

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
1996**

Robert A. Cerasoli
Inspector General



ROBERT A. CERASOLI
INSPECTOR GENERAL

The Commonwealth of Massachusetts
Office of the Inspector General

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December 1997

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chair of the Senate Ways and Means Committee

The Honorable Chair of the House Ways and Means Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Committee

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

During 1996, the Office of the Inspector General continued its work to prevent and detect fraud, waste, and abuse in the expenditure of public funds. The Office emphasizes prevention activities whenever possible. When necessary, however, we vigorously pursue investigations. The value of both approaches is demonstrated by this annual report.

This Office identified two areas of significant concern during 1996: the movement to privatize water and wastewater treatment plants and the state's control over intellectual property.

There has been considerable interest in privatizing public water and wastewater systems. Industry proponents argue that approach provides a mechanism for obtaining necessary funding for capital improvements without issuing public bonds, and can result in operational savings. Our work on this issue, highlighted in the report section entitled "Privatization of Municipal Water and Wastewater Facilities," has shown that this is a high-risk area that warrants close scrutiny and oversight. We have advised some communities about the risks, and we have continued our work in this area in 1997.

I am also very concerned about the state's lack of control over its intellectual property. The "Financial Oversight" section of this report describes a case in which private individuals stood to make substantial financial gains from patent rights they had illegally obtained – rights that should be the Commonwealth's. This case underscores both the potential value of intellectual property and the risks of inadequate control over such property.

Another area with which I have been concerned is oversight of the \$10.4 billion Central Artery/Third Harbor Tunnel project. In October 1996, the Inspector General, Attorney General, and State Auditor submitted another plan to the Legislature proposing joint oversight of the project. In January 1997, \$2 million was made available to the newly established Oversight Coordinating Commission. Continuation of this funding in the future should help assure citizens that the project is subject to an appropriate level of oversight.

Sincerely,

Robert A. Cerasoli
Inspector General

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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) 723-2334. 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. The hot line's number is 1-800-322-1323.

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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

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 that 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 statewide 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 the 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 comprises 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 its pages, this report details 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 and publishes and widely distributes a quarterly *Procurement Bulletin* with information and advice to promote effective and ethical purchasing. 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 that 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.

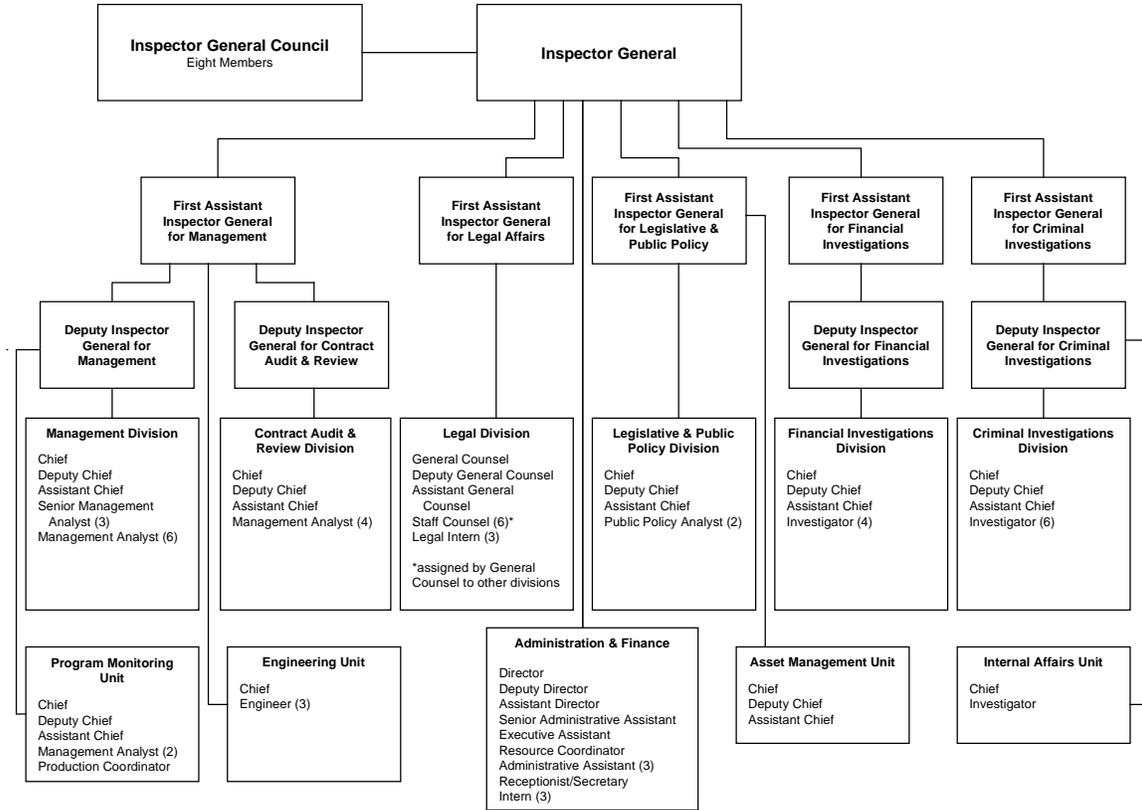
**Inspector General's Office
Budget History**

FY	Budget	Staff
97	\$1,562,523	47
96	1,482,232	42
95	1,413,702	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

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 the Office completes projects, we typically issue a letter or report detailing our 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 1997 is \$1,562,523. Although the Office has 104 authorized staff positions, only 47 staff positions were filled in fiscal year 1997 because of budget constraints. The following chart illustrates the Office's organization and approved staff positions.

Office of the Inspector General Organization Chart



This report summarizes the projects and activities completed by the Office during the 1996 calendar year.

Privatization of Municipal Water and Wastewater Facilities

In 1996, a number of large environmental service corporations aggressively promoted complex, long-term privatization contracts for municipally owned water and wastewater plants. These corporations invested substantial resources in efforts to persuade municipal officials to enter into 20-year lease or management contracts for design and construction of plant upgrades as well as plant operation and maintenance.

The sales efforts have persuaded some municipal officials to pursue this novel form of privatization. However, Massachusetts state laws do not permit privatization contracts for design, construction, and operation of municipal facilities. For this reason, several municipalities have sought or are seeking special legislative authorization to procure long-term privatization contracts.

The long-term privatization of the management of a public water or wastewater plant is similar to establishing an unregulated utility monopoly. Because such an arrangement poses substantial financial risks to taxpayers and ratepayers, and transfers an unprecedented level of control over public facilities to a private operator, the Office has closely followed these privatization efforts. In 1996, the Office worked with municipal officials from several communities to draft legislation that would provide some protection to the public. The Office also assisted two municipalities that already had legislative authorization in developing competitive procurement processes and establishing contracts that afford taxpayers and ratepayers some protection from excessive risks and costs.

Leominster

The City of Leominster obtained special legislation in 1993 to procure a 20-year contract for design, construction, operation, and maintenance services for the City's water and wastewater treatment plants. During 1996, the City advertised a request for proposals (RFP) for the privatization contract, and one of the two vendors competing for the contract filed a bid protest with the Office. The Office found that the City failed to provide the protesting vendor with essential information available to its competitor. Because the City's actions had undermined fair competition, the Office advised the City to cancel the procurement. The City followed this recommendation, and in April 1996 undertook a new RFP process.

Following the completion of the new RFP process, the City announced the selection of a vendor and proceeded to negotiate the final terms of a \$36 million contract. Despite the magnitude and complexity of this business deal, the City elected not to involve any privatization experts or attorneys to represent the City's interests in the negotiation. The Office reviewed the contract that emerged from these negotiations and warned the City that some of the terms were unreasonably one-sided and unfavorable to the City. In an October 22, 1996 letter, the Office advised the City that the agreement:

- lacked even minimal contract oversight safeguards;
- contained an extremely limited warranty for water treatment improvements;
- defined the parties' potential liability in the event of breach or termination in terms unreasonable and unfair to the City; and
- defined liability for fines, penalties, and damages to third parties in terms highly unfavorable to the City.

Because of the magnitude of the risks posed to Leominster's taxpayers and ratepayers, the Office urged the City to seek a review of the deal by legal counsel specializing in complex privatization arrangements before signing the contract. However, the City signed a final contract in November 1996 without renegotiating the unfavorable contract terms.

Taunton

In 1996 the City of Taunton sought special legislation for a privatization contract for the planning, design, financing, and construction of capital improvements to and the operation of the City's wastewater plant. The City planned to consider proposals both to sell or lease the plant and to operate and maintain the plant over a long term.

The Office worked closely with Taunton officials, reviewing the City's draft proposed legislation and recommending amendments to promote competition and protect the City's interests. After several months of discussion and many changes to the City's initial draft version, the City and the Office developed legislative language that strengthened the City's control over the quality and cost of plant improvements. The amended legislation was enacted.

“On behalf of the City of Taunton, I want to extend my sincerest thanks for the work done by your office on our homerule wastewater plant legislation The many and detailed recommendations put forward by your office substantially improved the draft, and will result in a process that is more protective of the City and fair competition.”

– Taunton Mayor Robert G. Nunes letter to Robert A. Cerasoli
September 1996

The Office and Taunton officials also worked together to develop an RFP. The City followed the Office's recommendations to clarify the evaluation criteria and strengthen proposed contract terms. In response to this Office's recommendation, the City obtained additional RFP assistance from a law firm experienced in wastewater privatization contracts.

Springfield

In 1996, Springfield officials met with the Office to discuss the City's interest in privatizing its regional wastewater plant. A few months later, the City of Springfield transferred its water and regional wastewater treatment facilities to the newly created Springfield Water and Sewer Commission.

The Commission asked the Office to review proposed legislation authorizing it to contract for the lease or sale, and/or operation and maintenance of its wastewater facilities, as well as for financing, design, and construction of modifications to the facilities. The Office advised the Commission to incorporate provisions to strengthen the Commission's control over the quality and cost of plant improvements planned, designed, and built by the private operator. In addition, the Office recommended legislative amendments to restrict the use of any up-front payment by the vendor to capital improvements. The Commission's proposed special legislation had not been enacted at the close of 1996.

“[S]ound fiscal principles dictate that the use of any proceeds offered by a private firm as part of any privatization under the proposed legislation should be restricted to funding capital improvements.”

– IG letter to Springfield Water and Sewer Commission
January 1997

Greater Lawrence

The Greater Lawrence Sanitary District owns and operates a wastewater treatment facility serving five municipalities. In 1996, the District requested the Office's comments on a draft RFP inviting vendors to propose sludge disposal or processing options ranging from transportation and off-site disposal to design and construction of an on-site facility. In addition to providing extensive technical assistance, the Office advised the District that the open-ended scope of services and vague evaluation scheme contained in the RFP rendered a meaningful comparison of competing proposals impossible. The Office also advised the District that vendor financing for the project would probably involve a long-term pledge of revenue, which could constitute a more onerous commitment than a conventional bond issuance. The Office recommended that the District obtain expert advice on the project's legal and financial ramifications before issuing an RFP.

Financial Oversight

Massachusetts Public Health Biologic Laboratories

In December 1996, the Office of the Inspector General issued *A Report on Certain Activities and Practices of the Massachusetts Public Health Biologics Laboratories*. The Office's inquiry was prompted by its review, pursuant to M.G.L. c.12A, §8, of the state Department of Public Health's (Department) legislative proposal to transfer the Massachusetts Public Health Biologics Laboratories (MPHBL) to a new quasi-independent institute. MPHBL was a state laboratory within the State Laboratory Institute, a division of the Department. The bill would have assigned to the new institute the Commonwealth's intellectual property rights to products developed by state employees at MPHBL, including the rights to two biologic products: Cytomegalovirus Immune Globulin (CMVIG) and Respiratory Syncytial Virus Immune Globulin (RSVIG). The bill might have foreclosed the Commonwealth's ability to recover millions of dollars in revenue from the sale of RSVIG.

The Office's December 1996 report revealed how the Director and Deputy Director of MPHBL devised and executed a plan to enrich themselves by misappropriating the Commonwealth's exclusive right to a patented process related to the production of RSVIG developed by state employees at MPHBL. The Director and Deputy Director assigned exclusive rights to the process to MPHBL's fiscal and administrative agent, the Massachusetts Health Research Institute, Inc., (MHRI) in return for royalty rights for themselves potentially worth \$6.3 million.

The report also chronicled the way in which MHRI appeared to have acted in concert with the Director and the Deputy Director of MPHBL in the attempt to misappropriate the Commonwealth's exclusive right to the RSVIG patent. By falsely claiming ownership of the invention, MHRI stood to gain a projected \$4.2 million in royalty rights.

The report further described the role of a pharmaceutical company, MedImmune, Inc., in the Commonwealth's loss of its rights to the patented RSV invention. Agreements executed by MedImmune, MHRI, and the Director and Deputy Director of MPHBL acting on behalf of the Commonwealth provided that MedImmune would receive most of the profits from RSVIG. The Office additionally concluded that the Department violated state finance laws and contracting procedures by using MHRI as an illegal fiscal conduit to receive and expend funds from MedImmune, Inc., and other sources.

The Inspector General revealed the existence of the Director and Deputy Director's royalty agreement with MHRI in a February 1996 letter to the Legislature, urging that the Legislature refrain from acting on the Department's proposal until the Office completed its review. The Office subsequently testified in opposition to the Department's proposal in March 1996. Before the Office issued its report, the House and Senate Committees on Ways and Means rejected the Department's proposal to establish a quasi-

independent institute. The Legislature enacted Chapter 334 of the Acts of 1996, which stripped the Department of its authority over MPHBL and transferred control to the University of Massachusetts.

Update: MWRA Procurement of Financial Services

Financial Advisor Conviction

In December 1996, former Massachusetts Water Resources Authority (MWRA) financial adviser Mark S. Ferber was sentenced to 33 months in prison and fined \$1 million for his key role in what sentencing judge William Young of the U.S. District Court described as a “massive, intentional kickback scheme” involving two Wall Street securities firms, Merrill Lynch and Lazard Freres. A federal jury convicted Ferber following a three-month criminal trial of 58 separate fraud and corruption charges, including arranging a secret fee-splitting contract between his firm, Lazard Freres, and Merrill Lynch. Under this contract, which paid Lazard Freres and Ferber a total of \$2.64 million, Ferber advised his public agency financial advisory clients to enter into lucrative interest rate swaps marketed by Merrill Lynch. These public agencies, which had hired Lazard and Ferber to provide independent financial advice, included the MWRA, the District of Columbia, the Michigan Department of Transportation, and the U.S. Postal Service.

As part of the same case, Merrill Lynch and Lazard Freres agreed to pay a civil fraud settlement in excess of \$24 million, the largest fine in any Department of Justice or Securities and Exchange Commission (SEC) municipal securities matter. The SEC also reached a settlement with Ferber under which he was fined \$650,000 and barred from the securities industry. Ferber, a licensed attorney in Massachusetts, was disbarred as a result of the conviction.

The conviction of Ferber and the levying of fines on Merrill Lynch and Lazard Freres resulted in large part from information uncovered by the Office of the Inspector General during a review of the MWRA’s agreements with its financial advisers and underwriters. The Office issued a report in December 1993 entitled *Massachusetts Water Resources Authority: Report of the Procurement of Financial Services*, which concluded that

- Merrill Lynch 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 actively involved in designing the MWRA’s underwriter selection process and advising the MWRA’s selection committee on the choice of firms, Lazard coached Merrill Lynch and provided 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; and

- MWRA paid more in fees and compensation for its bond sales than did many comparable issuers during the same period.

The report led to a two-year investigation by the Massachusetts Attorney General, U.S. Attorney, Federal Bureau of Investigation, Internal Revenue Service, and the U.S. Postal Service.

Judge Young praised the Inspector General in his remarks at Ferber's presentencing hearing on December 19, 1996. He singled out the Inspector General as one who "played a significant, appropriate role in bringing us to this resolution" and said that early on, the Inspector General "saw this for what it was."

Following is a letter of recognition from the U.S. Attorney's Office.



U.S. Department of Justice

United States Attorney
District of Massachusetts

2000 LSW, McCormack Post Office and Courthouse
Boston, Massachusetts 02108
August 29, 1996

RECEIVED

SEP 03 1996

OFFICE
MEMORANDUM

Mr. Robert A. Cerasoli
Inspector General
Commonwealth of Massachusetts
One Ashburton Place
Room 1311
Boston, Massachusetts 02108

Dear Inspector General Cerasoli:

I am writing to recognize and thank you and your staff for the tremendous contributions you made during the last three years to the joint federal-state investigation of Merrill Lynch, Lazard Freres, Mark S. Ferber, and others operating in the public finance industry.

As you know, this office, working with the Massachusetts Attorney General's office, obtained guilty verdicts in federal court earlier this month on 58 fraud and corruption charges against Mark S. Ferber, a former partner of Lazard Freres. Last October, this office and the Attorney General's office resolved civil actions brought against Merrill Lynch and Lazard Freres by entering into settlement agreements, pursuant to which the firms agreed to pay over \$24 million in restitution and fines, and further agreed to substantially change the way they conduct business with public entities.

The skilled and tireless efforts of you and members of your staff, particularly Gregory Sullivan, Richard Finnochio and Barbara Tanzer, were key factors in helping to obtain these important resolutions. Early in the investigation, during 1993 and 1994, your staff sought and obtained evidence that ultimately proved to be central to both the civil actions against the firms and the criminal action against Mark Ferber. Your staff also conducted sophisticated analysis of complex public finance transactions that was instrumental in paving the way for and supporting our investigative effort.

You and your staff should be very proud of the skill and dedication that you demonstrated in investigating the public finance industry. In significant part due to your efforts, that industry today is cleaner, fairer, and far better understood. In the end, of course, the citizens of the Commonwealth will be the direct beneficiaries of a public finance industry with fewer abuses and significantly enhanced integrity.

Congratulations on a job so well done.

Very truly yours,

JAMES B. FARMER
Acting U.S. Attorney

By:


BRIAN T. O'CONNOR
Assistant U.S. Attorney

Operational Reviews

Energy Management Services Procurement

In March 1996, the Office of the Inspector General issued *Procuring Energy Management Services: A Case Study*, a report detailing the procurement process undertaken by the Easton Public Schools to contract for repairs and maintenance to the heating, ventilating, air conditioning, and lighting systems in school buildings. The study concluded that Easton's procurement process was seriously flawed and that, contrary to Honeywell's claims, the \$1 million-plus cost of the contract with Honeywell would not necessarily be offset by guaranteed energy and operational savings. The Schools halted the procurement shortly after this Office commenced its review and did not ultimately execute an energy management services contract with Honeywell.

The Office's review disclosed that the Schools had given Honeywell an unfair advantage by allowing Honeywell exclusive access to the school buildings and to important financial information months before issuing a request for proposals (RFP). The Schools' RFP provided other vendors with little of the information necessary to prepare a proposal, and Easton officials relied on Honeywell to develop energy consumption data distributed to vendors. This Office discovered a major error in the Honeywell-prepared data that may have dissuaded other vendors from submitting proposals. Not surprisingly, Honeywell submitted the only proposal.

The review also revealed that Honeywell had misrepresented the terms of the contract that the Schools were poised to approve. Although Honeywell's proposal guaranteed that the program would pay for itself, the contract did not contain the same guarantee. In fact, the savings guaranteed by the contract would have amounted to less than half of the program's \$1 million-plus cost. Moreover, even this savings guarantee was based on unrealistic school occupancy hours and calculation methods. Honeywell's cost proposal also contained an unfounded \$26,000 maintenance savings projection and characterized a \$117,719 cost item as savings.

“Easton’s experience demonstrates the hazards of excessive reliance on an interested vendor for advice and assistance in the procurement process.”

– IG report
March 1996

The report offered the following recommendations to public agencies interested in contracting for energy management services:

- Contact the state's Division of Energy Resources for advice and technical assistance.
- Conduct an independent energy audit.
- Formulate objectives for the energy management services program in advance.

- Develop an RFP that provides vendors with adequate information.
- Specify the methodology for computing savings.
- Provide all vendors with adequate time to prepare a comprehensive proposal.

Regulatory Reform

On February 7, 1996, Governor Weld issued Executive Order 384 "To Reduce Unnecessary Regulatory Burden," requiring every agency within the Executive Department to "rescind, revise or simplify all [of their] regulations." The Inspector General in March 1996 wrote to Executive Office for Administration and Finance (A&F) Secretary Charles D. Baker, requesting that A&F allow the Office to review all proposed regulatory changes for the preservation of safeguards against waste, fraud, and abuse.

In the months that followed, Office staff members met and corresponded with representatives of A&F, discussing how to allow the Inspector General a meaningful opportunity to review proposed regulatory changes. In the spring, and then again in late fall, A&F provided the Office with lists of regulations that had been rescinded or revised or were slated for rescission or revision.

On December 5, 1996, the Inspector General commented on one of the proposed regulatory changes in a letter to the Director of the Department of Housing and Community Development (DHCD), the agency proposing the change. The Inspector General noted in his letter that the revision, a drastic reduction of DHCD's regulations addressing relocation assistance, eliminated many of the responsibilities of displacing agencies towards the persons being displaced. The new regulations similarly did away with safeguards against fraud, waste, and abuse contained in the original regulations.

DHCD informed this Office that it would take the Inspector General's comments into consideration in its final revision of the regulations. The Office will continue to review and comment on regulatory changes and proposed changes brought to its attention.

Update: 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). The statute also required the Office to 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 and administered the contract.

In February 1996, the Inspector General filed the final report prepared by Daniel Dennis & Company with the House and Senate Committees on Ways and Means. The report findings included the following:

- CPCS was generally operating efficiently and effectively; however, its administrative and financial operations could benefit from consolidation and its computer systems needed improvement.
- CPCS' systems for review, payment, and audit of bills submitted by private attorneys exhibited an overall lack of control. The report recommended that CPCS set limits on daily billing by private attorneys and reimbursement to private attorneys for waiting time; that CPCS impose stringent sanctions in response to fraudulent overbilling; and that CPCS improve its policies and procedures governing recovery of overpayments.
- The quality of representation generally provided by CPCS staff attorneys appeared to be somewhat higher than the quality of representation generally provided by private court-appointed attorneys. The report noted that CPCS staff attorneys did not maintain records of time spent on cases, and recommended that CPCS require its staff attorneys to do so.
- The cost of court-approved indigent services could be reduced by reducing reliance on private vendors and by establishing lists of competitively selected providers of these services. The report recommended that the Legislature consider appropriating funding for additional CPCS staff and amending CPCS's enabling statute to permit establishment of prequalified provider lists.

Real Estate Dealings

Springfield Technical Community College Assistance Corporation

In July 1996, the Springfield Technical Community College Assistance Corporation (STCCAC) asked the Office to review a proposed property management agreement with Appleton Corporation for the newly created Massachusetts Center for Telecommunications and Information Technology at the College. STCCAC's enabling legislation, Chapter 185 of the Acts of 1995, exempts the Corporation from all public bidding laws but requires the Inspector General's review of contracts with annual expenditures of more than \$100,000.

The proposed agreement required substantial revisions to protect taxpayer funds invested in the project from potential fraud, waste, and abuse. This Office helped draft a contract that clearly defines the property manager's responsibilities and protects the STCCAC from contract disputes and overcharges. During 1997, this Office expects to help STCCAC develop a request for proposals to competitively procure a new, multi-year property management contract.

Legislatively Mandated Reviews

The Legislature often mandates review and approval by the Office of independent appraisals of real property interests being conveyed or acquired by the state, counties, and municipalities. The Inspector General provides his report on each appraisal to the Commissioner of the Division of Capital Planning and Operations (DCPO) for submission to the Legislature. The Office also reviews and comments on the deeds and agreements effecting the conveyances.

Metropolitan District Commission Lease

Chapter 105 of the Acts of 1995 authorized the Metropolitan District Commission (MDC) to lease a portion of the Elm Bank reservation in Dover, including the historic mansion and several other buildings, to the Massachusetts Horticultural Society (MHS). The legislation required the Inspector General to determine whether the property improvements proposed by the MHS amounted to the full and fair market value of the lease, based on the appraised value of the property with and without the improvements. The legislation also required the Inspector General to review and comment on any lease to be entered into between the MDC and the MHS.

In a January 1996 letter, the Inspector General advised the MDC Commissioner that, based on the appraisal of the Elm Bank Reservation property, no additional compensation was necessary to obtain the full and fair market value of the lease, as long as the final lease required the MHS to pay for improvements and maintain the property as long as it provided for public use and enjoyment of the property.

In February 1996, the Office reviewed the draft lease and draft management agreement between the MDC and the MHS and provided the MDC with 14 detailed recommendations aimed at strengthening the public protections in these contracts. The MDC amended the lease and management agreement in accordance with most of the Office's recommendations.

In March 1996, the Inspector General submitted his written comments on the management agreement and lease to the Clerk of the Massachusetts House of Representatives, advising that both documents were consistent with the provisions and intent of Chapter 105 of the Acts of 1995. The Inspector General commended the MDC's responsiveness but noted that it had not yet developed detailed maintenance standards and procedures for inclusion in the joint management agreement, as recommended by the Office.

Proposed Disposition of the Massachusetts Highway Department's Wellesley Depot

Chapter 273 of the Acts of 1994, the 1994 Transportation Bond Bill, directed the Inspector General to review the proposed disposition by the Massachusetts Highway Department (MassHighway) of the Wellesley Central Maintenance Facility, known as the Wellesley Depot. Specifically, the Inspector General was directed to investigate:

- the costs and benefits of transferring highway functions performed at Wellesley to other MassHighway locations and to private contractors,
- possible future uses of the facility by MassHighway or other state agencies, and
- the likely income to be realized by the possible sale or other disposition of the site.

The legislation prohibited the sale or other disposition of the facility until the Inspector General completed and filed his report with the House and Senate Committees on Ways and Means. By the time the legislation was enacted, MassHighway had already relocated some functions from Wellesley and begun improvements at other sites to accommodate additional transfers.

In July 1996, the Inspector General issued *Proposed Disposition of the Massachusetts Highway Department's Wellesley Central Maintenance Facility: A Review Pursuant to Chapter 273 of the Acts of 1994*. The report described the Wellesley Depot, examined the potential income from the disposition, identified the costs associated with transferring functions, and reviewed the Commonwealth's assessment of potential state uses of the site. The report concluded that the Commonwealth could realize a net financial benefit through MassHighway's transfer of functions and disposition of the Wellesley Depot. Overall, the Office calculated the net benefit at approximately \$6 million.

The report also recommended that:

- MassHighway conduct a siting alternatives analysis prior to undertaking design and construction of a permanent research and materials testing facility at D Street in South Boston, and
- DCPO prepare and periodically update a statewide master facility plan identifying major space needs, assessing alternatives, and recommending cost-effective solutions for meeting needs.

Design-Build Procedures for the Brockton Trial Court

Chapter 277 of the Acts of 1995 required the Inspector General to review procedures developed by DCPO for procurement of design-build services for the design and construction of the Brockton Trial Court. The legislation required DCPO to file the procedures and the Office to file comments on the procedures with the Legislature before executing any design-build contract. In October 1996, the Inspector General submitted his written comments, advising DCPO that the procedures were appropriate, well written, and comprehensive.

Land and Building Purchase for the University of Massachusetts – Lowell Campus

Chapter 120 of the Acts of 1994 authorized DCPO to acquire land and buildings in a complex known as the Wannalancit Office and Technology Center, located in the City of Lowell, for the purpose of transferring the property to the Lowell campus of the University of Massachusetts, which was undergoing expansion. The legislation mandated that prior to this unique acquisition on behalf of the University, three independent appraisals of the Center be performed based on the value of the property for the use of “economic development projects and education.” Chapter 120 required the Inspector General to comment on and approve the three appraisals.

In an August 1996 letter to DCPO, this Office stated that each appraiser used different assumptions, approaches, and limiting conditions that resulted in a wide range of market values for the Center. The first value was between \$20.4 and \$21.2 million, the second ranged from \$8.7 to \$10 million, and the third fell in the middle, estimating the value of the Center at \$14.9 to \$15.1 million. The wide range of estimates provided little insight into the market value of the whole center.

Ultimately, only one five-story building and an adjacent parking lot were selected for purchase. This Office advised DCPO in its August letter that, because the agreed-upon price of \$2.7 million was less than the lowest end of the value estimates, the sales price was reasonable.

Plymouth Land Appraisal

Chapter 327 of the Acts of 1994 authorized the DCPO Commissioner to convey a parcel of land in Plymouth to the Knowles Family Trust for \$93,100. Chapter 327 also required the Inspector General to review and approve the appraisal of the property and to review

and comment on any agreement authorized by the Act. This Office investigated the matter and learned that the appraisal had been prepared for the Knowles Family Trust. This Office recommended that the Commonwealth obtain an independent appraisal before proceeding with the conveyance. A second appraisal was completed and the Inspector General concurred with a subsequent agreement to convey the property for \$176,592, increasing the Commonwealth's gain on the sale by \$83,492.

Effective and Ethical Contracting

MWRA Tunnel Contractor

In June 1996, the Inspector General sent a letter to the Executive Director of the Massachusetts Water Resources Authority (MWRA) regarding a recent MWRA decision to award a \$250 million tunnel contract to the joint venture of Shea-Traylor-Healy. According to an MWRA staff summary dated May 22, 1996, J.F. Shea Company, Inc., the lead partner of this joint venture, was the managing partner of a joint venture under contract with the Los Angeles County Metropolitan Transit Authority (LACMTA) to construct tunnels for the Los Angeles Metro Rail project. The LACMTA cancelled this \$163 million contract following the collapse of a portion of Hollywood Boulevard, which created a 70-foot sinkhole. According to the MWRA staff summary, MWRA staff had been unable to obtain substantive information on this matter.

The Office obtained a copy of an affidavit from the Inspector General for the U.S. Department of Transportation. The affidavit set forth evidence that the joint venture under contract with LACMTA used improper construction methods, installed substandard construction materials, and submitted false statements to LACMTA certifying that the work completed met the terms of the contract. The Inspector General's letter included a copy of that affidavit and noted that a former safety engineer employed by the same joint venture had been charged with falsifying licenses required by the state of California for safety engineering work in tunnel construction.

In response, the MWRA's Executive Director advised the Inspector General that MWRA staff had carefully assessed J.F. Shea's performance on projects for the LACMTA and other jurisdictions and recommended that the MWRA Board of Directors proceed with the award of the contract to J.F. Shea.

Procurement of Temporary Power Generators for the MWRA

The Office examined an approximately \$2.5 million procurement of temporary power generators by Boston Edison Company (BECO) to provide backup power for the Massachusetts Water Resources Authority's (MWRA) Deer Island wastewater treatment plant.

A 1992 agreement obligated BECO to provide permanent combustion turbine generators as a backup power supply for the plant, but construction delays prevented their installation. In 1994, the MWRA issued change orders to this agreement directing BECO to lease temporary generators until the permanent ones could be installed. BECO

"[T]his Office shares your concern with the importance of public accountability Where there is such a clear public interest in a contract, the need for public scrutiny is at least as compelling as it would have been had the MWRA conducted the procurement itself."

– IG letter to Representative Marie Parente
December 1996

procured the temporary generators by means of a private, unadvertised bid process. When an unsuccessful bidder asked to review the other bids after the procurement, BECO refused to provide the information, claiming that the bids were confidential. The aggrieved bidder appealed this refusal to the MWRA, and was told that the MWRA was bound by its contract with BECO not to disclose bid information without BECO's consent.

The Office reviewed the facts surrounding the procurement and concluded that the MWRA's decision to direct BECO to procure the temporary generators was both legal and reasonable. However, the MWRA's apparent conclusion that the records documenting the procurement were shielded from the public records law raised a substantial legal question. In the view of the Office, BECO was acting as the MWRA's representative in carrying out a procurement that was paid for by MWRA ratepayers, and therefore the bid documents could be deemed public records. The Office recommended that the complainant pursue the matter with the Supervisor of Public Records.

Massachusetts Bay Community College Cleaning Services

This Office reviewed Massachusetts Bay Community College's award of a \$200,000 cleaning services contract for the Wellesley and Framingham campuses. In a September 1996 letter to the College President, the Office noted several problems with the procurement but concluded that the College's award process substantially complied with sound procurement practices.

In reviewing this procurement, the Office held the College to the standards it set in its invitation for bids and to general principles of Massachusetts procurement law. Massachusetts state and local procurement laws do not apply to the College's service contracts, nor does the College have any internal procurement guidelines, regulations, or procedures governing these procurements. The College told the Office that the state procurement laws and "good business practices" serve as guides to the College when purchasing services.

The Office recommended that the College adopt the procurement procedures set forth in M.G.L. c.30B, the Uniform Procurement Act, to help ensure free and fair competition for all major contracts. The Office offered to provide any information and assistance needed to implement the Act.

Investigations

Subaru Warehouse Security

An Office investigation of security measures at certain Central Artery/Tunnel Project locations revealed that Building 13 at the Black Falcon Terminal in Boston, also known as the Subaru Warehouse, was not secured against unauthorized entry. The building houses electrical equipment and approximately \$300,000 of copper cable purchased for construction of the third harbor tunnel as well as core samples from the CA/T Project soil testing program. Surveillance by the Office disclosed evidence that copper cable had been stolen from the warehouse. A March 1997 letter from the Office to the CA/T Project Director urged the Project to secure the building and maintain a current inventory of all warehoused equipment and materials.

“We concur with your concern regarding security of the building and have been taking immediate steps to address the issue.”

– CA/T Project Director Peter Zuk
letter to IG
April 1997

The Project concurred with the Office’s concerns in an April 1997 letter to the Office describing the enhanced security measures implemented at the site as a result of the Office’s investigation.

Conflict of Interest Law Violation

On April 3, 1996, based in part on information supplied by the Office, the State Ethics Commission fined Warren Selectman Francis Beaudry \$500 for violating M.G.L. c.268A, the state’s conflict of interest law, by participating in a Selectmen’s discussion of Cemetery employee wages and joining in the board’s consensus to submit a revised wage list to Town Meeting for approval. Because Beaudry’s brother-in-law was a Cemetery Department employee at the time, Beaudry’s act was a prohibited official action affecting the financial interest of an immediate family member.

Illegal Sale of Scrap Metal

In response to a request from the Board of Commissioners of the Centerville, Osterville, Marstons Mills Water Department, the Office investigated the Department’s disposition of scrap brass and iron salvaged from old water meters, fire hydrants, and pipes. The Inspector General issued his findings in a December 1996 letter to the Commissioners, informing them that the former Water Superintendent had violated M.G.L. c. 30B by selling approximately \$11,413.00 in scrap metals to dealers of his choice. The Act requires an advertised bid or auction process for the disposal of surplus supplies valued at more than \$500 and the adoption of written procedures for the disposition of lesser amounts of surplus goods.

The Office also found that the former Superintendent failed to deposit all of the funds from the sale of the metals into the Fire District account, as required by state municipal

finance law. The former Superintendent informed the Office that he placed the brass proceeds in the Water Department safe, and thereafter spent the money on employee bonuses, Department Christmas parties, Department tapping team expenses, and miscellaneous office expenses such as pizza and donuts. Department employees denied having received bonuses, but confirmed that they had not been required to pay for annual Christmas parties held at a local country club or for tapping team expenses.

Most proceeds from scrap iron collected by the Department and sold by the former Superintendent were deposited directly into the Fire District Account as required by law, but a \$1,042 cash disbursement from a metals dealer for scrap iron from the Department could not be accounted for.

Falsified Price Quotations

In December 1996, the Office reported evidence to the Massachusetts Attorney General that a local housing authority had awarded \$16,925 in maintenance contracts based on falsified price quotations. The Office reviewed the authority's records of the solicitation and award of certain maintenance work over a two-year period and discovered that the same three firms had offered price quotations each time prices were solicited. In addition, the same firm had won all the work awarded during the time period examined.

This Office learned that one of the two losing firms was closely linked to the winning firm and had been dissolved in bankruptcy prior to the time the work was solicited. The president of the other firm from whom prices had purportedly been solicited told the Office that he neither authorized the quotations submitted in his firm's name nor recognized the signature of the person who signed the quotes. Moreover, he reported that his firm did not perform the type of work awarded.

Local Government Procurement Assistance and Enforcement

Chapter 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 five locations across the state during 1996. The training sessions, attended by approximately 325 local officials, covered four topics:

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

“Each session was very helpful and informative and presented in a clear and concise manner.”

– Evaluation by training participant

The Office also provided speakers on Chapter 30B at conferences sponsored by the City of Melrose, the Massachusetts Collectors and Treasurers Association, the Certified Fraud Examiners, the Barnstable County Fire Chiefs Association, the Massachusetts Sheriffs' Association, and the Massachusetts Firefighting Academy. The training and conference participants responded with enthusiastically positive comments.

During the summer of 1996, the Office participated in a seminar offered by Massachusetts Continuing Legal Education, Inc. (MCLE) on procurement issues for municipal counsel and local government officials. Two members of the Office's legal staff presented a segment addressing bid protests and emerging issues under Chapter 30B, and coauthored an article published in the MCLE textbook for the seminar. The article discussed the role of the Office in handling bid protests under Chapter 30B and analyzed Massachusetts court decisions interpreting public bidding statutes.

Publications

In addition to the MCLE article described above, the Office produced three issues of the *Procurement Bulletin*, a newsletter distributed to 2,800 procurement officials across the state. The *Bulletin* summarizes current procurement-related news and issues, addresses frequently asked questions about the Uniform Procurement Act, and highlights special topics such as bid protests, RFPs, and municipal construction.

The Office also developed sample school bus bid pricing forms, which the Office distributed to municipal procurement officials throughout the state. The sample forms

are designed to assist procurement officials in formulating methods for comparing prices.

Inquiries, Complaints, and Protests

The Office responded to 1,929 inquiries about Chapter 30B in calendar year 1996. The Office's team of procurement attorneys regularly responds to requests from municipal officials and aggrieved bidders by reviewing bid and proposal documents for compliance with Chapter 30B. The team also advises purchasing officials on how to increase competition for public contracts. The Office uses an informal dispute resolution process to resolve bid protests fairly and efficiently without litigation.

The remainder of this section presents examples of various types of municipal procurement reviews completed by the Office during 1996.

Lynn Wastewater Treatment Plant Services

“The M.G.L. c.30B provisions for waiving or correcting minor informalities are intended to promote full and fair competition. An overly rigid interpretation of RFP rules can have the unintended effect of eliminating qualified vendors.”

– Office letter to Lynn Water and Sewer Commission
December 1996

The Office received a protest concerning an RFP issued by the Lynn Water and Sewer Commission for a five-year contract to operate and maintain a wastewater treatment plant. The estimated value of the contract exceeded \$20 million. The protesting vendor alleged that the Commission had violated Chapter 30B by not permitting the vendor to correct a minor informality in its response to the RFP.

Chapter 30B requires jurisdictions to waive or allow the correction of minor informalities. The

Office's review in this case revealed that the Commission received and evaluated two proposals, both of which contained incomplete responses that the Office deemed minor informalities. Although the Commission permitted one vendor to correct its minor informality, it did not extend the same opportunity to the protesting vendor, an action that prejudiced fair competition. The Office recommended that the Commission cancel the procurement and readvertise the RFP. The Commission conducted a new procurement process in accordance with the Office's recommendation.

Boston Public Schools Consultant Services

The Office reviewed the Boston Public Schools' consultant contract for a \$50,000 study of school bus routes. The Schools had procured the consultant's services under the emergency provision of Chapter 30B, contending that the need for the study's results in time for the upcoming school year constituted an emergency.

Chapter 30B's emergency procurement procedures allow jurisdictions to waive certain requirements whenever the time necessary to comply would endanger the health or safety of people or property. The Office's inquiry, however, revealed that School Committee members had discussed hiring a consultant for approximately two months before invoking the emergency procedures. In a May 1996 letter to the Schools, the Office concluded that the circumstances surrounding the procurement did not constitute a genuine emergency justifying the use of the emergency provision. In the end, the Schools elected not to implement the consultant's routing plan because it would have required more school buses than the plan developed by in-house staff.

“An awarding authority cannot artificially create an emergency by postponing the procurement of needed services or failing to act until the need becomes critical”

– Office letter to Boston Public Schools
May 1996

Boston Systems Furniture Procurement

At the City's request, the Office reviewed the process by which the City of Boston had procured systems furniture. The City had issued an invitation for bids (IFB) and received two sealed bids. The lower bid contained mathematical errors, which the City corrected, and omitted list prices and a discount rate required by the IFB. The City waived these omissions as minor informalities and awarded the contract to this bidder. The second bidder protested to the Office, arguing that the City should have rejected the lower bid. However, after reviewing the relevant documents, the Office concluded that the City had acted within its discretion and could proceed to award the contract as planned.

Dedham Public Schools Lease

In response to a complaint, the Office reviewed the RFP process used by the Dedham Public Schools to lease school property for an elementary school extended day program. The Office determined the RFP was flawed in several respects, most notably by containing vague and standardless evaluation criteria that failed to state how the criteria would be applied or what minimum eligibility standards had to be met.

In addition, the Schools had applied factors and criteria not contained in the RFP to select a proposer. As a consequence of ignoring sound procurement practices, the Schools had selected the most expensive proposer and the only one with no experience in managing an extended day program for children. The Office concluded that the RFP issued by the Schools did not comply with Chapter 30B and recommended that the lease be reprocured. Office staff met with School representatives to advise them on how to continue the after-school program while undertaking a new procurement that complied with Chapter 30B.

Essex County Sheriff's Department Telephone System Contract

The Office reviewed the process used by the Essex County Sheriff's Department to purchase a telephone system for a correctional facility in Lawrence. The Department had awarded the contract by extending an existing contract that the Office had previously determined was unenforceable. In January 1996, the Office advised the Department that the modification was invalid and unenforceable and recommended that the Department conduct a competitive procurement for the telephone system.

The Department subsequently informed the Office that it planned to purchase a telephone system under the emergency provision of Chapter 30B. In a February 1996 letter to the Department, the Office advised that the Office did not endorse the Department's use of the emergency provision, which may be used only in sudden, unforeseen circumstances requiring an immediate response. The Department alleged no circumstances that created a sudden or unforeseeable need for the telephone system. In February 1996, the Office reiterated its recommendation that the Department competitively procure a telephone system.

Paul E. Tsongas Arena

This Office received a request for assistance in drafting a request for proposals for management services at the new Paul E. Tsongas Arena in Lowell. Office staff worked with the Lowell Arena and Civic Stadium Commission staff to develop a comprehensive scope of services and evaluation criteria for the procurement of a multi-year facility management contract.

Design Services for the City of Salem

In June 1996, the Salem City Council asked this Office to review a municipal design services contract for compliance with the designer selection law, M.G.L. c.7, §§38A½-O. The City had issued an RFP for a designer to assist the School Department in implementing a capital improvement program. The RFP called for a feasibility study reviewing the energy systems in all Salem school buildings and detailing a program of options, recommendations, and cost estimates for improvements to those systems. The designer was also to prepare plans and specifications for the proposed improvements. The RFP provided that the winning designer would be eligible for consideration for the final design contract, subject to an independent review of the feasibility study. The City Council questioned the legality of awarding the final design contract to the feasibility study design firm without a separate procurement process. After reviewing the RFP and related documents, this Office informed the City Council that the procurement process had complied with the designer selection law.

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 Central Artery and Third Harbor Tunnel (CA/T Project), scheduled to be completed in 2004 and estimated in 1997 by the U.S. General Accounting Office to cost \$11.6 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: staff assessments of management systems particularly vulnerable to waste and abuse, CA/T Project requests for technical assistance, and Legislative directives. The Office has also undertaken joint projects with other state oversight agencies.

OFFICE INITIATIVES

Value Engineering Change Proposals Report

The Office reviewed the Project's value engineering change proposal (VECP) program, a Project cost containment effort that allows construction contractors to recommend design or construction changes to improve efficiency or lower costs. This Office released its VECP program report to the Project in December 1996. The report found that:

- Bechtel/Parsons Brinckerhoff (B/PB), the joint venture that manages the CA/T Project design and construction under contract to MassHighway, does not track all VECP program savings and costs.
- B/PB did not follow VECP program procedures.
- Neither the contractors nor B/PB prepared life-cycle cost estimates for VECPs.
- Insufficient section design consultant (SDC) involvement in the VECP process increases the Commonwealth's financial risk.
- B/PB failed to give a VECP full and fair attention until the contractor reported worker injuries.
- By failing to conduct timely value engineering studies, B/PB deprived the Commonwealth of the benefits of competitive bidding on a construction alternate.
- B/PB used the VECP program to apply a design alternative that could have been competitively bid.
- A contractor received VECP credit for identifying a design item that B/PB should have deleted previously.

“As the CA/T Project moves further into construction, costs will continue to increase unless MassHighway uses tough cost control measures.”

– IG report
December 1996

The report recommended ways to improve the effectiveness of the VECP program, including monitoring all VECP costs and savings, following VECP procedures, and requiring more SDC involvement in the VECP process. The Office also recommended that the Project include alternate methods of construction in construction contract documents before bidding, and that it conduct value engineering design reviews before final design is 75 percent complete.

Despite being offered the opportunity to comment on two draft reports during the course of approximately one year, the Project waited until December 1996 to question facts in the report the time period covered by the review. The Project's December 1996 letter also offered an unresponsive defense of the VECP program.

B/PB Net Fees

In April 1996, the Office completed an examination of B/PB's invoicing of net fees under its management contract with MassHighway, valued at \$350.5 million as of October 1995.

Using GAAP-recognized cost accounting standards, the Office examined the correlation between completion percentages and net fees billed to MassHighway and concluded that a positive linear relationship existed between quarterly progress as reported by B/PB and incurred net fees invoiced to MassHighway. The Office found no evidence of improper billings (noncompliance with 48 CFR 30) with respect to B/PB's net fees. The Office advised the U.S. Department of Transportation Inspector General of its conclusion in an April 1996 letter.

Shop Drawing Requirements

In May 1996, the Office advised the Project director in writing of apparent inconsistencies and vulnerabilities in the Project's requirements for the preparation of record shop drawings. Record shop drawings are the only documents that detail the final version of what was constructed under a contract. The drawings can be used to reconstruct components should components need replacement at some point: they can also be used to help determine the cause of component failure. This Office identified and objected to a pending change order that would have deleted the drawing requirement. In response, the Project informed this Office that it had cancelled the change order and would continue to require record shop drawings.

Review of Work Program 14

In a June 1996 letter to the Project Director, the Office expressed concerns about MassHighway's contract with B/PB. The letter recommended that MassHighway reconfigure the design and construction management of the CA/T Project, including competitively procuring construction management services separately from preliminary engineering and design management. The Office concluded that MassHighway's near-total reliance on B/PB to manage administration, preliminary design, final design, and

construction creates significant unnecessary financial risk for the Commonwealth. The Office also concluded that the contract with B/PB does not best serve the needs of MassHighway or the pressing requirements for accountability on such a large, complex project. The Office observed that by reconfiguring the contractual relationships, MassHighway could separate the roles of the management firms it selects from its own oversight responsibilities.

The Office noted some improvements over the prior scope of services in the management contract, both in specifying deliverables and in streamlining text. The Project also substantially improved Project status reporting through its newly developed monthly management report.

In his September 1996 response to this Office, the Project Director disagreed that Project management should be restructured, citing delay, inefficiency, and cost. The Project Director also stated his view that MassHighway has an adequate system of controls over the Project and that a number of state and federal agencies provide project oversight. The Project Director noted that MassHighway has strengthened its management control by holding B/PB accountable for delivering work products.

“By relying on B/PB to manage both design and construction, MassHighway forfeits the independent representation of its interests that a separation of these roles would provide.”

– Office letter to CA/T Project
Director Peter Zuk
June 1996

Update – Asset Management

In December 1995, the Office issued a report exposing serious weaknesses in the CA/T Project’s control over the \$18.6 million-plus in fixed assets used by the Project. The report recommended a number of improvements to the Project’s manner of safeguarding these assets of the Commonwealth, including the suggestion that MassHighway record the Project’s fixed asset acquisitions in the Massachusetts Management Accounting and Reporting System (MMARS) in compliance with DPGS regulations.

In February 1996, the Office of the Massachusetts Comptroller informed the Inspector General that the CA/T Project had acted on the recommendation by posting the Project’s fixed assets in the MMARS system.

Technical Assistance

90-Day Construction Bid Process

In a January 1996 letter to the Project Director, the Office completed Phase II of its review of the Project’s proposal to accelerate the construction contract procurement

cycle. The Office had offered preliminary comments to the Project in May 1995 in response to MassHighway's request for comments. The Phase II letter amplified some of the Office's preliminary observations and examined data underlying the Project's draft proposal. The letter also highlighted certain factors beyond the Project's control that delay getting contracts out to bid. The Office cautioned Project management against premising its construction schedule on a radically reduced time frame until the Project consistently demonstrated that it could achieve its accelerated target. In addition, this Office concluded that to stay on schedule, the Project should curtail its practice of using addenda to manage design and construction after work is advertised.

Blanket Purchases

In response to a Project request, the Office examined 32 of the Project's blanket agreements as well as Project procedures for purchasing equipment and supplies. In a January 1996 letter to the Project, the Office stated its findings that the Project procures some commodities without following state bidding practices, does not appear to use existing state blanket agreements for routine procurements, and does not appear to have adequate plans to prevent overlapping contracts for the same service.

MassHighway's written response agreed that Project procedures should be complied with and that blanket agreements should be used by the Project when cost effective, practical, and in the best interests of the Project. However, MassHighway stated that items covered under certain blanket agreements could not be used by the Project because of differing equipment specifications. The response also noted that a number of concurrent contracts for what appeared to be the same service in fact covered different services.

Construction Management Review

The Project asked the Office in 1994 to investigate allegations concerning B/PB's construction management practices, Bechtel Corporation's review of the allegations, and the Project's vulnerability to fraud, waste, and abuse due to B/PB's alleged failings. In 1995, the Office submitted the results of Phase I of its review to the Project Director. The Phase I review criticized Bechtel and B/PB's poor handling of this matter.

In May 1996, the Office submitted the completed Phase II review examining construction management practices in a sample of six construction field offices. The Office found that B/PB had not complied with its own procedures, that certain procedures and practices were deficient, and that these deficiencies significantly increase the Commonwealth's vulnerability to fraud, waste, and abuse. The review yielded the following specific findings:

- B/PB failed to correct deficiencies identified by its own internal audit.
- B/PB staff did not follow procedures.

- B/PB has not provided the Commonwealth with an adequate record of construction issues and activity.
- Construction management oversight needs improvement.

The Project, responding in a letter of October 1996, stated that the Office's review prompted several internal reviews of the Project's practices and procedures in construction field offices.

“This report prompted us to conduct several internal reviews of our practices and procedures in construction field offices. . . .”

– CA/T Project Director Peter Zuk
letter to IG
October 1996

A - B Method of Competitive Procurement

In August 1996, the Project asked this Office to review a proposed method of competitive bidding known as the A - B method, which allowed bidders on construction contracts to reduce their bids by the estimated value of their proposed early contract completion date.

The Office's comments, contained in a September 1996 letter, commended the Project for exploring innovative approaches to cost and schedule control, but offered cautionary advice. The review noted, for example, that the proposed method could permit the award of a contract to a firm other than the lowest bidder, thus increasing the Project's vulnerability to bid protests. Bid protests could in turn cause delays that might negate much or all of the time savings proposed by the bidders. The review also questioned the use as a test case of a small and specialized contract of a type subject to delays, and pointed out that success on that contract would not necessarily signal success on other contracts, particularly those that have multiple interdependencies. The Office encouraged the Project to explore more direct methods of motivating contractors.

MassHighway proceeded with its plans to test the A-B method of bidding. In response to a bid protest subsequently filed by the Construction Industries of Massachusetts, the Office of the Attorney General determined that the method contravened the state bid law. In December 1996, MassHighway filed a bill (House No. 117) seeking authorization to abandon the construction bid laws and use whatever alternative methods of construction it deemed appropriate. In January 1997, the Superior Court declared that the A-B bidding method violated M.G.L. c.30, §39M.

Geotechnical Instrumentation Monitoring Contract

In a November 1996 letter, the Office released its final response to the Project's request for a review of its procurement of geotechnical instrumentation monitoring services. The Office supported the Project's decision to readvertise the contract and offered the following recommendations to improve the process:

- Clearly define evaluation criteria, advise the Committee and proposers of the rules in advance, and take appropriate steps when rule changes could affect which firms choose to compete for the work.
- Evaluate firms solely on their written proposals and the information explicitly required.
- MassHighway – not B/PB – should take the lead in reviewing and evaluating the proposals; B/PB's role should be restricted to that of advisor.
- Obtain information necessary to assess proposers' qualifications: consider tapping other resources within MassHighway, including the internal audit group, to assist in drafting the RFQ/P and reviewing proposers' financial information.
- Evaluate all proposals during the second round against the revised prequalification criteria.

The Project followed many of the Office's suggestions when it readvertised the contract, including providing proposers with a checklist consolidating the evaluation criteria, clearly defining the specifications, and specifying the number of résumés that could be submitted for each position to prevent "bait-and-switch" tactics by potential contractors.

Legislatively Mandated Reviews

Statutorily Mandated Review of Vent Building No. 3

This Office provided its statutorily required review of Vent Building No. 3 to the Project in May 1996. The review disclosed that MassHighway did not ensure the use of two important cost containment measures and that the estimated contract cost increased by 60 percent with little explanation. In addition, the Office found that inadequate planning and a complicated right-of-way agreement had the potential to increase Project costs in the future.

Report on Statutorily Mandated Reviews of Central Artery/Tunnel Building Construction Contracts, 1994 - 1996

“Proactive and aggressive cost containment will serve the best interests of the Project and the Commonwealth.”

– IG report
December 1996

In December 1996, the Office released a report containing all seven of its statutorily mandated reviews of CA/T Project building contracts performed to date as well as all Project responses to the reviews. The report also included a November 1996 Office letter summarizing significant issues and common

themes from the seven completed reviews. The report contained Office reviews of Vent Building No. 3, the temporary toll plaza and emergency response station, the interim police facility, Vent Building No. 4, the East Boston emergency response station and

electrical substation, the Project's D Street facility renovation, and the central maintenance facility. The report stressed this Office's thematic concerns of cost containment, cost and design changes, change orders, and mitigation agreements.

Joint Projects

Supplemental Oversight Plan

In October 1996, pursuant to Section 2B of the July 1996 Transportation Bond Bill, the Inspector General, State Attorney General, and State Auditor submitted the Supplemental Plan creating the CA/T Project's Oversight Coordination Commission to the Legislature. The Supplemental Plan is a scaled-down version of the comprehensive oversight plan the three offices submitted in November 1995 in response to a legislative directive.

Both plans provided for joint oversight of the \$10.4-billion CA/T Project, combining the expertise and legal authority of the three offices to identify cost-saving measures; target management difficulties that invite fraud, waste, and abuse; and pursue enforcement and recoupment actions against contractors engaged in fraud or other unlawful activity. The original plan had requested an annual budget of \$2.8 million plus one-time start-up costs and increases for inflation: the Legislature authorized \$2 million for the scaled-down version.

In anticipation of the funding, which did not become available until the end of January 1997, the Commission members interviewed candidates for the position of Executive Director to the Commission and further developed coordinated plans for implementing the Commission's goals. With the less-than-requested funding, the Office plans to review the revenue and expense budget and recommend adjustments to help ensure the long-term financial stability of the CA/T Project. Remaining monies will target work in progress and recommend cost-containment measures before public funds are spent, especially on costly construction change orders and faulty or unnecessarily elaborate design work.

"The Oversight Coordination Commission now stands ready to launch a unified effort to prevent, detect and correct fraud, waste and abuse at the CA/THT project."

– Letter from IG, Attorney General, and Auditor to the Legislature
October 1996

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 1996.

Massachusetts Biologics and Laboratory Sciences Institute

On February 22, 1996, this Office sent a letter to the Governor, the Senate President, the Speaker of the House, and chairmen of key legislative committees recommending the delay of further consideration of House 210 of 1995 until this Office concluded its investigation of the Massachusetts Public Health Biologic Laboratories (MPHBL). House 210 was the Department of Public Health's proposal to transfer MPHBL and all of its assets, which included intellectual property rights, to biologic products developed at the state laboratory and belonging to the Commonwealth. The proposed legislation would have transferred MPHBL and its assets to a quasi-independent entity known as the "Biologics Institute," to be created by the Legislature.

In the February letter, the Inspector General revealed the existence of previously undisclosed royalty arrangements between MPHBL's Director and Deputy Director and the Massachusetts Health Research Institute (MHRI) regarding one of these products, Respiratory Syncytial Immune Globulin (RSVIG). The Director and the Deputy Director had sold the patent on RSVIG, a drug used to prevent pneumonia in severely ill premature infants, to MHRI, and stood to gain royalties from the sale of this drug. (The previous "Financial Investigations" section of this report contains a detailed discussion of the Inspector General's investigation of this matter.) Staff from the Office subsequently testified before the Senate Science and Technology Committee in opposition to the Department's legislative proposal.

In the ensuing months, numerous amendments and letters were exchanged between this Office and two Senate Committees. The Office continued to strenuously oppose passage of House 210 and the creation of the Biologics Institute. Ultimately the Office generated in excess of 40 pages of correspondence on this legislative issue.

In July 1996, the Senate Ways and Means Committee recommended a substitute bill transferring the State Laboratory to the University of Massachusetts, a proposal actively supported by this Office. The Legislature enacted the alternative proposal, which the Governor signed into law on August 9, 1996.

Waiver of Designer Selection and Construction Bid Laws for Barnstable County

In January 1996, the Inspector General wrote to the Joint Committee on Counties objecting to a bill proposing to exempt unspecified “additional facilities” built by Barnstable County from the designer selection and construction bid laws for public building projects in the Commonwealth. In his letter, the Inspector General expressed the view that the vague, open-ended provisions of the bill would expose state taxpayers (who foot the bill for county projects) to significant financial risks, including excessive operating, energy, and maintenance costs. The letter also pointed out that the risks associated with design flaws and substandard construction would be borne by county employees, citizens, and other users of the facilities authorized by the bill. The bill was not enacted in the 1996 legislative session.

Proposal to Change Requirements for Designer Selection, Construction, and Real Property Transactions

In March 1996, the Inspector General wrote to the Joint Committee on State Administration opposing a bill that would have substantially eradicated Ward Commission reforms by significantly changing the Commonwealth’s statutory rules for designer selection, construction, and real property transactions involving public entities. The Inspector General criticized a number of the bill’s provisions, including its proposals to:

- eliminate the Designer Selection Board’s independence;
- allow a board of architects and engineers to award design contracts up to \$500,000 without advertising;
- substitute unspecified regulations for the specific designer application requirements contained in the current law;
- permit architects and engineers to recommend the scope and budget of final design contracts in which they have a financial interest;
- abolish the requirement of legislative approval for alternative methods of design and construction; and
- give an Undersecretary for Public Buildings and Real Estate and independent state authorities excessive discretion to waive construction bidding.

In addition, the Office objected to provisions in the bill that would have eliminated all statutory safeguards over state leasing of private property; given an Undersecretary for Public Buildings and Real Estate broad authority to acquire, dispose of, and transfer property; and reduced advertising and disclosure requirements. The bill was not enacted in the 1996 legislative session.

Legislative Recommendations: 1997 Session

Under M.G.L. c.12A, the Inspector General has the authority to recommend policies that 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 1996 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 1997 session. (The pending proposals filed by the Inspector General for the 1997 legislative session will retain their original bill numbers and status at the outset of the 1998 legislative session under Joint Rule 12B of the Legislature's permanent Joint Rules for 1997 and 1998.)

Registration of Motor Vehicles

The Inspector General filed legislation to improve compliance with motor vehicle excise taxes, sales or use tax, and insurance premiums. The Commonwealth loses money whenever individuals improperly register vehicles in other states, cities, or towns. The legislation would establish criteria to determine whether a motor vehicle is garaged in the Commonwealth. Those who evade payment of taxes and insurance premiums due to improper registration would be subject to penalties. The legislation would eliminate the 30-day grace period during which a motor vehicle registered out of state need not carry

“[T]he Commonwealth is losing a significant amount of revenue due to the fact that many individuals and businesses improperly register their motor vehicles in another state, or in another city or town.”

– IG letter to State Taxation Committee
March 1997

compulsory insurance equal to the minimum requirements applicable to Massachusetts motor vehicle owners. Repealing this grace period greatly diminishes the incentive to register a vehicle in New Hampshire. The tax compliance certificate necessary for a right or license to conduct a profession, trade, or business would be modified to include new language concerning motor vehicle registration. Anyone who improperly registers his or her motor vehicle out of state or in another city or town in order to evade sales tax or motor vehicle excise taxes would not receive the license or contract. Individuals who declare Massachusetts' residency in order to qualify for a benefit or privilege would be required to register their motor vehicles in the state.

House 147, Improving tax compliance associated with the registration of motor vehicles

Improving Information Exchange

The Inspector General filed legislation to improve exchange of ideas, information, education, knowledge, and training in the prevention and detection of fraud, waste and abuse in government expenditures and programs. A commission would be created of the current and two of the former Massachusetts Inspectors General, Attorneys

General, State Auditors, and their designees. The commission would confer both regionally and nationally with local, state, and federal government officials to formulate proposals for professional certification and standardization of practices in areas such as fraud examination, governmental accounting and auditing, performance auditing, law enforcement, criminal justice administration, intellectual property law, public purchasing and procurement, and fair labor standards and practices. Commission members would not receive any compensation and no additional employees or consultants would be hired. The commission may request clerical and technical assistance from the three offices involved, but the offices would provide assistance strictly on a voluntary basis.

House 146, Establishing an interstate commission on cooperation

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 139, 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 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 140, Related-party transactions in state contracts

The Inspector General filed legislation to streamline M.G.L. c30B, which governs procurement of supplies, services, and real property by local jurisdictions. Six 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 Associations 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 141, Amending certain public bidding laws

House 145, 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 142, Establishment and administration of certain funds

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 143, Technical change regarding the Office of the Inspector General