

Investigations

Operational
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Oversight

Megaprojects
Monitoring

Effective &
Ethical
Contracting

Real Estate
Dealings

Asset
Management

Procurement
Assistance &
Enforcement

Commonwealth of Massachusetts
Office of the Inspector General

**ANNUAL REPORT
1997**

Robert A. Cerasoli
Inspector General



The Commonwealth of Massachusetts
Office of the Inspector General

ROBERT A. CERASOLI
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ROOM 1311
TEL: (617) 727-8140
FAX: (617) 723-2334
MAILING ADDRESS:
STATE HOUSE STATION
P.O. BOX 270
BOSTON, MA 02129

December 1998

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chairman of the Senate Ways and Means Committee

The Honorable Chairman of the House Ways and Means Committee

The Honorable Chairman of the Senate Post Audit and Oversight Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Bureaus

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

In 1997, my Office established the Massachusetts Public Purchasing Official (MCPPO) program. This program is intended to bring professionalism and expertise to the field of public purchasing in Massachusetts. In doing so, the program should have the effect of enhancing the credibility of the people who earn the MCPPO designation in the eyes of the public and government appointing authorities. Professionalism, expertise, and credibility are essential to help turn around widely held negative views about public servants. The program has been very successful since its introduction last year. During 1998 we continued to expand and improve the program.

My Office has also continued work in some of the areas I have identified as high priorities in past reports. These include preventing fraud, waste, and abuse by providing training and technical assistance, and timely reviews of

proposed procurements, laws, regulations, and proposed reforms. We have, for example:

- worked to help ensure that proposed private-public partnerships for water and wastewater treatment plants would adequately address public interests,
- reviewed past public-private partnerships to see what lessons should be learned by public officials from the experiences,
- continued our reviews and technical assistance on the Central Artery/Third Harbor Tunnel project, and
- assisted numerous public officials involved in procurements and resolved bid protests from vendors.

Of course, my Office vigorously pursues investigations when warranted. This report contains examples of some of the investigative work we have done, including a statutorily mandated investigation and report on improper motor vehicle registrations, and continued work to protect the Commonwealth's intellectual property.

You will find in the pages of this report details on our activities during 1997. I welcome your comments and suggestions.

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. Our address on the worldwide web is <http://www.state.ma.us/ig/ighome.htm>.

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 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. The Massachusetts Certified Public Purchasing Official program is a major new capacity-building initiative of the Office. Another example is the quarterly *Procurement Bulletin* containing 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.

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. When the Office identifies issues that we believe should interest many public officials, we widely distribute information to help other jurisdictions avoid problems. For example, when the Office identified significant problems in one town's completed school renovation project, we aimed our recommendations at preventing similar problems in all other 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.

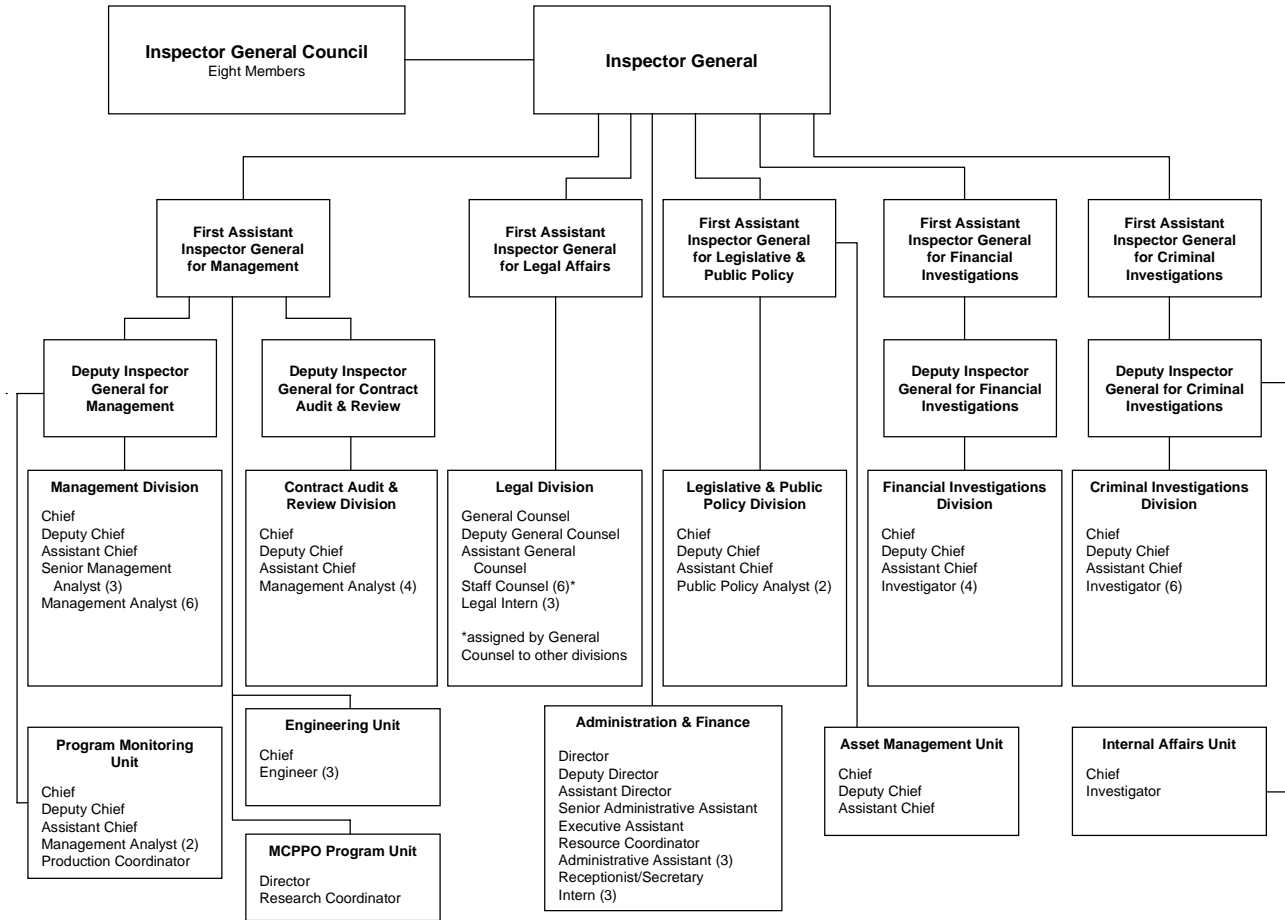
**Inspector General's Office
Budget History**

FY	Budget	Staff
98	\$1,774,756	49
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, and our investigators often assist in the continuing investigation of such cases.

The Office's budget for fiscal year 1998 is \$1,774,756. Although the Office has 104 authorized staff positions, only 49 staff positions were filled in fiscal year 1998 because of budget constraints. The following chart illustrates the Office's organization and approved staff positions.

Office of the Inspector General Organization Chart



This following pages of this report summarize the projects and activities completed by the Office during the 1997 calendar year.

The MCPPO Program

The Inspector General sought and received authorization in the fiscal year 1997 budget to create a Massachusetts Public Purchasing Official (MCPPO) program. The program promotes excellence in public procurement and is designed to foster:

- cost-effective, ethical, and modern purchasing practices;
- dialogue and exchange of ideas and best practices among procurement officials;
- stewardship of resources in the public's interest; and
- compliance with Massachusetts contracting laws.

The program is an integral component of the Office's prevention strategy. Devoting resources to build the capacity of public purchasing officials to operate effectively, efficiently, and ethically is vastly preferable to relying on post audits and investigations to detect fraud, waste, and abuse. Public purchasing officials are responsible for procuring the supplies, services, and facilities government requires to provide public services. The procurements involve massive expenditures of public funds. The need for government to invest in expertise for this mission-critical function is especially great now because:

“I am impressed with the advocacy role the Inspector General’s Office has taken with the implementation of this law Too often, we see action by state agencies charged with enforcement as adversarial. The Inspector General’s Office has shown that this is not necessary.”

-- November 1997 MCPPO seminar participant

- With government reinvention and reform, many jurisdictions are granting greater flexibility and discretion to purchasing officials, who are expected to be innovative and use "best value" procurement methods.
- Procurement officials are increasingly called upon to handle nontraditional procurements (including service contracting, privatization, performance contracting, and public-private partnerships) and must deal with rapidly changing markets, such as that resulting from electricity deregulation.
- The public has a negative perception of public procurement because of the defense procurement scandals of the 1980's, widely reported failures of procurement systems, and periodic ethical lapses by government officials.

The MCPPO program and the individual seminars that comprise the program were developed with the assistance of an advisory group comprised of representatives of the Massachusetts Public Purchasing Officials Association, the Massachusetts Association of School Business Officials, and the City Solicitors and Town Counsel Association.

During 1997, the Office offered two three-day seminars in the MCPPO program: **Public Contracting Overview**, which is a prerequisite for other courses and includes segments on purchasing principles, ethics, and Massachusetts purchasing laws, and **Supplies and Services**, which trains participants to use invitations for bids and requests for proposals to make best value procurements of supplies and services under M.G.L. c. 30B. Each seminar provides instruction by experts using a variety of teaching methods -- including lecture, visual aids, discussion, and small group exercises -- and concludes with a written examination.

The first Public Contracting Overview seminar was delivered in January 1997. A total of 393 participants attended nine Public Contracting Overview seminars during the year. Four Supplies and Services seminars were delivered in 1997, beginning in October. A total of 151 individuals participated in the four seminars during the year.

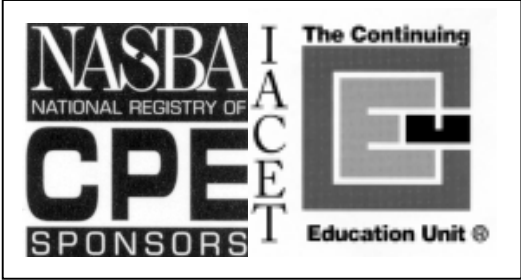
Each participant who successfully completes a seminar receives a certificate of completion. Public purchasing officials who complete requisite seminars and meet the educational and experience requirements are eligible to apply for the MCPPO designation. MCPPOs must maintain their knowledge and skills and document at least 60 hours of continuing professional education to achieve recertification every three years.

The MCPPO program has been designed to meet standards of national organizations. In 1997, the National Association of State Boards of Accountancy accepted the Office on the National Registry of Continuing Professional Education sponsors to award continuing professional education credits. In addition, the Office met the requirements of the International Association for Continuing Education and Training as an authorized sponsor of continuing education units. Seminars also qualify for professional development points required of school business administrators under the state's education reform act.

Current information on the program is available at the Office's website: <http://www.state.ma.us/ig/ighome.htm>.

"This has been the best seminar I've ever attended. It was well thought out and carefully presented. The written materials are invaluable. I enjoyed each day. . . . Keep up the good work. I'll continue to attend all the other seminars, even once I earn my certification. They are that useful. Thank you."

-- October 1997 MCPPO seminar participant



Local Procurement Assistance and Enforcement

The Office provides extensive technical assistance to local government officials 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 and Professional Development

The MCPPO program, discussed in the previous section of this report, was a major new training and professional development initiative undertaken in 1997. The Office also provided speakers on M.G.L. c. 30B at conferences sponsored by the Massachusetts Collectors and Treasurer's Association, the Massachusetts Firefighting Academy and the Massachusetts Association of Housing Authority Maintenance Supervisors.

Publications

In September 1997 the Office released a new publication entitled *Practical Guide to Drafting Invitation for Bids and Request for Proposals for Supplies and Services*. The Guide includes general tips for writing invitation for bids (IFBs) and request for proposals (RFPs), a model IFB, and instructions on how to modify that model to create an RFP. The Office also produced four issues of the *Procurement Bulletin*, a newsletter distributed to 2,900 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 best value procurement, efficient purchasing practices, maximizing competition, and building repair and maintenance. The *Practical Guide* and back issues of the *Procurement Bulletin* are available at the Office's website: <http://www.state.ma.us/ig/ighome.htm>

Inquiries, Complaints, and Protests

The Office responded to 1,924 inquiries about M.G.L. c. 30B in calendar year 1997. 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 M.G.L. c. 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 1997.

Springfield Sludge Cake Removal Services Bid Protest -- City's Position Upheld.

In response to a protest, the Office reviewed the procurement process undertaken by the City of Springfield for the removal of municipal sludge cake generated by the City's regional wastewater treatment facility. The protester alleged that the selected bidder was not responsive to the IFB's specifications and should have been rejected because

the selected bidder changed its stabilization process after the bids were open to allow the City's sludge to be hauled to a New York state site. This Office found that all bidders were given the same opportunity to bid on either or both of two methods of disposal and that all bidders were on notice that the City intended to award the contract to the lowest bidder regardless of the method of disposal. Therefore, the Office concluded that City had not violated M.G.L. c. 30B in the award of the contract.

Norfolk County Sheriff's Office Lease -- Improper Lease Through Private Entity.

In response to a complaint, the Office reviewed a five year agreement entered into by the Norfolk County Sheriff's Office to lease 1,968 square feet of office space from Kelley Limited Partnership for a total of \$162,360. The Norfolk County Sheriff's Office did not follow the competitive sealed proposal requirement set forth in M.G.L. c. 30B for real property transactions costing more than \$25,000.

The Sheriff's Office stated that the lease agreement was entered into by the Norfolk County Civil Deputy Sheriff's Office, an independent, non-governmental entity. However, the lease document listed the Norfolk County Sheriff's Office as the tenant. The Sheriff's Office is a governmental body subject to the requirements of M.G.L. c. 30B. The Office recommended that Norfolk County Sheriff's Office conduct an advertised proposal process to procure the needed office space.

City of Brockton Local Preference Ordinance Proposal -- Proposed Preference Contrary to State Law.

The City of Brockton sought an opinion from the Inspector General regarding a proposed local ordinance that would grant a preference to businesses located in Brockton in bidding for City supply, service, and construction contracts. Such businesses would, under the proposed ordinance, win a bid even if their bid was up to ten percent higher than the bids of other bidders not located in the City. The Inspector General advised the City that such an ordinance would be in direct conflict with the state competitive bid laws' requirement to award public contracts to the lowest qualified bidders. The Inspector General further stated that local preferences are difficult to administer and would likely lead to allegations of illegal favoritism.

Boxford Reconstruction of Johnson's Field -- No-Bid Contract Payments Illegal.

In response to several complaints, the Office reviewed the Town of Boxford's procurement of reconstruction services for Johnson's Field in Boxford. The Office found that the Town spent a total of \$42,581 over a two-month period for the almost daily rental of trucks, bulldozers, screens, and backhoes for use in the renovation of the field. The Office concluded that the Town should have followed the sealed bid procedures set forth in M.G.L. c. 30, §39M. The Office recommended that the Town refrain from making any further payment to the vendor for work done that was not competitively bid and also suggested that Town officials participate in procurement training seminars or call this Office for assistance with procurements.

Springfield Library and Museum Association -- No-Bid Lease Illegal. In response to an inquiry, the Office reviewed an arrangement where the City of Springfield leased City-owned property to the Springfield Library and Museum Association, a private non-profit corporation. The Office reviewed information showing that the City owned two buildings occupied by the Association without any lease agreements. The Office recommended that the City follow procedures set forth in M.G.L. c. 30B to lease the City-owned property. The Office also reviewed legislation that the City filed to borrow \$6,999,000 to purchase equipment, remodel, reconstruct, and make repairs to buildings owned and operated by the Association. The Office recommended that the City seek advice from the Department of Revenue as to whether the City is permitted to borrow money to make building improvements and equipment purchases for a non-public entity.

City of Newton School Bus Transportation -- Determination of Bidder Nonresponsibility Upheld. The Office received a bid protest pertaining the City of Newton's award of a school bus transportation contract. The protester argued that the City improperly determined that the low bidder was not responsible. This Office reviewed the City's IFB and the City's determination that the low bidder was not the lowest responsible bidder. The City determined that the low bidder was not responsible because of an excessive school bus inspection failure rate according to the Registry of Motor Vehicles and poor performance records in other communities that it serviced. The Office concluded that the City's determination to reject the lowest bidder as non-responsible and award the contract to the lowest responsive and responsible bidder complied with M.G.L. c. 30B.

City of Taunton Public Safety Facility Site Acquisition -- Interpretation of "Unique Acquisition" Provision. The City of Taunton requested the Office's assistance with a purchase of a site for a new public safety facility. The City reviewed nine potential sites and sought the Office's advice on whether a proposed acquisition met the requirements of a "unique acquisition" under M.G.L. c. 30B, §16. The Office advised Taunton that if the City concluded that only one site would satisfy its requirements and criteria for a new public safety facility, then the City may proceed under the unique acquisition provision of M.G.L. c. 30B. However, if there was a possibility that more than one site could satisfy the City's requirements and criteria, then the City should conduct an advertised proposal solicitation process for the acquisition.

Effective and Ethical Contracting

The North East Solid Waste Committee Project: Planning and Development of a Public-Private Partnership

In December of 1997, the Inspector General issued a report entitled *The North East Solid Waste Committee (NESWC) Project: Planning and Development of a Public-Private Partnership*. The report detailed the history of the (NESWC) project, a waste-to-energy plant built and operated under a public-private agreement. The Office had undertaken its investigation at the request of a caucus of state legislators who represent the 23 communities comprising NESWC.

The project was planned and developed by the Commonwealth in the 1970s and early 1980s as a partial solution to the Commonwealth's mounting solid waste disposal problems. The Commonwealth selected a private contractor to design, build, and operate a resource recovery facility to handle solid waste and produce electric power from steam generated during combustion. The 23 NESWC communities entered into 20-year agreements with the contractor which cover both operating and development costs. Development costs have totaled \$197 million to date and additional costs are planned for required plant upgrades. The report's findings include the following:

"The NESWC communities have learned that long-term cost projections that do not adequately factor in project risks can be dangerously misleading. The current momentum to privatize wastewater treatment facilities without adequate planning, safeguards, and oversight could similarly burden current and future taxpayers and ratepayers in Massachusetts with massive long-term costs and risks."

-- IG report
December 1997

- Price proposals generated by the Commonwealth's open-ended RFP were not reliable because key business terms of the project had not been established.
- The service agreements negotiated by the Commonwealth posed significant financial risks for participating communities.
- The Commonwealth aggressively marketed the project to Massachusetts communities.
- The project risks were depicted as minimal in publicity disseminated by the Commonwealth and the contractor.
- The Commonwealth did not conduct a meaningful competition in selecting the consulting engineer responsible for overseeing construction of the facility.
- The construction agreement between the contractor and its subsidiary did not protect the interests of the communities.

- Evidence suggests that the contractor might have manipulated acceptance tests of the facility to conceal design and construction deficiencies.

The Commonwealth and the contractor persuaded the NESWC communities that the disposal fees would be low. Risks had not been adequately identified, examined, and disclosed. The Commonwealth's contracting process and development oversight did little to help ensure the project's success. When the facility opened in 1986, the communities were faced with disposal fees that were far higher than predicted -- and the fees have continued to climb. The NESWC communities paid approximately \$95 per ton for waste disposal in 1997, nearly twice the market rate in the region.

Lease-Purchase Financing of a Design-Build Project: the Plymouth County Correctional Facility

Chapter 425 of the Acts of 1991 authorized Plymouth County to enter into a long-term financing lease for a 1,140-bed correctional facility, which was completed in May 1994. The project's use of lease-purchase financing and design-build construction had been touted as an innovative, entrepreneurial approach enabling rapid construction of a new correctional facility that represented savings to taxpayers of hundreds of millions of dollars over the project financing period. The Office initiated its 21-month review of the project in October 1995. In July 1997, the Inspector General released a 117-page report entitled *Lease-Purchase Financing of a Design-build Project: The Plymouth County Correctional Facility*. The highlights of the report are summarized below:

- Project publicity had characterized this \$115 million project as "a unique public/private partnership" that entails "virtually no risk to the taxpayers." However, the Office's review revealed that this project has exposed taxpayers – who are obligated to pay for the financing, operating, maintenance, and repair costs of the facility -- to significant financial risk.
- “There is nothing innovative or entrepreneurial about lax financial controls and no-bid contracts.”***

-- IG report
July 1997
- The Commonwealth's exposure to risk was heightened by Plymouth County's creation of a "special-purpose corporation" to manage the project finances. The Plymouth County officials serving as Corporation directors while the Plymouth facility was under construction did not comply with the rules mandating public accountability and disclosure. Since the enabling legislation had exempted the project from all state laws requiring advertised competition, Plymouth County officials had wide latitude to negotiate no-bid project contracts with funds to be repaid by the Commonwealth's taxpayers.
 - In comparison with general obligation financing, lease-purchase financing of construction projects requires a higher overall loan amount (to pay for capitalized interest and debt service reserve requirements), carries a higher interest rate, and

- entails substantially higher issuance costs. The issuance costs for the Plymouth facility included an exorbitant \$5 million ground lease payment to Plymouth County and questionable fees to some private development team members.
- The Plymouth facility's small size and use of modular construction techniques were conducive to lower construction costs. However, the Commonwealth had no authority to oversee or approve the design-builder's work, and the fast-track design-build process used by the design-builder restricted public access to key project information. Shortly after the Plymouth facility began operations, Plymouth County officials concluded that the facility's administrative space was inadequate. Three years later, construction defects at the facility remained unresolved.
- Although the fast-track design-build method of delivering the Plymouth facility was promoted as a contracting innovation that enabled more rapid delivery of a completed facility at a lower cost than the Commonwealth could achieve, the Office's review did not support this claim. During the same period in which the Plymouth facility was designed and built, the Commonwealth built a new, 1,260-bed Hampden County Jail and House of Correction, using modular construction techniques, at a lower construction cost per square foot than the Plymouth facility and on a more rapid construction schedule than the Plymouth facility. Moreover, the Commonwealth achieved these results without waiving requirements for planning, competition, and oversight.

The methods used to finance and build the Plymouth County Correctional Facility are inherently more risky than the conventional financing and construction methods used by the Commonwealth for public construction projects. Because they entail higher risks, these methods require increased safeguards. The case of the Plymouth County Correctional Facility illustrates the consequences of employing these methods on a publicly funded project without strong, effective safeguards that protect taxpayer interests.

"It is my hope that this report will focus attention on the need to identify the full costs and risks of 'innovative' financing and construction projects before obligating the public to fund such projects in the future."

-- IG report
July 1997

Long-Term Lease for the University of Massachusetts at Dartmouth

Chapter 457 of the Acts of 1996 authorized the Commonwealth to negotiate and enter into a 20-year lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. The property would be leased by the New Bedford campus of the Visual Arts Division of the College of Visual and Performing Arts of the University of Massachusetts at Dartmouth.

Although the legislation anticipated that the selected landlord would procure extensive design and construction services under the 20-year lease with the Commonwealth, the

legislation exempted the lease from all statutory safeguards applicable to public design and construction contracts. Moreover, although the legislation required a competitive selection process, the Office had learned that the City of New Bedford had already designated the developer for the only eligible project site within the target area for the lease. For these reasons, the Inspector General had strongly recommended that the Governor veto this legislation.

The legislation required the Office to review and approve the reasonableness of the process and criteria established by DCPO for the selection of any developer, designer, and construction contractor for the project authorized by the legislation. At DCPO's request, the Office reviewed and recommended changes to an initial draft of the request for proposals (RFP) for the long-term lease. DCPO revised the RFP in accordance with the Office's recommendations. Accordingly, the Inspector General approved the process and criteria established by DCPO.

However, the Inspector General made clear that his approval should not be interpreted to mean that the public interest is protected in this transaction. Rather, the Inspector General's approval signified his belief that the selection process and criteria were reasonable and protected the public interest within the narrow confines of Chapter 457 of the Acts of 1996, which drastically limited – if not eliminated – competition for this lease, to the detriment of the public interest.

"The Commonwealth's experience with the Ruggles Center lease has shown the high risks inherent in this approach to procuring design and construction services."

-- IG letter to DCPO Commissioner
September 1997

Privatization of Municipal Water and Wastewater Facilities

In 1997, the Office continued to comment on complex, long-term privatization plans for municipally-owned water and wastewater facilities. The privatization of such a facility is akin to creating a private, unregulated, monopoly utility. The Office advised legislators and local public officials on statutory safeguards, procurement methods, and contract terms that promote competition for privatization contracts and protect the public's vital stake in these facilities.

Greater Lawrence Sanitary District RFP. The Greater Lawrence Sanitary District owns and operates a wastewater facility that serves five municipalities. During 1997, the District sought the Office's assistance in developing a request for proposals to identify a solution to the District's sludge disposal problem. The Office worked closely with the District to help define the goals of the privatization process and to draft a request for proposals (RFP) for a contract to design, build, and operate an on-site biosolids processing facility. The Office also provided comments on and proposed amendments to legislation filed by the District to

authorize the privatization contract. The legislative authorization was enacted in July 1997.

The District advertised for and received proposals for different technical approaches to processing biosolids. At the end of 1997, the District was evaluating these proposals to identify the most advantageous proposal, taking into consideration technical feasibility, environmental concerns, and cost to the District.

City of Gardner Legislation. In 1997, the City of Gardner sought special legislation to authorize the City to privatize its water and wastewater facilities. The proposed legislation would permit the City to sell or lease the facilities or to enter into a binding, long-term operation and maintenance contract. It would also waive state bidding laws for the design and construction of improvements to the facilities. The Office opposed the bill in its original form because it lacked key provisions that would help promote fair competition and protect taxpayers from imprudent borrowing. The City amended the legislation to incorporate the Inspector General's recommendations. The amended legislation was enacted in July 1997.

MBTA Bus Service Privatization Contract

At the request of the State Auditor, the Office reviewed a proposal by the Massachusetts Bay Transportation Authority (MBTA) to privatize bus services and bus maintenance for the Charlestown/Fellsway route bundle. The Office's review focused on two provisions of the MBTA's proposed contract with ATC/Vancom Management Services, the private firm selected by the MBTA: an advance payment provision and a fuel purchase provision.

The RFP issued by the MBTA had informed prospective bidders that the MBTA would pay for the services within 30 days of receiving the contractor's invoice for services delivered the previous month. However, the MBTA's proposed contract called for the MBTA to make advance monthly payments to ATC/Vancom, thereby effectively providing the contractor with interest-free financing. In an October 1997 letter, the Inspector General advised the Auditor of his view that the MBTA had negotiated a substantial change to the terms of the advertised contract and that this change could have been prejudicial to fair competition. The Office also noted that the proposed prepayment provision would invite

“[T]he advance payment provision of the MBTA's proposed contract with ATC/Vancom, which would provide ATC/Van-com with interest-free financing, represents a substantial change to the terms of the advertised RFP.”

-- IG letter to State Auditor,
October 1997

fraud and abuse while unnecessarily increasing the MBTA's contract administration costs.

The Office also reviewed the proposed contract provision relating to the purchase of fuel under the contract. The documents reviewed by the Office contained unclear and apparently conflicting information regarding the fuel taxes paid by the MBTA, the basis for the contractor's cost proposal, and the impact of the proposed contract provision on the price the contractor would pay for fuel. Consequently, the Inspector General advised the Auditor that the Office was unable to determine whether the fuel purchase provision of the MBTA's proposed contract represented a substantial and unfair change to the terms of the advertised RFP.

Real Estate Dealings

Wellesley Depot

In April 1997, the Office sent a letter to a member of the Town of Wellesley Board of Selectmen in response to his request that the Office review the developer selection process conducted by the state Division of Capital Planning (DCPO) and the Massachusetts Highway Department (MassHighway) for the disposition of the Wellesley Maintenance Depot at the intersection of Route I-95/128 and Route 9. The letter summarized the results of the Office's review of the selection and the offers made by competing developers.

The Office's review revealed that DCPO did not choose the developer who offered the highest return to the Commonwealth over the years of the lease of the property. Two other developers submitted proposals which, according to the assumptions made by DCPO's real estate consultant, offered a rental amount 44 percent greater in net present value than the winning developer's proposed rent, over the 99-year term of the lease. One of the other developers rent proposal would have resulted in expected payments to the Commonwealth of \$173 million more than the developer selected by DCPO, according to DCPO's assumptions over the 99-year term of the lease.

According to the Office's analysis, which was based upon DCPO's net present value assumptions, National Development of New England/Newton Wellesley Hospital offered a proposal, based on a 250,000 square feet building, with expected payments of \$433 million over the 99 year term. The winning proposer, the Drucker Company, Ltd., ("Drucker"), offered expected payments of \$259,520,623, based on the same assumptions.

In discussions with Office staff, the Commissioner of DCPO stated that she was aware that she did not select the developer who offered the highest financial return, but that she believed that she selected the most advantageous proposal to the Commonwealth. She stated that DCPO selected Drucker, based substantially on the fact that it proposed a single, nationally recognized tenant with strong credit: Harvard Pilgrim Health Care. Furthermore, she explained that the other proposers who made greater financial offers had proposed to build speculative buildings without a tenant in hand.

The Office subsequently learned that a representative of MassHighway and a representative of Drucker, the provisionally designated developer, appeared before the Wellesley Board of Selectmen on April 30, 1997, and presented a new project proposal and site plan for the Commonwealth's Wellesley Depot site. This proposal constituted a wholly new design at lesser footage; moreover, it did not include the participation of Harvard Pilgrim Health Care, which was a party to the original proposal submitted by Drucker during the developer selection competition conducted by DCPO in 1996.

In May 1997, the Office sent the Commissioner of DCPO a letter in advance of the Wellesley Town Meeting's deliberation of the revised site plan. The letter advised the Commissioner that DCPO could not lawfully award the final developer's designation to, or execute a lease with, the provisional developer based upon a proposal fundamentally different than that proposed during the 1996 developer selection process. Such actions would violate M.G.L. c. 7, §40H, which requires an advertised competition, based on the submission of sealed proposals. The Office further pointed out that Massachusetts Courts have consistently ruled that statutes requiring fair and open competition for public contracts must be strictly interpreted. The requirement for fair competition in the solicitation of sealed proposals necessarily prohibits allowing an offeror to withdraw its proposal and substitute a different proposal after the submission. In this case, permitting the provisional developer to change the terms of the proposal to include a new design at significantly less square footage and with multiple new, unidentified tenants would be contrary to Massachusetts law.

The Office recommended that, if the provisional developer sought to execute a lease with DCPO for a project substantially different from that which the developer originally proposed, DCPO should conduct a new selection competition. A new competition would allow all proposers to submit new design plans and financial offers to the Commonwealth and the town of Wellesley.

DCPO Land Conveyance in Belchertown

Chapter 353 of the Acts of 1996 required the Office to review an appraisal, proposed release deed, and other documents relevant to Parcels A and C on a plan entitled "Plan of Land in Belchertown." This Act also authorized the Commissioner of DCPO to sell, lease, or otherwise convey parcels A and C to the Town of Belchertown for "full and fair market value."

In a February 1997 letter, the Office commented on the land conveyance to the Town with some concerns. The proposed release deed lacked use restrictions, leaving the property vulnerable for future uses not intended by the Legislature in authorizing the conveyance. The appraisal of these parcels was not accurate because the appraiser adjusted downward the market value estimate of Parcel A from \$1,120,000 to \$368,900 to reflect the condition and costs of needed renovations anticipated by the Town. DCPO informed the Office that this is standard practice, arguing that sellers make these adjustments based upon the buyer's plans for future use of the property. The Office disagreed, saying that similar adjustments occurred when the five comparable sales used for the appraisal were under negotiation; consequently, the price of the comparable sales already reflected discounts for plans for future use and require no further consideration.

The Town also requested that "improvements" made to the property (most of which the Office determined to be ordinary maintenance) in the amount of \$352,095 and

“extensive” asbestos removal (the Office concluded that pipes, flooring and panel do not need to be totally removed) should be considered in determining the price paid for these parcels and under these conditions should now be valued at a net negative value of \$336,395 and thus the land should be transferred to the Town for nominal consideration. The Office disagreed and stated that the Town should be required to pay full and fair market value for these parcels. Subsequently, Chapter 353 of the Acts of 1996 was amended to allow Parcel A to be conveyed at full and fair market value less the cost of the expenditures incurred by the Town as a result of its occupancy and use of parcel A and the buildings thereon. After review of additional documentation provided by the Town, the Office approved this new determination of the sale price of Parcel A to the Town for nominal consideration.

In December 1997, the Office met with Belchertown officials regarding parcels B, D, and E at the former Belchertown State School, to be conveyed to the Belchertown Economic Development Corporation.

Mashpee Land Conveyance to the Boys and Girls Club of Cape Cod, Inc.

Chapter 65 of the Acts of 1997 authorized the Town of Mashpee to convey a parcel of land to a named party, the Boys and Girls Club of Cape Cod, Inc. This legislation was originally filed as a Home Rule Petition authorizing the Town to lease municipal property to the Boys and Girls Club without an advertised competitive leasing process. In an April 1997 letter to the members of the Joint Committee on Local Affairs, the Office opposed this legislation because it did not state a declared public purpose, contain use restrictions, or have a reversion clause to protect taxpayer interests in the event the property ceases to be used for a Boys and Girls Club. This proposal was redrafted and filed by the Governor for the Town of Mashpee. It contained the Office’s recommended amendments, including the declaration of a public purpose and a reversion clause.

Transfer of Property to the Boston Renaissance Charter School

In April 1997, the Office wrote a letter to the Joint Committee on State Administration opposing legislation authorizing DCPO’s transfer of Commonwealth property in downtown Boston to the Boston Renaissance Charter School for \$2.5 million. The property is a 13-story building at 250 Stuart Street containing over 114,000 square feet of useable floor area. As of January 1, 1995 the appraised value was \$3.2 million. This property previously housed the offices of the President of the University of Massachusetts and the downtown Boston campus of the University. When the University vacated the property to make way for a long-term lease by a private developer, the Office objected to the plan. The Inspector General believed that the state could make good use of the property as office space for state agencies. As of April 1996, the state leased almost 1.6 million square feet of space for agencies’ headquarters functions at an annual cost of \$29.5 million.

The Asset Management Board authorized a 9.3-year lease to the Boston Renaissance Charter School in February 1995. The Board approval specified improvements to be made to the building, including guarantees by the Government Land Bank of the rent to the State and the completion of the first two stages of improvements to the building. The Board worked diligently to ensure that at the end of the lease term the lessees would return the renovated building to the state.

Section 304 of Chapter 43 of the Acts of 1997 authorized the sale of 250 Stuart Street to be at full and fair market value, less the value of any improvements made by the Renaissance Charter School, based upon the average of three independent appraisals conducted at the direction and expense of DCPO. The Inspector General was required to review and approve the appraisals, including the methodology used for such appraisals and file a report with DCPO and the Joint Committee on State Administration.

In November 1997, the Office commented on the three appraisals of this property. In a letter to the DCPO Commissioner, the Office noted that one of the appraisals was for \$21,116,915 and another was for \$21,600,000. The Office rejected the third appraisal's methodology and determination that the property had a market value of \$13,800,000. This third appraisal claimed that in order to sustain any program of highest and best use of the property, full renovation of the property would be required. The Office rejected this argument. The two other appraisals stated, and the Office concurred, that the tenant had undertaken extensive renovations of the property and the highest and best use was continued use as a school. In addition, some of the expenditures the Charter School submitted as "improvements" made to the property were considered "soft costs." Furniture, equipment and other specialized items are not improvements and do not contribute directly to the market value of the property and therefore should not be deducted from the market value of the property.

Because the Office approved only two of the three appraisals of 250 Stuart Street, it was impossible to calculate the average value of the three appraisals as Section 304 provided. Based on the information provided, the Office estimated the full and fair market value of the property to be approximately \$21,358,000 and the value of the improvements to be approximately \$8,400,000. These values would result in a sale price of approximately \$12,958,000.

An additional appraisal was completed in 1998 to replace the one that had been rejected. The Office agrees with DCPO's methodology of averaging the three appraisals of the building shell in order to establish a fair and reasonable price for the building. DCPO and the Office now agree that it is unnecessary to calculate a market value for the tenant improvements because, in effect, that amount has already been deducted from the purchase price by the appraisers. This method recognizes that to the Charter School, the value of the property is the value of the building shell plus the actual cost of the tenant improvements. Therefore the Office accepts the three

independent appraisals of the building shell at 250 Stuart Street which are \$7,000,000, \$7,489,732, and \$9,500,000. The average of these three appraisals is \$7,996,577 which the Office agrees should be the purchase price for the parcel by the Charter School.

Conveyance of Land in the Town of Wilbraham

In 1996 and 1997 three different versions of legislation were filed to convey state-owned land known as the “Wilbraham Game Farm” in the Town of Wilbraham. The Office had no objections to the conveyance of the land to the Town at market value. However, the Office had repeatedly opposed these proposals because each authorized and directed the Town to transfer the property to a private entity, the Wilbraham Pheasant Farm Trust (Trust). This legislation shared the common element that each bill sought exemptions from laws governing the conveyance of public property utilizing an open and competitive process. M.G.L. c. 30B prohibits cities and towns from disposing of real property without this open and competitive process.

In a September 1996 letter, the Speaker of the House agreed with the Office’s position by stating that, “The legislation authorizes conveyance to the town for fair market value and the town may dispose of the property as it sees fit. However, it is not the practice of this legislature to direct a town in the conduct of such affairs [to convey the property to a private organization] and to circumvent any laws designed to maintain a fair and equitable bidding process.”

In November 1997 the Governor signed Chapter 175 of the Acts of 1997, an Act authorizing the competitive disposition of land located in the Town of Wilbraham. This law incorporated some of the safeguards recommended by the Office, including an independent appraisal of the market value of the property which the Office is required to review and approve. Once the Office has approved the appraisal, a request for proposals will be issued and the property will be competitively bid. A board consisting of the Commissioner of DCPO, the director of the Division of Fisheries and Wildlife and a member of the Town of Wilbraham Board of Selectmen will determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals.

Investigations

Improper Motor Vehicle Registrations

In March 1997 the Office released a report entitled *A Study of Improper Motor Vehicle Registrations*. The report had been mandated by Section 311 of Chapter 38 of the Acts of 1995. The Office conducted a broad, 15-month investigation of Massachusetts citizens and businesses that improperly register their motor vehicles out of state. The Legislature also asked for an analysis of the economic impact on state sales taxes, motor vehicle excise taxes, and insurance coverage costs.

The Office's report substantiated that extensive fraud has occurred through improper out of state registrations. Vehicle registration fraud is estimated to cost the state and its cities and towns \$55 million annually in lost tax revenues. The report illustrated that it has been extremely easy for residents and businesses to improperly register vehicles out of state. For example, an individual who had registered three motor vehicles in New Hampshire claimed he was a New Hampshire resident at a compliance hearing by the Registry of Motor Vehicles (RMV). However, contrary to that residency claim, this same individual applied for residential property tax exemptions in Boston claiming that was his principal residence was in the city.

"For many years, tens of thousands of Massachusetts motor vehicle owners have gotten away with this illegal activity In some cases, violators simply do so by lying to law enforcement officials and the Registry of Motor Vehicles. In most cases, however, these same violators have already told other agencies of government that their principal residency is located in Massachusetts. Apparently with little or no fear of detection, these violators tell two different stories to different government agencies, and generally get away with it."

-- IG report
March 1997

In another case, the Office determined that a businessman registered his fleet of construction vehicles to a vacant field in New Hampshire. After a State Police investigation and two RMV compliance hearings, the RMV ruled that the businessman violated state law and directed him to register his fleet of more than 100 vehicles in Massachusetts.

To counter such schemes, the Office proposed legislation (further detailed in the "Legislative Recommendations" section of this report) which recommended using high technology to detect motor vehicle registration fraud. The Office also advocated tough new penalties for vehicle owners who dodge taxes, fees and insurance premiums by illegally registering their vehicles out of state. The Joint Committee on Taxation unanimously supported the bill.

In January 1998, the Massachusetts Department of Revenue (DOR) also endorsed the legislation. DOR stated that the bill “enhances the ability of the Department and other agencies to combat tax evasion associated with the improper vehicle registration.”

The Governor’s Office convened a Task Force on Road Tax Evasion in 1998 to increase compliance and identify violators through information technology. The task force will develop a coordinated plan of action for addressing road tax evasion, identify existing agency databases that can be used to identify evaders and develop an interagency referral program to ensure compliance.

Maintenance and Repair Contracting by the Boston Housing Authority

In response to allegations of illegal procurement practices by the Boston Housing Authority (BHA), the Office investigated the award of 23 heating system maintenance and repair contracts awarded by the BHA between 1989 and 1996. In February 1997 the Office issued a report entitled *Maintenance and Repair Contracting by the Boston Housing Authority*. The report findings included the following:

- The BHA awarded seven contracts totaling \$16,925 between 1990 and 1992 based on price quotations, solicited by the BHA staff, that appear to have been falsified. Although the BHA had three quotes for each of the contracts, one firm's President reviewed the quotations submitted on his company's letterhead and denied any knowledge of the submissions. A second firm for which the BHA had quotations had been dissolved in bankruptcy and had ceased to do business prior to the dates of the quotations.
- The BHA approved a \$30,000 no-bid change order to a fixed-price \$20,630 contract with no change in the contract scope.
- BHA's lax contract oversight led to frequent contract overpayments on some of the contracts.
- The BHA improperly used emergency procurement procedures to award six contracts for heating system maintenance and repair. The maintenance and repair requirements had been foreseen, but BHA took no action until the need became critical. Moreover, the BHA failed to document and disclose the emergencies as required by statute. Also, by awarding six nearly identical \$25,000 emergency contracts, the authority avoided seeking a waiver of advertising requirements from the Commissioner of the Division of Capital Planning and Operations that would have been required for larger contracts.
- After receiving a \$26,535 quotation for repair work, the BHA awarded the work through four purchase orders, thereby evading bidding requirements.
- BHA contract specifications were vague and open-ended, preventing meaningful price competition.

The report made a series of recommendations to improve contracting, record-keeping, and oversight and recommended that the BHA prepare a multi-year facilities management plan for capital upgrades and heating system replacements.

Central Artery/Third Harbor Tunnel Project: Probable Warehouse Theft

In 1996, the Office initiated an investigation of alleged thefts of material belonging to the Central Artery/Third Harbor Tunnel Project and stored in Building 31 at the Black Falcon Terminal in Boston. The warehouse contained electrical equipment and approximately \$300,000 of copper cable purchased for the Project as well as core samples taken as part of the project's soil testing program.

The Office's investigation disclosed evidence that copper cable had been cut and removed without authorization, probably for sale as scrap metal. The Office also discovered that the building was not secure and that the equipment and material stored in the building were not adequately inventoried. The evidence of thefts discontinued after the Office instituted surveillance of the site.

In a March 1997 letter the Office informed the Project Director of the problem and recommended that the Project secure the building and establish and maintain a current inventory of all warehoused equipment and materials. In an April 1997 response, the Project Director informed the Office of measures undertaken to address the issues. Subsequent surveillance by the Office confirmed that measures had been taken to secure the area.

Town of Avon Cross Connection Control Program

In 1997 the Office received a complaint about the Town of Avon's Cross Connection Control Program, which requires that businesses install equipment to prevent backflows of chemicals into the water system. As part of the investigation, the Office reviewed the Water Department's contract with a firm to administer the program. In August 1997, the Office informed the Chairman of the Water Commissioners that the contract was invalid. The contract had been awarded in 1995 as an extension of an agreement first awarded in 1990. Neither contract resulted from an advertised competition. Consequently, the 1995 agreement violated the competitive award requirements of M.G.L. c. 30B. The Water Department decided to cancel the contract and perform the service in-house.

School Milk Overcharges

In June 1997 the Office received an allegation that a milk vendor was overcharging a school district for milk delivered under a contract. The contract called for variable monthly prices based on the federal milk order announced on the fifth of every month. Subsequently, additional allegations were received about the vendor overcharging other school districts. The Office worked with the Massachusetts Department of Food and Agriculture and verified the overcharges. The price calculation required a butterfat differential which the vendor manipulated. The result was inflated prices. In August

1997 the Office forwarded its findings to the Massachusetts Department of Consumer Affairs and Business Regulation, which was investigating the same vendor for allegedly underfilling milk containers. In September 1997 the Office published an alert about potential milk contract overcharges in the *Procurement Bulletin*.

“Some schools have been overcharged due to the vendor’s failure to include the butterfat differential in the price calculation. It is very important that you review these bills to ensure that you are not overpaying under your contract.”

*--Procurement Bulletin
September 1997*

Financial Oversight

Update: Massachusetts Public Health Biologic Laboratories

Chapter 334 of the Acts of 1996 transferred the Massachusetts Public Health Biologic Laboratories (MPHBL), a division of the Department of Public Health (DPH), to the University of Massachusetts, (UMS) effective January 1, 1997. This special statute, mandating the transfer of the Biologic Laboratories from DPH to UMS, responded to the findings of the Office's investigation of certain activities and practices of MPHBL, chronicled in a report issued in December 1996. The statute required the Inspector General to comment on the written agreement effecting the permanent transfer to or use by UMS of DPH facilities, space, equipment and other property, including intellectual property, prior to its execution. In a letter dated February 12, 1997, the Inspector General urged the DPH Commissioner and the President of UMS to amend the agreement to require DPH to take the procedural steps necessary to compel the Massachusetts Health Research Institute, Inc. (MHRI), the private company whose relationship with DPH was described in the Office's 1996 report, to turn over the financial records that it maintained for the Biologic Laboratories as its fiscal and administrative agent; its records of expenditures on behalf of DPH State Laboratory Institute and/or MPHBL; and all records in its possession relating to the patents on the drug, Respiratory Syncytial Immune Globulin -Intravenous (RSVIG-IV), belonging to the Commonwealth. The Office also urged that UMS undertake the civil action necessary to recover the State's patents on RSV technology.

In May 1997, UMS terminated MHRI's subsidiary, the Orphan Biologic Institute, Inc. (OBI) as the fiscal and administrative agent for the Biologic Laboratories that were now under its jurisdiction. OBI had replaced MHRI, as its agent, in January 1996. Chapter 334 of the Acts of 1996 had transferred state employees at the Biologic Laboratories, to UMS system on January 1, 1997.

DPH's Terminates MHRI as its fiscal and administrative agent. Due to action by the State Comptroller, in response to information revealed in the Office's 1996 report, DPH also terminated MHRI as its fiscal and administrative agent. The Comptroller's review, conducted with the assistance of the State Auditor, of DPH activities managed by MHRI in illegal, off-budget accounts, eventually identified 38 programs, of which 19 were federal grants and 19 were retained revenue accounts involving approximately \$28.70 million. The Comptroller directed the transfer of those programs to DPH, that were not expiring at the end of the fiscal year, to be accounted for and reported via the state accounting system or to UMS, to be managed through the University's accounting system. This transfer was concluded in September 1997. UMS, which had already assumed fiscal responsibility for approximately 150 employees of the Biologic Laboratories, who were paid by MHRI, using funds that were diverted from the state's General Fund into off-budget accounts, also took over the management of the \$3.59 million State Newborn Screening Program.

In August 1997, the State Comptroller wrote to the new DPH commissioner, informing him that the "DPH-MHRI relationship . . . which apparently lasted for several years and involved tens of millions of dollars each year, did not comply with the requirements of state finance law. . . . [F]inancial operations 'off the books' and relationships such as 'fiscal conduits' are not permissible and will have negative implications for DPH."

Preparations for the second phase of the review of MHRI's books, directed by the Comptroller, began in late 1997. The purpose was to determine certain residual amounts in the off-budget accounts managed by MHRI, on behalf of DPH, to be transferred to the state's General Fund or to the UMS accounting system. The Comptroller has stated that completion of these two phases of the his review did not preclude the possibility of additional work by other agencies to determine the amount of past proceeds from the sale of drugs developed by MPHBL that MHRI owes to the Commonwealth.

Continuation of the Office's Investigation of the Commonwealth's RSV Patent Rights. The Office continued its investigation in 1997. The Office met with staff of the Department of Defense (DOD) Inspector General in August 1997 to review the Office's report. The Henry M. Jackson Foundation, a private, not-for-profit Maryland corporation that provides personnel as well as contract and grant management services to the Uniformed Services University of the Health Sciences, a DOD agency, stands to receive an estimated \$21 million in revenue from the sale of RSVIG-IV that would otherwise have gone to the Commonwealth for its invention. The Office worked with the University of Massachusetts and the Department of Public Health to protect the Commonwealth's interests.

Central Artery/Third Harbor Tunnel Project Monitoring

An interdisciplinary team within the Office monitors the design and construction of the Central Artery and the Third Harbor Tunnel (CA/T Project), scheduled to be completed in 2004 and estimated early in 1998 by the U.S. Department of Transportation Inspector General to cost \$11.2 billion. The team is funded in part by an interdepartmental service agreement between the Office and the Massachusetts Turnpike Authority (MassPike) which, under legislation enacted in 1997 and an agreement with the Massachusetts Highway Department (MassHighway), is assuming responsibility for the CA/T Project. 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, particularly other members of the CA/T Oversight Coordination Commission, through which the Legislature provides funding for additional oversight initiatives.

OFFICE INITIATIVES

Review of the Central Artery/Tunnel Project's Materials Testing Laboratory Function

The Office reviewed the Project's Materials Testing Laboratory, which is responsible for ensuring that construction materials such as concrete and steel meet Project specifications. The laboratory opened in 1991 in one building renovated for that purpose and was later moved to a second building renovated to house the laboratory. Taxpayers have paid more than \$26 million for MassHighway's consultant, the joint venture of Bechtel/Parsons Brinckerhoff (B/PB), to design and renovate buildings for the laboratory and to operate and maintain the laboratory. The Office estimated that the laboratory will cost an additional \$26 million between now and 2004 when the CA/T Project is scheduled to be completed. The Office issued a report on its review in December 1997. The report entitled *A Review of the Central Artery/Tunnel Project's Materials Testing Laboratory Function* found that:

- Project management did not adequately assess the options before spending millions of dollars to establish and maintain the laboratory.
- The project unnecessarily spent at least \$5 million for design, renovation work, relocation expenses, and fees paid to B/PB.
- MassHighway violated state law by allowing B/PB to give more than \$621,000 worth of no-bid building renovation work to Bechtel Construction Company.

“ . . . [B]y failing to comply with the public bidding law, MassHighway deprived the public of the benefits of open competition and market forces that may have driven costs down.”

- IG report
December 1997

- MassHighway violated state law by not obtaining certification of its building program by the Division of Capital Planning and Operations.

This Office urged Project management to comply with all applicable state laws and regulations. In addition, this Office concluded that at least \$5 million had been spent unnecessarily for design, renovation work, relocation expenses, and fees paid to B/PB. The Office recommended that Project management include the CA/T Project laboratory operations in cost containment initiatives, and assess the potential for transferring certain laboratory functions to MassHighway's statewide materials testing laboratory, using outside laboratories, or some combination of the two. The Office also recommended that Project management comply with all applicable state laws and regulations pertaining to public building projects.

In response to the report, the CA/T Project Director stated that the laboratory has provided a good value to the Project and the Commonwealth, and that careful analysis of options is conducted when necessary. The Project Director also disagreed with the Office's conclusion that MassHighway violated state law. The Project Director concluded by stating that the laboratory would be the subject of continuing analysis to identify more cost-effective alternatives.

Early Opening of the Third Harbor Tunnel

In December 1997, the Office sent a letter to Project management reporting on the Office's examination of the costs of the early opening of the third harbor tunnel now known as the Ted Williams Tunnel. The purpose was to provide the Project with information it might find useful in the management of future early opening initiatives. This Office's review disclosed the following problems:

- Project documents did not explain the Project's choice of an early opening date.
- The tunnel opened later than anticipated despite the "accelerated" early opening.
- MassHighway underestimated the cost for the accelerated early opening.
- MassHighway may have overestimated the economic benefits of the early opening.
- The Federal Highway Administration (FHWA) did not fund all early opening costs.

This Office is concerned that costly early opening initiatives will increase the financial burden of the Project for Massachusetts taxpayers. In light of decreasing FHWA financial participation in the Project and the Project's attempts to control costs, any decision to expend resources on an early opening initiative should be examined closely. The public benefit to an early opening initiative should clearly outweigh the costs for the initiative for an early opening to make financial sense at this point in the life of the Project.

The Project did not respond to this letter in 1997.

The Value Engineering Change Proposal (VECP) Program

In 1997 the Office followed up on several programmatic concerns raised in the Office's December 1996 entitled *Value Engineering Change Proposals: A Review of a Central Artery/Tunnel Project Cost Control Program*. The VECP program provides construction contractors with an opportunity to propose design changes or changes in construction methods during construction. These proposals aim to create cost savings, reduce schedules, and/or enhance constructability. If the Project implements a VECP, the contractor receives one-half of the net cost savings as an incentive bonus. In May 1997, this Office advised the Project of the Office's concerns about staff practices relating to the VECP program.

Specifically, the Office expressed concern about Project staff not including schedule savings in a VECP cost-savings analysis. Apparently, staff held aside proposed schedule reductions for future ad hoc negotiations and trade-offs with the contractor. The Office advised the Project that these actions sacrifice savings opportunities and create vulnerabilities to fraud and abuse.

The Project responded by stating that schedule savings are included in the final VECP savings estimate after the completion of what could be a lengthy negotiation process between the Project and a construction contractor.

TECHNICAL ASSISTANCE

Bidder Attraction

In response to a Project request, the Office reviewed the Project's bidder attraction program (BAP). The Project began the BAP in an attempt to attract a greater pool of construction contract bidders for the CA/T Project. By letter in July 1997, the Office reported to the Project that even though the Project had met its limited BAP program goal of attracting additional bidders, the following problems impeded the program's effectiveness:

- B/PB did not develop an adequate scope and action plan for the program.
- B/PB used incomplete and subjective methodology for choosing firms to contact.
- B/PB violated state procurement policy in the hiring of a BAP subcontractor.
- B/PB hired a subcontractor who did not appear to have been qualified to do the work.
- The BAP subcontractor did little to justify his \$10,000 contract.

“B/PB staff knew the subcontractor and had worked with him previously when he had been a Bechtel employee. In fact, Bechtel had begun the process of hiring him back at the same time that he received this B/PB subcontract.”

-- IG letter to Project management
July 1997

- B/PB has not completed the program as planned.
- B/PB should have kept better records.
- B/PB did not account for BAP program costs.
- The Project should have initiated the BAP earlier.

The Project responded by stating that it believed the BAP met its goal and that B/PB performed satisfactorily. The Project acknowledged that more could be done to attract bidders through additional efforts but stated that no decision had been made to initiate new efforts.

The Field Engineer's Inspection Handbook

In response to a Project request, the Office reviewed the Project's Field Engineer's Inspection Handbook (FEIH). The FEIH is intended to provide field-engineering staff with uniform guidelines for judging the acceptability of construction. By letter of May 1997, the Office advised the Project that the FEIH was an adequate reference tool for experienced field staff but might be too general for inexperienced or new staff. The Office also concluded that the FEIH could be made more user friendly and could be refined through the addition of references to Project procedures and guidelines for professional conduct. In addition, the Office found that B/PB did not adequately review the FEIH when instructed to by MassHighway and that B/PB failed to follow Project procedures for the distribution and control of the FEIH.

In response, a top Project manager stated that the letter was shared with relevant Project personnel "to maximize the awareness of this report and its recommendations and to make others aware of your important role in assisting the Project." In its letter of response, the Project made no reference to specific findings nor to whether any recommendations would be implemented by the Project.

Automated Technology Office

In response to a Project request, the Office reviewed the procurement practices of the CA/T Project's Automated Technology Office (ATO). Specifically, the Project asked that the Office analyze the extent to which B/PB uses state blanket contracts for computer hardware and software, and related purchases. Office staff reviewed 143 purchase orders, ATO budgets and expenditures, and state regulations and policies. The Office also interviewed Project staff. The review yielded the following findings:

- The Project's thresholds for determining bidding requirements are markedly different from those established in state regulations.
- The Project received price quotes from state blanket vendors in only three out of the 143 cases reviewed when it solicited vendors to supply various hardware and software products.

- In two of the three cases the state blanket vendors' quotes were higher than those of non-state blanket vendors.
- Over the course of two years, B/PB more than tripled its original \$100,000 contract with one vendor without benefit of additional competition.
- ATO's direct expense budget is about 14 percent of the work program's budget, yet it is spending at a 15 percent rate.

The Project's written response to this review disagreed with the review findings. The Project stated that all purchases had conformed to applicable state law and regulation. The Project also stated that ATO direct expense spending was the result of a "strategic decision" to incur more costs earlier in the work program with a concomitant reduction in costs towards the end of the work program.

"Please be assured that MHD will continue to ensure that ATO expenditures are appropriate and sufficient to meet Project needs."
 -- CA/T Project letter to IG
 January 1998

LEGISLATIVELY MANDATED REVIEWS

Update - Statutorily Mandated Review of Vent Building No. 3

The 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 costs in the future.

The Project provided a written response to this review in January 1997. The Project disagreed with the review findings. The Project stated that all contract cost increases could be explained and that the ultimate bid for the work was below the Project's contract cost estimate. The Project also asserted that cost containment measures had been used and strongly disagreed that inadequate planning had occurred.

JOINT PROJECTS

CA/T Project Oversight Coordination Commission

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 \$11.4 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 billion plus one-time start-up costs and increases for inflation. The Legislature authorized \$2 million for an unspecified period of time for the scaled-down version.

As soon as the funding became available the end of January 1997, the Commission filled the Executive Director position specified in the enabling legislation. In keeping with the multi-agency teamwork envisioned by the Supplemental Plan, the Inspector General agreed to handle administrative expenses and staff support for the Commission. Setting up the new Commission – and providing housing and equipment - - consumed a significant portion of the Office's oversight budget and staff resources during 1997.

Senior staff of the three member agencies continued to meet at least once a month throughout the first year of the Commission's existence to further develop coordinated plans for implementing the Commission's goals. Twice in 1997, the Commission invited members of the Legislature to participate in meetings aimed at coordinating oversight activities, exchanging information, and ensuring that the Commission properly included legislative concerns in its agenda.

The following initiatives were among those originally contemplated in the Supplemental Plan and illustrate the early success of the Commission as a structured forum for coordinating and maximizing effective independent oversight of the CA/T Project:

- During discussions of oversight target areas, the agencies discovered that each had an interest in the CA/T Project's insurance program. By mutual agreement, the Office stepped back from the program, but not before briefing staff of the other Commission agencies on preliminary work. Subsequently, the Auditor's Office took the lead, and the other two offices turned to the Auditor's Office for insight into the insurance program, thus avoiding duplication of effort.
- In another situation, all three offices expressed an interest in ensuring that the Project was effectively pursuing legitimate claims against contractors through the cost recovery program. In this instance, the Auditor's Office stepped back, and this Office launched a joint effort with the Attorney General's Office. This Office will report the results in 1998.
- Because of expertise developed during its decade-long monitoring effort and engineering resources, the Office provided assistance to Commission members on topics ranging from documenting the legislative history of transportation bond bills, to interpreting technical reports generated by the CA/T Project, to previewing financial management plans.

- In instances where a complaint did not yield civil/criminal prosecution potential, the Office has pursued referrals from the Attorney General's Office that suggested potential weaknesses in Project design and construction management.

For more detailed information on these and other joint projects, refer to the Commission's annual report of activities.

Of the three agencies, only the Office of the Inspector General has a specific legislative mandate in the context of the Commission. The Office is directed, in part, to "recommend adjustments and corrections to the budget and project plans in order to ensure the long term financial stability of the Central Artery/Third Harbor tunnel[.]" In pursuit of that charge, the Office crafted a detailed request for responses aimed at soliciting proposals from firms qualified to conduct and deliver such an independent evaluation. In 1998, the Inspector General will determine whether to advertise for an outside firm to do the work or hire in-house staff to deliver the mandated work products.

Operational Reviews

Private Office Space Leasing by State Agencies

In January 1997 the Inspector General issued a report entitled *Private Office Space Leasing by State Agencies* on the process by which the Commonwealth leases private office space for use by state agencies. The leasing function is the responsibility of the Division of Capital Planning and Operations (DCPO). As of April 1996, DCPO was responsible for 498 leases totaling more than seven million square feet and costing more than \$97 million per year. The report focused on office space leases, which accounted for more than 73 percent of the state lease transactions at an annual cost of over \$60 million. During the course of the Office's review, a state work group also examined the leasing process and recommended changes including increased delegation of authority to user agencies to procure certain leases outside the downtown Boston area.

The Office's review focused on office space lease transactions completed between January 1, 1994 and May 12, 1995. Staff analyzed DCPO lease data and selected two samples of leases for in-depth review: one sample of new lease transactions and a second sample of leases that were amended including term extensions or renewals.

The report profiled the leasing process and examined the broader implications of the Office's statistical analysis of leasing data and interviews with DCPO and user agency officials. The report concluded that DCPO's professional oversight and management have protected the Commonwealth from excessive leasing costs and added value to the leasing function. However, the report also identified the following as significant leasing issues:

- Protracted leasing schedules encourage short-term lease amendments, which cause further schedule delays. The Office's step-by-step analysis of the leasing process documented that 38 of 40 new leases took on average 472 days -- roughly 16 months -- from the agency's request to DCPO to lease execution. The use of short-term lease amendments only served to divert agency and DCPO resources and thereby extend the time required to complete new leases.
- DCPO, user agencies, and landlords all share responsibility for protracted leasing schedules.
- Some time savings projections by the state work group for the user agency delegation process appear unrealistically high.
- Major exceptions to the lease size threshold established for agency delegation had already been authorized. Whereas the delegation procedures stated that user agencies could procure leases of up to 15,000 square feet, DCPO had already delegated to two agencies authority to lease larger amounts of space: one for 25,000 square feet and the other for 27,000 to 30,000 square feet.

- The delegation process, as currently designed, poses new risks to the Commonwealth. DCPO was created in 1980 in part to remedy problems stemming from fragmentation of responsibility, lack of expertise and resources, and inappropriate political considerations in acquiring capital facilities by construction and leasing. However, the delegation process is likely to generate new problems stemming from the lack of effective controls over the size and cost of state leases, the inexperience of user agencies' legal staff, and the absence of clear decision rules for evaluating and rejecting lease proposals.
- Systemwide cost control and accountability require effective DCPO oversight of the agency delegation process, yet no plan was in place for DCPO to establish clear standards and exercise oversight responsibility.
- Statewide facility planning needs improvement. In 1987, the Inspector General sought reliable information from DCPO on state agencies' office space needs in the Boston area, but DCPO was unable to provide this information. The then-DCPO Commissioner agreed on the need for a plan in Boston and throughout the state. Ten years later, the state still had no plan identifying current and foreseeable agency space needs, assessing the costs and benefits of owning or leasing office space, and recommending cost-effective strategies for meeting agency space needs.
- DCPO's post-delegation leasing, oversight, and planning responsibilities may warrant additional resources.
- DCPO and user agency officials believe that cost-effective leasing is impeded by statutory restrictions limiting the term of leases to five years and prohibiting the exercise of lease renewals earlier than six months prior to the lease expiration date.

The report made the following recommendations to the Legislature:

- Direct DCPO to prepare and periodically update a statewide master facility plan.
- Direct DCPO to prepare a detailed delegation oversight and evaluation plan.
- Direct DCPO to prepare a staffing plan and appropriate resources for its implementation.
- Mandate and fund a consultant study, commissioned by DCPO, to design a reliable system within DCPO for collecting and tracking information on usage of state-owned space.

"[T]his Office does not oppose decentralization of state leasing if accompanied by sufficient and effective monitoring and enforcement. In practice, however, this Office has serious concerns about the risks imposed by the agency delegation process as currently designed. Although the agency delegation process is intended to promote economical leasing, this Office's analysis suggests that it may have the opposite effect: leasing costs may escalate. . . ."

-- IG report
January 1997

- Amend M.G.L. c. 7 to require all state agencies to provide information on their usage of state-owned space.
- Amend M.G.L. c. 7, §40G to allow the DCPO Commissioner to lease private space for a term not exceeding 10 years, provided that any lease exceeding the standard five-year term shall be ineligible for delegation.
- Amend M.G.L. c. 7, §40G to permit lease renewals to be exercised within 12 months prior to the lease expiration date.

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. In 1997 the Office commented on hundreds of pieces of legislation. This section highlights some of the major legislative work of the Office during 1997.

Proposed "Merger" of the University of Massachusetts Medical Center with Memorial Health Care, Inc.

In March 1997, the Office reviewed, pursuant to M.G.L. c. 12A, §8 and §9, the proposed "merger" of Memorial Hospital in Worcester and the University of Massachusetts Medical Center. The pending legislative petition, House No. 4397 of 1997, authorized the sale of the Medical Center, including the teaching hospital built to serve the University of Massachusetts Medical School; its physician group practice; ancillary support and operating services; three trust funds; cash reserves; and the University's interest in the Worcester City Campus Corporation and other related nonprofit organizations incorporated to enable the Medical Center to expand its service network, and then its merger to form two or more newly created nonprofit corporations, UMASS Memorial Health Care, Inc. and UMASS Memorial Medical Center, Inc. The bill also granted the use of the real property belonging to the teaching hospital and group practice to the new corporations under a ninety-nine year lease.

The proponents of the transaction asked the Legislature to assume direct control of the transfer, to authorize the sale and merger by special statute, and to exempt the transaction from numerous rules and laws which safeguard the public interest, including the requirements of the state determination of need law regarding changes in hospital ownership; all public procurement and bidding laws; construction bid laws; all fair labor standards and practices; and the conflict-of-interest laws for persons who would become administrators, employees, physicians and persons of interest in the new corporation. After the enactment of the legislation, a written agreement (the "Definitive Agreement") established an 18-member Board of Trustees of the new parent corporation, UMASS Memorial Health Care, Inc., with nine members each from Memorial Hospital and from the University of Massachusetts. After the expiration of the initial four-year term, however, the Definitive Agreement significantly reduced the number of the Commonwealth's appointed positions on the Board and thus, its role in the governance of the new corporation. The Office's review of other public/private hospital mergers indicated that this loss of control of the governing board of the new corporation was not typical of mergers elsewhere. The Office's review also disclosed that the terms of the Definitive Agreement could be changed without legislative consent.

Furthermore, the legislation permitted the trustees of the new corporation to transfer or sell "all or substantially all of the assets or operations" of the teaching hospital to another non-profit entity in a second or subsequent merger, without legislative authorization; and also left the door open to the disposition of a smaller proportion of the assets or operations of the hospital to a for-profit corporation, without legislative consent.

The Definitive Agreement established the specific terms of the compensation to be paid to the Commonwealth for the transfer of its assets and hospital business to the new private corporation. Under the Definitive Agreement, the Commonwealth, through the Medical School, would receive a \$12 million inflation-adjusted annual payment, a ten percent payment of net revenues (adjusted on a scale up to 28 percent depending on net income), assumption of \$37 million in outstanding debt by the new corporation, and a commitment of \$21 million for construction of a research facility for the Medical School. The transaction also involved a 99-year lease for certain property. According to University officials, approximately \$120 million in cash would be transferred from the University of Massachusetts to the new entity from trust fund balances and other sources

The Office examined numerous documents in detail, including the Definitive Agreement, executed on February 13, 1997 by representatives of the University of Massachusetts, Memorial Health Care Inc. and the Worcester City Campus Corporation d/b/a UMASS Health System. The Office also met with the House Chairman of the Joint Committee on Health Care, the Chancellor of the Medical School, the Deputy Chancellor of the Medical School, the General Counsel of the University of Massachusetts, and attorneys and consultants representing Memorial Health Care, Inc., and other individuals with expertise in the field of hospital mergers and acquisitions.

On June 13, 1997, the Office wrote to the Chairmen of the Joint Committee on Health Care pointing out that the proposed transaction was possibly the largest privatization in the history of the Commonwealth. This letter urged that, in view of the magnitude and complexity of the transaction, the Legislature delay action on the bill and require the performance of a thorough, expert due diligence review of the proposed transaction, including an assessment of the value of the hospital business proposed for transfer, the value of the physicians' group practice, and the assets and liabilities of the teaching hospital. The purpose of the review was to safeguard the interests of the Commonwealth's taxpayers; to insure that they would receive fair compensation in the form of direct financial payments and/or other benefits for the tangible and intangible public assets sold, transferred or leased under the transaction; to see that no individuals or entities gained undue personal benefit as a result of the transaction; to insure that state employees were not treated unfairly as a result of the transaction; to assure that the resultant entity did not conflict with the Medical School's independence; and to assure that the process was fair, open and honest.

In response to the Office's concerns about the necessity for an expert, arms-length review of the transaction, the Senate Committee on Ways and Means engaged a consulting firm to review the assets and operations of the University of Massachusetts Medical Center and its affiliated corporations. Following the completion of this review, the Legislature enacted an amended version of the original bill in November 1997. The revised enabling legislation prohibited the transfer of the assets or operations of the teaching hospital to a for-profit entity in order to preserve its public mission. The statute required, for ten years following the effective date of the act, prior legislative approval of any subsequent merger or consolidation of the corporation with a nonprofit organization if the change in ownership would result in turnover of 50 percent or more of the individuals who were members of the original board or its successor. The law also prescribed the governance structure of the new parent corporation, increasing the minimum number of trustees appointed by the Commonwealth, after the expiration of the initial four-year term, from 17.6 percent to 26.3 percent of the voting membership of the board. Finally, the act contained a provision to prevent conflicts of interest that might result from the merger by prohibiting officers, trustees, and employees of the new parent corporation, to which the assets and ownership of the teaching hospital were transferred, from acquiring an equity interest in any for-profit subsidiaries or affiliates of this organization.

Improvements to the John A. Ryan Ice Arena in Watertown

Senate Bill 1705 authorized Bentley College to make improvements, including the construction of two locker rooms, to the John A. Ryan Ice Arena in Watertown. The Town of Watertown would be given the use of one locker room, while Bentley College would have exclusive use of the other. No public monies would be expended on the improvements to the rink, and the rink design and construction would not be subject to public construction laws. This Home Rule Petition also provided that the Bentley College hockey team would have exclusive ice time for practice and games pursuant to five-year fixed-price agreements between the College and the Town. These five-year agreements would continue for as long as Bentley College has a collegiate hockey team.

In June 1997, the Office sent a letter to the Massachusetts Senate Counsel expressing concerns regarding the proposed exemption from the public bidding laws. The Office wanted the bill amended to ensure that the Watertown taxpayers' and citizen-users' best interests would be represented in any future agreements with the College. This Office also recommended that the deal would have to be at market terms and calculated so that the value of the improvements provided by Bentley College would be equivalent to the price paid by the College for ice time.

In September 1997, the Legislature enacted Senate 1705 incorporating the Office's changes. The bill was signed by the Governor and become Chapter 115 of the Acts of 1997.

Electric Deregulation

In October 1997, the Office met with the chairmen of the Joint Committee on Government Regulations to discuss the issue of electricity deregulation. The proposed legislation included a provision would exempt the procurement of energy services from M.G.L. c. 30B. The Office viewed a blanket exemption from M.G.L. c. 30B as contrary to the goal of deregulation, which is to foster competition.

The Office proposed amending the legislation to protect consumers from unfair marketing practices and provide for robust competition in the procurement of energy services in this deregulated industry. In an earlier draft of the deregulation legislation, the concept of alternative procurement procedures for energy or energy-related services was proposed by the Office. The Inspector General would promulgate binding regulations for the purchase of energy-related services to address any unique circumstances associated with the awarding of these energy services contracts. However, in a letter to the Legislature, the Massachusetts Municipal Association (MMA) opposed the uniform procurement of energy related services and asserted that regulations created by the Office would severely hamper municipal efforts to aggregate and negotiate for the purchase of electricity. The Office responded in a letter to the MMA stating that an amendment to the bill exempting municipal procurements from M.G.L. c. 30B was completely irresponsible, contrary to the goal of deregulation, and contrary to the public interest.

The Office was successful in convincing the Legislature that a complete exemption from Chapter 30B would put taxpayers and consumers at risk and would not ensure the selection of the best proposal at the best price. In November 1997, the Legislature enacted legislation deregulating electricity sales beginning in March 1998. Chapter 164 of the Acts of 1997 authorized cities and towns to conduct their own electricity procurements or participate in a larger electricity-purchasing group. Some types of energy and energy-related contracts were exempted from M.G.L. c. 30B, while others are procured under a new provision: M.G.L. c. 30B, §6(k).

City of Malden School Building Projects

In March 1997, the City of Malden submitted a Home Rule Petition to the Legislature, Senate 316 of 1997, to allow the City to undertake large-scale school building projects with no oversight by any state agency. In the Office's view, this lack of oversight, coupled with the absence of statutory controls, could open the door to favoritism and back room deals in real property transactions and construction. This legislation was unprecedented in the degree to which it would exempt the projects from dozens of important public protection provisions of the law.

The Office met with the Mayor of Malden and members of the Legislature. Their primary concern was with the issue of pre-qualifying bidders and sub-bidders. The City wanted to require that only contractors and subcontractors who did not exceed a

predetermined threshold of workers' compensation experience would be eligible to bid on any school projects. They also wanted to exempt projects from M.G.L. c. 149, s44F concerning the filing of sub-bids. The Office assisted the City with compromise language; however, since the Office supports compliance with existing public construction laws, including the filed sub-bid requirement, the Office could not support this draft language and deferred to the Legislature and the Governor relative to the draft's passage.

In June 1997, the Governor signed Chapter 16 of the Acts of 1997 incorporating the draft language of the Office.

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. M.G.L. c. 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 and sales or use taxes. The Commonwealth and municipalities lose money when individuals improperly register vehicles in other states. Also, some individuals avoid higher insurance premiums by improperly registering vehicles in cities or towns within the state other than where the vehicle is garaged. This results in diversion of taxes from the city or town in which the vehicle is located. The legislation would establish criteria to determine whether a motor vehicle is garaged in the Commonwealth. Those who evade payment of state and local 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 compulsory insurance equal to the minimum requirements applicable to Massachusetts motor vehicle owners. 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. The legislation was redrafted and is now House 5024 of 1997. It is awaiting action by the House Committee on Ways and Means.

"[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

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 would be able to request clerical and technical assistance from the three offices involved, but these 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. c 30B, which governs procurement of supplies, services, and the acquisition and disposition of 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 M.G.L. c 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 M.G.L. c 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 M.G.L. c 30B for construction projects of less than \$100,000 rather than the less flexible construction bid law. 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