a May 1995 letter, the Office advised MassHighway that the written waiver procedures did not contain the guidance necessary to ensure the CA/T Project's compliance with state service contracting regulations. The procedures did not adequately describe when a waiver is required, how to develop a waiver, who is responsible for various steps in the waiver process, and what happens if the waiver is not approved. The Office recommended revisions to address these shortcomings.

The Office also identified a series of issues that remained unresolved from the Office's 1994 compliance review. For example:

- The CA/T Project's practice of instructing consultants to begin work before waivers had been filed at the Comptroller's Office put the Commonwealth and the consultants at financial risk.
- The CA/T Project's practice of modifying contracts and making payments to consultants before requesting approval to waive competitive requirements violated state service contracting regulations.

- The CA/T Project's waivers sometimes misstated the amount of funding to be provided by the Federal Highway Administration for the contract.
- Costs reported in waivers differed substantially from B/PB's estimates as well as the final negotiated costs of the services.

LEGISLATIVELY MANDATED REVIEWS

Chapter 102 and Chapter 273 of the Acts of 1994, two transportation bond bills, contain provisions requiring this Office to conduct certain reviews relating to the CA/T Project. These acts require the Office to conduct a review prior to the commencement of construction or contractual agreements for construction of ventilation buildings, utility facilities, and toll booths connected with the CA/T Project. The Office's reviews are forwarded to the Secretary of Transportation, the Commissioner of the Massachusetts Highway Department, the Senate and House ways and means committee chairmen, and others as appropriate. The Office completed three such reviews in 1995.

Interim State Police Facility Change Order Review

“Project staff has indicated that the Project will not begin to negotiate a fixed price until after construction has begun, and may not arrive at a final price until after the facility has been built. This after-the-fact method of price negotiation is highly vulnerable to waste and abuse and cannot be used under the State's building construction statutes.”

-- IG letter to MassHighway
February 1995

In February 1995, the Inspector General notified MassHighway that the Office would be unable to complete its legislatively directed review of the CA/T Project's proposed contractual agreement to construct an interim state police facility until the Project and the contractor reached agreement on a fixed price for the work. The Inspector General pointed out that, by statute, the price for a contract change order must be adjusted before commencement of the work whenever feasible. MassHighway's after-the-fact method of price negotiation was not only impermissible under the law but also highly vulnerable to waste and abuse.

In May 1995, MassHighway provided the Office with the final contract change order for \$750,000. In a June 1995 letter, the Inspector General provided MassHighway with comments that included the following:

- The change order lacked the contractor's statutorily required certification that the cost and pricing data submitted by the contractor were accurate, complete, and current as of the date of submission.
- The final negotiated price of the change order -- a four-fold increase from the CA/T Project's original cost estimate without a corresponding increase in the scope of work -- raised concerns about the accuracy of the contractor pricing data for the change order. Project documents indicated that the cost of this project would continue to grow.

- Although MassHighway advised the Office that the interim police facility was on the “critical path” for the CA/T Project, the CA/T Project spent more than a year deciding on a definitive scope of services and price for the change order. The CA/T Project could have bid the work during that time.

Construction Change Order Pricing

“The Ward Commission spelled out the procedures for pricing change orders and for negotiating cost and pricing data on a fixed price basis. . . . The enactment of Chapter 102 did nothing to change the requirement that MassHighway must follow Ward Commission procedures on CA/T contracts for building projects.”

-- Office letter to
MassHighway
September 1995

In a September 1995 letter to MassHighway, the Office set forth the bases for its conclusion that the CA/T Project must incorporate M.G.L. c.7 safeguards for change order pricing into certain CA/T Project construction contracts for buildings. These contracts are governed by Section 11 of Chapter 102 and Section 115 of Chapter 273 of the Acts of 1994. The language of these sections of the law exempts these contracts from oversight by the state Division of Capital Planning and Operations, which oversees state agency building construction, in certain instances; however, the legislative language does not allow the CA/T Project to bypass the state’s construction bid laws altogether.

Parcel Seven Contract Review

The Office reviewed bid documents relating to the CA/T Project’s planned \$107 million project to construct a vent building, parking garage, and commercial/office space and to reconstruct portions of the Massachusetts Bay Transportation Authority’s Haymarket subway station. This project is known as “Parcel Seven.” In an April 1995 letter, the Inspector General raised the following issues:

- The CA/T Project did not conduct a value engineering study for this contract, although the potential for cost savings might have been significant.
- The CA/T Project did not calculate life-cycle cost estimates for the energy systems designed for this facility and file these estimates with the Secretary of Economic Affairs and the Building Code Commission, as required by statute.
- Certain design contracts relating to the Parcel Seven contract did not contain certain statutorily required provisions.
- The CA/T Project had not identified and estimated the cost of mitigation measures called for in the contract.

The Inspector General recommended that MassHighway conduct value engineering studies for all future vent building final designs on the CA/T Project, ensure that all building design contracts include required statutory provisions, and

track the mitigation features and costs of all CA/T Project contracts. In response, MassHighway disputed some of the Office's conclusions and claimed that other problems identified by the Office had already been handled.

Temporary Toll Plaza and Emergency Response Station Change Order Review

"I am concerned that poor planning on the CA/T Project is resulting in charges for the design and construction of temporary facilities that will have to be rebuilt as permanent structures."

-- IG letter to MassHighway
August 1995

The Office reviewed documents relating to the CA/T Project's planned construction of a temporary toll plaza and emergency response station to serve the Third Harbor ("Ted Williams") Tunnel. In August 1995 the Inspector General notified MassHighway that MassHighway's assignment of a no-bid change order for modular buildings to a roadway contract violated the state's construction bid laws. The Inspector General also warned that MassHighway had authorized commencement of work on the project without clearly describing the scope of work to be undertaken by the contractor; that the contractor's \$682,629 cost estimate appeared too high, based on project documents; and that no federal aid would be available to offset construction costs.

In a February 1996 response, MassHighway argued that its approach was "cost-effective and appropriate" and that "a well-ordered design development process" had been conducted. However, MassHighway concurred that the contractor's early cost estimate was too high and stated that some change order work was subsequently eliminated during negotiations.

Financial Oversight

Salem State College Assistance Corporation Oversight

Chapter 60 of the Acts of 1994 created a new “Salem State College Assistance Corporation” to assist Salem State College in securing physical and financial resources necessary for expansion of its programs and facilities and to secure such land, buildings, and other properties that the College may be unable or “unwilling” to secure for itself. The impetus behind this legislation was the College’s desire to acquire a specific parcel of land, owned by GTE/Sylvania, in the city of Salem. Chapter 60 also included a provision requiring oversight by the Inspector General: no power, duty, action, responsibility, or authority of the Corporation may be exercised without review and comment by the Inspector General. Legislation enacted in 1994 and 1995 authorized \$4.5 million for acquisition of the GTE/Sylvania site by the Corporation and \$13 million for planning, design, renovation, and construction of buildings on the site by the College.

In April 1995, Office staff met with Salem State College officials to discuss their plans for acquisition of the GTE/Sylvania site. College officials notified the Office of their intent to conduct a real estate appraisal of the site.

In a subsequent May 1995 letter, the Office advised the College that Chapter 60 of the Acts of 1994 required the Inspector General to review and comment on all actions the College or the Assistance Corporation had taken pursuant to Chapter 60. The Office requested that detailed information and supporting documentation regarding all such actions be provided to the Office at least 14 days in advance of the proposed action. The Office also questioned the legality of the College’s plan to expend funds for the appraisal on behalf of the Corporation. With respect to the appraisal itself, the Office endorsed the College’s plan to solicit three proposals and award contracts to the two proposers offering the lowest prices.

Salem State College did not reply to the Office’s request for information and supporting documentation, nor to a subsequent request by the Office in September 1995. In the meantime, the Inspector General strongly opposed provisions of several bills that would have eliminated the Inspector General’s legislatively directed oversight of the Corporation’s actions under Chapter 60. (This legislation is discussed in greater detail in the “Legislative Reviews” section of this report.)

Springfield Technical Community College Assistance Corporation Oversight

Chapter 273 of the Acts of 1994 created a new "Springfield Technical Community College Assistance Corporation" as a vehicle for Springfield Technical Community College to acquire a 37.5-acre site, formerly owned by Digital Equipment Corporation (DEC), to serve as the "Massachusetts center for telecommunications and information technology at Springfield Technical Community College." Chapter 273 also included a provision requiring oversight by the Inspector General: no power, duty, action, responsibility, or authority of the Corporation may be exercised without review and comment by the Inspector General. Legislation enacted in 1994 and 1995 authorized \$4.5 million for acquisition of the DEC site by the Corporation and \$16.5 million for repairs and renovations by the College to campus facilities and grounds as well as for the College's site acquisition costs.

In May 1995, Springfield Technical Community College forwarded to the Office copies of requests for proposals (RFPs) for real estate appraisal and environmental assessment services in connection with the pending acquisition of the site. In an accompanying letter, the President of the College advised the Office that the real estate appraisal contract had been awarded to the lowest-priced proposal and that proposals for the environmental assessment contract were due shortly.

In a May 1995 letter, the Office advised the College that Chapter 273 of the Acts of 1994 required the Inspector General to review and comment on all actions the College or the Assistance Corporation had taken pursuant to Chapter 60. The Office requested that detailed information and supporting documentation regarding all such actions be provided to the Office at least 14 days in advance of the proposed action. The Office also questioned the legality of the College's plan to expend funds for the appraisal on behalf of the Corporation and the authority of the partially constituted Board of Directors to act on behalf of the Corporation. The Office endorsed the College's plan to solicit and award a contract for real estate appraisal services to the lowest-priced proposal. However, the Office advised the College that the RFP for environmental assessment services lacked clear evaluation and selection criteria, and recommended that the College amend the RFP before proceeding with the procurement. In the meantime, the Inspector General strongly opposed provisions of several bills that would have eliminated the Inspector General's legislatively directed oversight of the Corporation's actions under Chapter 273. (This legislation is

discussed in greater detail in the “Legislative Reviews” section of this report.)

Woburn Logan Express Relocation

“[T]he proposed relocation of the Woburn Logan Express service from Mishawum Station to the Industry-Plex site . . . represents an appropriate use of the site which seems feasible, has potential for economic benefit, and is likely to result in increased ridership.”

-- IG letter to House and Senate Ways and Means Committees and Joint Committee on Transportation
December 1995

Chapter 85 of the Acts of 1994 required the Inspector General to study and examine the feasibility of relocating the Massachusetts Port Authority’s shuttle bus services to and from Logan International Airport, known as the “Woburn Logan Express,” from its existing site at the Mishawum commuter rail station in Woburn to the Industri-Plex Regional Transit Center in Woburn. The legislation required the feasibility study to include an analysis of the potential economic benefits of the relocation and the appropriateness of the site itself. Massport’s \$3.3 million cost estimate for construction of a 900-space garage at the new site was substantially lower than the \$15.3 million cost estimate for construction of a comparable garage at the existing site.

Based on the engineering, financial, and transportation data provided to the Office by Massport and other transportation agencies, the Office concluded that the proposed relocation was feasible and offered the potential for economic benefit. In December 1995, the Inspector General submitted his report to the Legislature. The report conveyed the following conclusions concerning the feasibility of the proposed relocation:

- Based on available market analyses and ridership projections, relocating the Woburn Logan Express from the Mishawum Station to the Regional Transit Center will increase its potential ridership.
- Assuming that the proposed site meets all applicable local, state, and federal environmental standards, the use of the site by the Woburn Logan Express is appropriate and is in the public interest.

Update: MWRA Procurement of Financial Services Indictment and \$36.7 Million Settlement

In 1995, Mark S. Ferber, the Massachusetts Water Resources Authority’s (MWRA’s) former financial advisor, was indicted by a federal grand jury on 63 counts of fraud and corruption charges resulting from an investigation begun by the Office. The indictment charged Ferber with defrauding and violating his fiduciary duties to his public financial advisory clients, including the MWRA. The charges detailed in the indictment related to financial advisory services Ferber provided between 1985 and 1993 to the MWRA as well as the District of Columbia, the Michigan Department of Transportation, and the United States Postal Service.

“[T]he size of the fine indicates the SEC intends to address the kinds of shenanigans that were once part of the municipal finance landscape. This is a strong step to restoring integrity to the municipal marketplace.”

-- Former SEC
Commissioner, quoted in
The New York Times
October 26, 1995

In 1995, the MWRA's former financial advisory firm, Lazard Freres, and its former co-managing underwriter, Merrill, Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch) reached an agreement with the Securities and Exchange Commission and the Office of the United States Attorney under which the firms would pay \$36.7 million to the Commonwealth and the United States government in fines and restitution to settle charges stemming from the undisclosed fee-splitting contract between the two firms. *The New York Times* deemed the settlement “the largest settlement of its kind in municipal finance.”

These actions stemmed from information uncovered in a review initiated by the Office in late 1992 of the financial services agreements between the MWRA and its financial advisor and underwriters. During this review, the Inspector General requested information from the MWRA concerning any business relationships between its financial advisor and firms doing business with the MWRA, including underwriters. In March 1993, the Inspector General recommended that the MWRA adopt a clear policy requiring written disclosure by the MWRA's financial consultants of any business arrangements which might pose a conflict of interest, and written determination by the MWRA as to whether a conflict exists.

In May 1993, following the Inspector General's recommendations for written disclosure, Ferber informed the MWRA that his financial advisory firm was jointly engaged with Merrill Lynch in developing interest rate swap arrangements for a client and that it had engaged in the past with Merrill Lynch in developing swap transactions, and that it might do so in the future. This disclosure revealed for the first time the existence of an ongoing business relationship between the MWRA's financial advisor and its co-managing underwriter. The Office considered this disclosure alarming because the financial advisor had played a significant role in advising the MWRA with respect to two multimillion dollar interest rate swap transactions between the MWRA and Merrill Lynch and because the financial advisor was instrumental in coordinating the MWRA's selection of underwriters, a process which resulted in the selection of Merrill Lynch.

This May 1993 disclosure led to requests for the full details of this business arrangement between the financial advisor and Merrill Lynch. In June 1993, eight months after this Office began its inquiry and one month after disclosure of the joint business arrangement, additional details about the agreement were disclosed in a newspaper account, including the fact that Merrill Lynch had paid the financial advisor a \$1 million annual retainer to help Merrill Lynch market interest rate swaps and that the firms had split more than \$6 million in fees and commissions under the agreement.

The Inspector General issued a report in December 1993 entitled *Massachusetts Water Resource Authority: Report on the Procurement of Financial Services*. During the period covered by the Inspector General's 1993 report, Ferber served as head of Lazard Freres' Boston office. The report described evidence obtained by the Office which suggested the following:

- Merrill Lynch had directly weighed revenues it earned in connection with MWRA interest rate swap deals in determining whether to renew its swap agreement with, and increase its payments to, Lazard.
- While Lazard was actively involved in designing the MWRA's underwriter selection process and advising the MWRA's selection committee on which firms to select, Lazard was coaching Merrill Lynch and providing the firm with advance information regarding the MWRA's 1989 and 1992 underwriter competitions.
- Lazard's advocacy of Merrill Lynch was a *quid pro quo* for lucrative business delivered to Lazard by Merrill Lynch in other deals, including out-of-state deals.
- The MWRA paid more in fees and compensation for its bond sales than did many comparable issuers during the same period.

After the report was issued, a two-year investigation was conducted by the Office of the Attorney General, the U.S. Attorney, the Federal Bureau of Investigation, the Securities and Exchange Commission, the Internal Revenue Service, the Attorney General, and the U.S. Postal Service.

Update: Loan to Tufts University Development Corporation

In a January 1995 letter, the Inspector General alerted the Secretary of Administration and Finance to concerns regarding the constitutionality of two sections of Chapter 273 of the Acts of 1994, the recently enacted transportation bond bill. These sections authorize the Massachusetts Bay Transportation Authority (MBTA) to borrow \$10 million in bond funds from the Commonwealth and loan the proceeds to the private, for-profit Tufts University Development Corporation (TUDC) to finance a \$600 million commercial development. The letter set forth the basis for the Office's opinion that the loan of tax-exempt bond proceeds to TUDC violates the Massachusetts Constitution and recommended that this issue be reviewed by the Commonwealth's bond counsel before additional bond funds were released for TUDC's use. The Inspector General had previously advised the Legislature that the loan appeared to violate the Constitution and that TUDC appeared to have used at least \$650,000 from the proceeds of Commonwealth bonds to lobby for additional state support.

Investigations



The Office's investigations of criminal and civil violations of law arise from a variety of sources, including complaints received in writing or by telephone, information developed during the course of other Office reviews and activities, and requests for assistance by other investigative agencies such as local and state police. During 1995, the Office renewed its outreach to the public by printing and widely distributing across the state new posters inviting calls to our toll-free hotline to report allegations of fraud, waste, and abuse.

Town of Sandwich Harbormaster Indictments

A joint investigation by the Sandwich Police Department, State Police, and the Office resulted in the February 1995 Barnstable County Grand Jury indictments of the former Sandwich Harbormaster and two of his associates. The former Harbormaster was charged with theft of Town property and violating the state's conflict of interest law. One associate was indicted on related charges of receiving stolen property and conspiracy to violate the conflict of interest law, and another was charged with conspiracy in connection with the theft of town property.

In March 1996, the former Harbormaster pled guilty to the charges that he violated the conflict of interest law when he arranged for the sale of a Town-owned boat trailer to a friend. Charges against his two associates were dismissed.

Public Works Construction Contract Violations

The Inspector General reported to the Attorney General on possible violations of state law by a municipal water district. The Office's investigation disclosed that, between March 1993 and July 1995, the district had awarded construction and repair contracts worth more than \$180,000 to a local company without advertising for sealed bids, as required by M.G.L. c.30, §39M. The local company receiving the contracts was owned and operated by relatives of one of the district commissioners.

In addition, the local company's payroll records indicated that the company may have overbilled the district for work performed and that it may have violated laws pertaining to the payment of prevailing wages, provision of workers' compensation insurance, and withholding of payroll taxes.

Unfair and Deceptive Business Practices

“[T]he contractor appears to rely on the lack of technical expertise and resources available to local school departments to induce school officials to enter into agreements that may not deliver the promised benefits. The total cost to Massachusetts public school systems for these programs amounts to millions of dollars. . . . ”

-- Office letter to the
Attorney General
December 1995

The Office reported to the Attorney General on the unfair and deceptive business practices of an energy management services contractor conducting public business in Massachusetts. The Office's investigation of a proposal by the contractor to a local school district revealed that the proposal contained misleading representations regarding the cost of the proposal. The Office also found that the contractor had used similar representations in recent years to sell its program to other Massachusetts school districts. The Office estimated that these programs cost Massachusetts public school systems millions of dollars.

Preliminary Investigation Reports to Other Agencies

In those instances in which the Office determines that a matter would best be handled by another agency, the matter is reported to the other agency after a preliminary investigation. Examples during 1995 include the following:

Improper licensure for a state position. The Office reported to the Attorney General on possible violations of law in connection with a state agency employee who held a plumber's job without the appropriate plumber's license required for the civil service position.

Alleged enterprise fund abuse. The Office reported to the Department of Revenue a complaint alleging that a local water department misused enterprise funds.

CPA's false representation. The Office reported to the Massachusetts Board of Public Accountancy information that a CPA firm submitted a plagiarized writing sample to the Office in response to a request for proposals issued by the Office. The writing sample, which the firm falsely represented as its own product, was excerpted from the 1993 Report of the National Performance Review, *Creating a Government that Works Better and Costs Less*, by Vice President Al Gore.

Real Estate Dealings

Sale of State Buildings to the Massachusetts Special Olympics

“The starting point for this Office’s review is the basic constitutional requirement that a sale of state-owned property to a private institution be made on fair market terms.”

-- Office letter to DCPO
March 1995

Chapter 494 of the Acts of 1993 authorized the Division of Capital Planning and Operations (DCPO) to convey state-owned land and buildings at Danvers State Hospital to the Massachusetts Special Olympics, Inc.(MSO). The legislation required the Inspector General to approve the terms and sale price negotiated by DCPO and MSO, taking into consideration MSO’s prior investments in the property and other costs MSO had incurred under a 1986 lease. That lease required rental payments of \$100,000 in improvements and the provision by MSO of specified services to the state.

In March 1995, the Office sent a letter advising DCPO of the Office’s determination that MSO’s offer of \$210,000 for the property, free of any use restrictions, did not represent a sale on fair market terms and therefore could not be approved by the Office. However, the Office advised DCPO that if the property were restricted to uses benefitting persons with mental retardation, the appraised value of the property would undoubtedly be substantially reduced. DCPO subsequently obtained a new appraisal of the property incorporating the use restriction suggested by the Office; the new appraisal calculated the value the property at \$118,000. To date, however, DCPO and MSO have not negotiated and submitted to the Office new terms and a new price proposal.

Site Selection for the Brockton Trial Court

Chapter 277 of the Acts of 1995 authorized DCPO to develop, in consultation with the Inspector General, alternative procedures for site selection or procurement of design/build services for the Brockton Trial Court. The legislation required the Inspector General to comment on the final procedures at least 30 days prior to publication of a notice requesting proposals, and to submit his comments to the Governor and the Legislature at least 45 days before the execution of any contract.

DCPO submitted draft site selection procedures and a draft request for proposals (RFP) to the Office in November 1995. The Office advised DCPO, in a December 1995 letter, that the procedures conformed to the requirements set forth in Chapter 277. The letter also recommended a series of amendments to the draft RFP designed to more closely reflect the requirements set forth in Chapter 277.

Lease of State Property in Framingham to the Town of Framingham

Chapter 280 of the Acts of 1994 directed DCPO to lease vacant state-owned land in Framingham to the Town of Framingham for 99 years, with a recreational use restriction, at fair market value. The legislation required the Inspector General to approve the appraisal of the property and the methodology used to conduct the appraisal. The appraisal of the property, with the recreational use restriction, computed the annual market rent at \$9,350. In a December 1995 letter, the Inspector General advised DCPO that, based on the Office's review, the property appraisal appeared to provide a reasonable basis for establishing the lease price.

Acquisition of Bridgewater Property

Chapter 85 of the Acts of 1994 directed the Inspector General to audit all expenditures made from a \$5.5 million budgetary authorization to acquire property in connection with the expansion of the Bridgewater Correctional Center. In early 1995, DCPO requested the Office's opinion on its plans to acquire a series of residential properties abutting the prison in Bridgewater without an advertised competition. The Office reviewed DCPO's rationale and concluded that the basis for DCPO's plans was reasonable.

Asset Management Board

The Inspector General serves as an *ex officio* member of the Asset Management Board. Other members include the Commissioner of Capital Planning and Operations (the designee of the Secretary of Administration and Finance and the board's chair) and three public members appointed by the Governor. The board has broad power under M.G.L. c.7B to waive real property acquisition and disposition statutes and regulations.

Building Lease to the Boston Renaissance Charter School

The board approved preliminary and final proposals to lease the vacant state building at 250 Stuart Street in Boston to the Boston Renaissance Charter School without competition. The University of Massachusetts had vacated the building in 1992; in 1993, after extensive marketing, the Division of Capital Planning and Operations (DCPO) had rejected all five proposals it received for a long-term lease of the property. The complex arrangement involved the start-up charter school, a private firm to operate the school, the Government Land Bank (GLB), and plans for private financing. In approving the nine-year and four-month lease, the board imposed conditions that included a GLB guarantee of rent and phased building improvements and annual financial reporting by the charter school.

Suffolk County DA Long-Term Lease

The board approved preliminary and final proposals to authorize the Suffolk County District Attorney to competitively solicit and award a lease of office space with an initial term of up to 15 years. M.G.L. c.7, §40G limits initial lease terms to five years. The DA, which requires specialized buildout for its operations, had previously advertised for a five-year lease but received only one proposal which was considered too expensive.

Registry of Motor Vehicles Long-Term Lease

The board approved preliminary and final proposals to authorize the Registry of Motor Vehicles (RMV) to competitively solicit and award one or more leases for its administrative office and customer service facility with an initial term of up to 20 years. The RMV was approaching the end of an emergency one-year lease that had begun when the RMV vacated its leased facility at Ruggles Center because of air quality problems.

Legislative Reviews

The Office is obligated under its enabling legislation, M.G.L. c.12A, to review legislation and make recommendations concerning the effect of the legislation on the prevention and detection of fraud, waste, and abuse. The Office reviews every bill filed in the Legislature. When appropriate, the Inspector General comments in written and oral testimony to the Legislature and the Governor on proposed legislation; often, the Inspector General recommends specific amendments to bills. This section highlights some of the major legislative work of the Office during 1995. Under Joint Rule 12B of the Legislature's permanent Joint Rules for 1995 and 1996, all pending bills at the close of the 1995 legislative session were carried over into the 1996 legislative session.

Alternative Construction Methods

“[Past] design-build projects proved extremely expensive and labor-intensive; moreover, most did not achieve their anticipated schedules. . . . [G]iven the risks of using these methods, I recommend that the Legislature restrict the number of design-build projects undertaken . . . at one time.”

-- IG letter to State
Administration Committee
February 1995

The Inspector General recommended amendments to four bills authorizing the use of alternative design and construction methods for construction, expansion, and maintenance of various state capital facilities. In a February 1995 letter to the Legislature, the Inspector General noted that the previous design-build prison construction projects undertaken by the Commonwealth had proved extremely expensive and labor-intensive and that most did not achieve their anticipated schedules. Although the Inspector General was not opposed to experimenting with design-build methods again, he recommended that the Legislature restrict the number of design-build projects undertaken by the Commonwealth to a maximum of three at one time. He also recommended that any legislation authorizing design-build methods include a provision drafted by the Office and the Division of Capital Planning and Operations (DCPO) requiring safeguards to reduce the risks of waste, schedule delays, and deficient construction. The enacted legislation incorporated the Inspector General's recommendations.

The Inspector General also recommended amendments to a bill authorizing the City of Lowell to establish a local commission to plan, design, construct, operate, and maintain a hockey arena. Specifically, the Inspector General recommended deleting provisions allowing the Lowell Arena Commission to solicit proposals for design-build and construction management services rather than complying with the Commonwealth's designer selection and construction bidding laws and exempting the Commission's real property acquisitions and dispositions from advertised competition. The bill was enacted in early 1995.

Subsequently, the Inspector General opposed certain provisions of a bill to allow the Commission to design, construct, and operate a baseball stadium in addition to the hockey arena. Although the Inspector General took no position on the advisability of developing the stadium or the arena, the Inspector General opposed provisions to waive the designer selection and construction bidding laws for the stadium, to exempt the Commission's real property acquisitions and dispositions from advertised competition, and to authorize the Commission to pay an unspecified amount of money to Gilbane Construction Company for services provided on the civic arena prior to the execution of a contract with Gilbane. (The Inspector General's review of the City of Lowell's contract with Gilbane is discussed in the "Operational Reviews" section of this report.) This bill was also enacted in 1995.

Salem State College Assistance Corporation and Springfield Technical Community College Assistance Corporation

"Efforts by the Assistance Corporations to weaken further the already anemic public protection provisions of the enabling legislation should offend the sensibilities of the general public. . . . This lack of oversight, coupled with the absence of statutory controls, would open the door to favoritism and back room deals in real property transactions and construction."

-- IG letter to Governor Weld
July 1995

The Inspector General opposed legislation to permit the Salem State College Assistance Corporation and the Springfield Technical Community College Assistance Corporation, two newly created entities, to undertake large-scale, publicly funded college building construction projects with little or no governmental oversight. Their enabling statutes do not require these two entities to comply with the Commonwealth's laws concerning designer selection, construction bidding, conflict of interest, financial disclosure, or public records. In place of these safeguards, the enabling statutes of the two assistance corporations contained provisions requiring the Inspector General to review and comment on the corporations' actions. (The Office's legislatively directed reviews of the two corporations are discussed in the "Financial Oversight" section of this report.)

The legislation opposed by the Inspector General would have abolished the Inspector General's review and comment role. In opposing this legislation, the Inspector General urged the adoption of amendments mandating that the corporations, which will receive more than \$31 million in taxpayer dollars, comply with Ward Commission safeguards and with relevant conflict of interest, financial disclosure, and public records laws. The enacted version of the legislation, which the Inspector General also opposed, excluded contracts up to \$100,000 from the Inspector General's review. By further diluting public oversight of the two assistance corporations, the enacted legislation effectively enabled the corporations to conduct nearly all of their business hidden from public view.

Higher Education Capital Outlay Bill

“DCPO was created after the Ward Commission uncovered massive corruption, waste, and safety problems in higher education construction projects during the 1970’s. Exempting millions of dollars in . . . projects within the higher education system from DCPO oversight and control would be risky and imprudent.”

-- IG letter to Senate Ways
and Means Committee
June 1995

The higher education capital outlay bill provided for the merger of the University of Lowell Building Authority and the Southeastern Massachusetts University Building Authority into the University of Massachusetts Building Authority. This merger was consistent with the Inspector General’s recommendation in the February 1995 report, *A Review of the Commonwealth’s Higher Education Building Authorities*.

The Inspector General opposed a section of the bill exempting higher education capital outlay projects of \$2 million or less funded by the bill from DCPO jurisdiction. As the Commonwealth’s professional property management agency, DCPO is responsible for planning and overseeing design, construction, renovation, and maintenance of state buildings. Noting that DCPO was created after the Ward Commission uncovered massive corruption, waste, and safety problems in higher education construction projects during the 1970’s, the Inspector General warned the Legislature that exempting millions of dollars in higher education facility repair, construction, and renovation projects from DCPO oversight and control would be risky and imprudent. This section was not included in the enacted version of the bill.

The enacted version of the higher education capital outlay bill included a provision authorizing the University of Massachusetts, the University of Massachusetts Building Authority, and any state or community college with an on-site engineer to apply to the Inspector General requesting that a particular building project be certified as an emergency, provided that the total project cost does not exceed \$2 million. If the Inspector General fails to respond within 10 days, or determines that expedited completion of the project is necessary for health, safety, or welfare, the authority, university, or college may expend the funds without complying with certain statutory requirements governing designer selection and real property transactions.

Central Artery/Third Harbor Tunnel Building Contracts

The Inspector General opposed a bill that would have removed from the jurisdiction of the Division of Capital Planning and Operations (DCPO) virtually all public building construction related to the Central Artery/Third Harbor Tunnel Project. The Inspector General also opposed certain provisions of a bill that would have weakened the contractor prequalification requirements for a vaguely defined category of Project-related building construction. In both cases, the Inspector General

advised the Legislature that he would not object to exempting specific facilities from specific provisions of the law in well-defined circumstances, but that he opposed vague, wholesale exemptions of buildings and structures. These bills were not enacted in 1995.

Cost-Effective and Ethical Public Financing

“There is much that state lawmakers can do to protect the public and temper the vulnerabilities inherent in sketchy disclosure requirements. . . . I urge the Committee to favorably report a bill that would require competition and full financial disclosure when financial services are procured.”

-- IG letter to State
Administration Committee
April 1995

The Inspector General supported a bill to safeguard bond issues by the Commonwealth and state authorities. The bill would have required competitive bids for bond issues except when unique circumstances dictate the use of negotiated transactions. The bill would also have required full disclosure of financial relationships that would, if known, be of concern to an issuer of public debt. However, this bill was not enacted in 1995.

Massachusetts Biologics and Laboratory Sciences Institute

The Inspector General opposed a bill, recommended by the Department of Public Health, to establish the Massachusetts Biologics and Laboratory Sciences Institute. The proposal lacked specificity about the institute's business plan and about taxpayers' potential exposure to financial losses related to new biologic product development and to product liability risk. The bill was not enacted in 1995.

The Inspector General continued to review certain activities and practices of the Massachusetts Public Health Biologic Laboratories in early 1996. The review disclosed that two state employees were instrumental in arranging a series of agreements between the Laboratories, a state vendor, and a Maryland-based pharmaceutical company, permitting them to receive as much as \$6.3 million in royalties from the commercial sale of a pharmaceutical product developed in the Laboratories. Under these agreements, the Commonwealth stood to receive far less than a licensor should receive. Legislation opposed by the Inspector General would assign to the proposed Massachusetts Biologics and Laboratory Sciences Institute the Commonwealth's rights to the pharmaceutical product cited above and other products developed in the Laboratories. Unless an amendment to the current version of the bill is adopted, this assignment would require the Commonwealth to undertake expensive litigation in order to recover its rightful interest in the biologic product.

University of Massachusetts Integrated Technology Projects

The Inspector General proposed amendments to a bill authorizing the University of Massachusetts to undertake integrated technology projects with private companies. The amendments were designed to ensure sufficient safeguards over construction and leasing of university property and to institute conflict of interest guidelines applicable to university faculty, employees, and students participating in integrated technology projects. The bill was amended in accordance with the Inspector General's recommendations, and engrossed by the Senate in 1995.

Fair Competition for Local Contracts

“Particularly in an era of rising water and sewer rates, there is no public policy justification for prohibiting Massachusetts municipalities, commissions, and districts from considering cost as a factor when contracting with engineering firms to operate public facilities.”

-- IG letter to State
Administration Committee
April 1995

The Inspector General opposed several bills to amend M.G.L. c.30B, the Uniform Procurement Act. One such bill would have created new statutory procedures for local governments to follow when procuring contracts for the management, operation, and maintenance of water treatment facilities. This bill would have prohibited local governments from considering price in selecting operators for water treatment facilities, thereby impeding their ability to control costs to ratepayers. In addition, this bill would have allowed engineering firms virtually to write their own specifications for management, operation, and maintenance services, and to negotiate the terms of their contracts after being selected. After contract execution, this bill would have allowed unlimited amendments to the contract. The bill was not enacted in 1995.

Another bill would have inserted into Chapter 30B a preference for Massachusetts vendors, thereby requiring local awarding authorities to determine which vendors constituted in-state vendors and to verify each vendor's residency. The Inspector General opposed this bill, arguing that it would create needless red tape for local awarding authorities, who would be inundated with bid protests and legal challenges. The bill was not enacted in 1995.

The Inspector General opposed proposals to exempt from Chapter 30B the rental of conservation land for agricultural purposes, the acquisition of conservation land, and the purchase of real property by economic development and urban renewal agencies. The latter proposal was enacted in 1995.

The Inspector General opposed several bills that would have exempted certain municipal contracts from advertised competition. One bill, drafted and filed at the recommendation of a private wastewater treatment plant operator, would have authorized a long-term, no-bid contract for the operation and maintenance of the Westborough Treatment Plant. Another bill would have established a new Pittsfield Parking Authority and exempted its contracts from the requirements of Chapter 30B and the prevailing wage law. The Authority's agreements with accountants, architects, engineers, construction contractors, financial advisors, managers, and consultants would have been exempt from competition, as would the Authority's agreements to manage or lease garages. None of these bills was enacted in 1995.

“Allowing no-bid contracts of up to \$200,000 for supplies and services that could and should be bid would invite massive fraud, waste, and abuse.”

-- IG letter to State
Administration Committee
April 1995

“[T]he lack of specific statutory guidelines for procuring supplies through leasing or installment agreements frequently creates confusion for public officials... All citizens of the Commonwealth have a right to expect the codification of prudent procedures for management of public expenditures.”

-- IG letter to Local Affairs
Committee
February 1995

The Inspector General opposed a bill, drafted by the Massachusetts Municipal Association, that would have unnecessarily increased the exposure of Massachusetts municipalities and other local jurisdictions to waste and abuse in public contracting. The bill would have amended Chapter 30B to allow unadvertised, sole-source contracts up to \$200,000; it would also have eliminated advertising and competition for all municipal real property transactions, regardless of value. This bill was not enacted in 1995.

The Inspector General supported several proposed amendments that would improve Chapter 30B. One such bill would have established prudent safeguards for municipalities entering into lease-purchase or installment agreements. Another bill supported by the Inspector General would have limited an exemption from Chapter 30B for tax collection services to municipalities with populations under 40,000; larger municipalities would be required to award these contracts competitively. The Inspector General also supported legislation to raise the dollar threshold for competitive real property acquisitions and dispositions from \$500 to \$25,000. This increase in the real property threshold was enacted in 1995.

Disposition of Real Property

Each year, many bills are filed to allow the disposition of state-owned real property to named individuals or entities, thereby reducing or eliminating Ward Commission safeguards over the acquisition and disposition of state property. In 1995, the Office continued its longstanding policy of opposing such bills. For example, the Inspector General opposed a bill directing DCPO to lease four parcels of state-owned land in Lowell to a named private firm for 65 years. This bill appeared to contemplate a substantial public subsidy to the private

entity, with no declaration of public purpose; it would also have obligated the Commonwealth to expend an undetermined sum to clean up any hazardous materials and complete demolition in order to prepare the site for construction.

The Inspector General also opposed bills that would have required DCPO to convey state land in Tewksbury, Revere, and Holden to named parties. The enacted bill authorizing DCPO to convey land in Holden for fair market value to two individuals required the Inspector General to review and approve an appraisal of the property, including the methodology used; to report his findings to the Legislature; and to review and comment on any agreement and report submitted by DCPO. The other bills were not enacted in 1995.

Legislative Recommendations: 1996 Session

Under M.G.L. c.12A, the Inspector General has the authority to recommend policies which will assist in the prevention or detection of fraud, waste, and abuse. Chapter 12A requires the Inspector General to report annually on these recommendations to the Governor and the Legislature. The previous sections of this report detail many of the problems identified by the Office in 1995 as well as the Inspector General's recommendations for corrective action. This section discusses the Inspector General's legislative proposals before the Legislature during the 1996 session. The pending proposals filed by the Inspector General for the 1995 legislative session retained their original bill numbers and status at the outset of the 1996 legislative session under Joint Rule 12B of the Legislature's permanent Joint Rules for 1995 and 1996. During 1995, every proposal was discharged to the House Committee on Ways and Means.

Competitive Procurement of Financial Services

The Inspector General filed legislation to establish open, accountable, and competitive procedures for the issuance of public debt by the Commonwealth. Negotiated sales would be controlled, and the role of the Finance Advisory Board would be strengthened to ensure that taxpayers' interests are fully protected.

House 164, Procurement of financial services

Effective and Ethical Government Contracting

The Inspector General filed legislation to establish clear rules for contracting by state agencies and independent state authorities. The statutory rules for state agency contracting for supplies and services are outdated and inadequate. Independent authorities can spend public funds on supplies, services, and real property without open, fair competition. The Inspector General's legislation would provide a statutory framework for effective and ethical procurement, restrict and regulate related-party transactions by the Commonwealth's vendors, and establish open and accountable procedures for the acquisition and disposition of real property by independent state authorities.

*House 165, Procurement of services by the Commonwealth
House 166, Related-party transactions in state contracts*

"[I]f vendors and procurement officials follow the same basic rules throughout the state, public contracting becomes less of a mystery to public officials awarding contracts, to vendors who might wish to compete, and to citizens who observe the process and ultimately pay for the supplies and equipment purchased."

-- IG letter to State
Administration Committee
February 1995

*House 170, Procurement of supplies by the Commonwealth
House 171, Authority real property acquisitions and
dispositions*

The Inspector General filed legislation to streamline M.G.L. c.30B, which governs procurement of supplies, services, and real property by local jurisdictions. Five years ago, a working group was formed at the request of the Joint Committee on State Administration for the purpose of developing technical amendments to Chapter 30B. The working group, which included representatives from the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, the City Solicitors and Town Counsel Association, the Massachusetts Municipal Association, and the Office of the Inspector General, drafted a series of consensus recommendations aimed at making Chapter 30B more workable for local officials. The Inspector General's legislation incorporates the working group's recommended amendments; for example, one amendment would permit local awarding authorities to follow Chapter 30B rather than the less flexible construction bid law for construction projects of less than \$100,000. This legislation would also require local jurisdictions to seek competition when contracting for police-ordered towing and solid waste collection, disposal, and recycling services. The Inspector General filed separate legislation to require competitive procurement of insurance and retirement board services.

*House 167, Amending certain public bidding laws
House 172, Procurement of services in municipalities, districts,
and counties*

Trust Funds and Off-Budget Accounts

The Inspector General filed legislation to establish prudent controls over the creation, administration, and reporting of trust funds and off-budget accounts. The state currently lacks effective controls over the creation and use of funds that are not appropriated by the Legislature. The Inspector General's legislation would require legislative approval of the creation of such funds as well as reports to the Legislature on revenues and expenditures associated with trust funds and off-budget accounts.

*House 168, Establishment and administration of certain
funds*

“Both the Office of the Inspector General and the Office of the State Auditor have discovered numerous past instances of abuse of . . . off-budget accounts. Establishing prudent controls over the creation and administration of all off-budget accounts is a matter of sound public policy.”

-- IG letter to State
Administration Committee
February 1995

Service of Summonses

The Inspector General filed legislation to authorize Office staff to deliver summonses for documents. Currently, Office staff may deliver summonses for witnesses, but not for documents. This legislation would protect the confidentiality of investigations and produce cost savings for the Office.

House 169, Technical change regarding the Office of the Inspector General