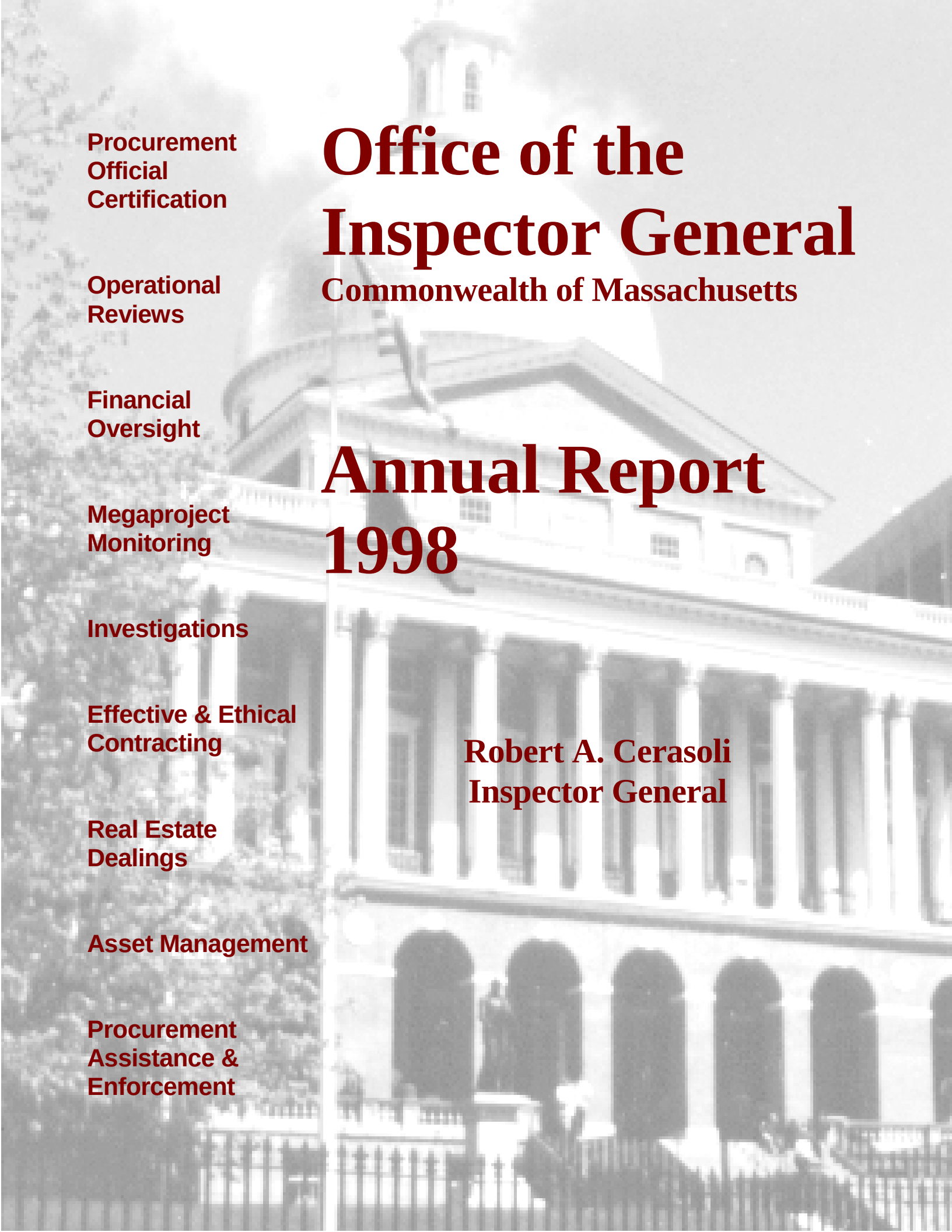

Procurement Official Certification

Operational Reviews

Financial Oversight

Megaproject Monitoring

Investigations

Effective & Ethical Contracting

Real Estate Dealings

Asset Management

Procurement Assistance & Enforcement

Office of the Inspector General

Commonwealth of Massachusetts

Annual Report 1998

Robert A. Cerasoli
Inspector General

The Commonwealth of Massachusetts
Office of the Inspector General

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August 1999

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chair of the Senate Ways and Means Committee

The Honorable Chair of the House Ways and Means Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Committee

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

My Office concluded several ongoing investigations in 1998. One investigation uncovered large-scale theft and extortion related to the Massachusetts Bay Transportation Authority's project to restore the Old Colony Railroad line. That investigation, assisted by the Massachusetts State Police and the Federal Bureau of Investigation, resulted in two indictments, a guilty plea, and a settlement agreement that netted the Commonwealth $200,000 and the United States government $300,000.

Much of my Office's work focuses on prevention of fraud, waste, and abuse by promoting competence and professionalism in public procurement and contracting. For example, after receiving complaints about a contractor's poor performance on three municipal building projects, my Office issued a report in 1998 documenting weaknesses in the state's current system of qualifying contractors for public building construction work and recommending systemic reforms. Another Office report issued in 1998 examined the Central Artery and Third Harbor Tunnel Project's poor design and improper installation of anchor bolts on a $78.2 million tunnel finishes contract; the report recommended a series of measures designed to improve the performance of designers and contractors on the Project.

I filed several legislative proposals in 1998 designed to reform and streamline some of the laws governing public procurement and contracting. In addition to raising the current dollar thresholds in these laws, my proposals would establish training standards for oversight of state-funded construction contracts, strengthen contractor qualification and selection procedures, and simplify local procurement rules.

My Office continued to devote substantial resources to training and technical assistance. We issued revised and updated versions of our two procurement manuals, which provide step-by-step guidance on the legal requirements that apply to public procurements as well as recommended practices for best value contracting, standard forms, and other sources of assistance. Public officials can access these manuals electronically from the Office's website.

We also expanded the Massachusetts Public Purchasing Official program, which promotes excellence in procurement. During 1998 the Office added a new seminar on design and construction contracting to the two MCPPO seminars launched in 1997. Attendance at the seminars exceeded 600 in 1998, and 67 participants received MCPPO designations. We have been gratified by the positive response to the MCPPO program. We are proud to have earned the American Council on Education's recommendation of undergraduate and graduate credit for our MCPPO seminars. My Office will continue its efforts to provide training and assistance to public officials so that they will be better equipped to perform their mission-critical functions effectively, efficiently, and ethically.

Sincerely,

Robert A. Cerasoli
Inspector General

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Introduction

The Massachusetts Office of the Inspector General was established in 1981 on the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts. The 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 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 Office has a broad mandate under Massachusetts General Laws Chapter 12A to prevent and detect fraud, waste, and abuse in government. Chapter 12A provides the Office the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and noncriminal violations of the law. The Office employs a staff of experienced specialists, including investigators, lawyers, management analysts, and engineers. Special interdisciplinary teams are formed to meet the unique requirements of the Office's projects. For example, the team assigned to monitor the Central Artery/Third Harbor Tunnel Project comprises specialists in contracting, engineering, law, and financial analysis. The Office also has assigned a team of procurement specialists to assist local governments with M.G.L. c. 30B, the Uniform Procurement Act.

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

Capacity building. The Office provides extensive training of public officials, including the Massachusetts Certified Public Purchasing Official (MCPPO) program. The Office also provides technical assistance to public officials by fielding a team of procurement

specialists that regularly answer questions related to M.G.L. c. 30B, and publishing instructional manuals on state public purchasing laws as well as a quarterly *Procurement Bulletin* with information and advice to promote effective and ethical purchasing. The Office also offers technical assistance to the Central Artery/Third Harbor Tunnel Project, often to suggest improvements to the Project's management controls.

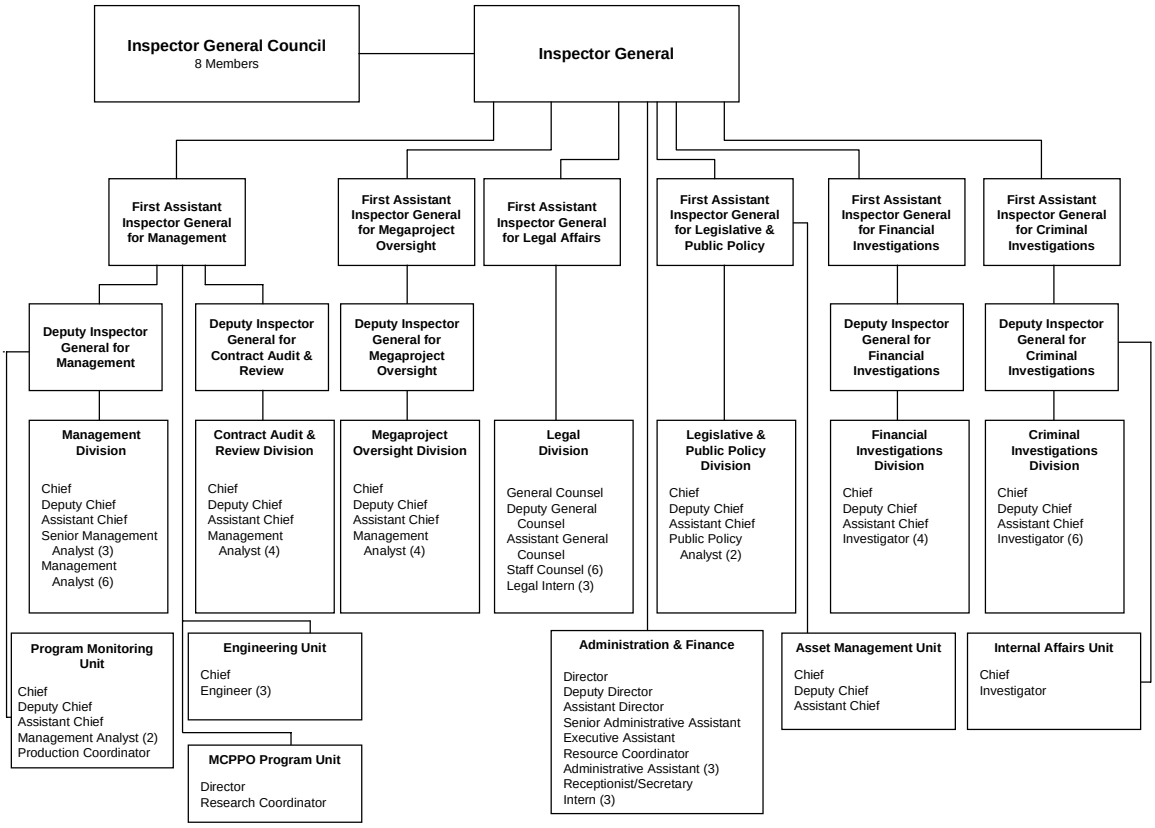
Timely intervention. Whenever possible, the Office seeks to intervene in situations before fraud, waste, or abuse occurs. For example, the Office may comment on legislation that exposes the state to financial losses or assist a public agency in devising terms for a request for proposals that will generate 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. Where the Office identifies issues of potential interest to many public officials, the Office disseminates information to help prevent problems before they occur. For example, when the Office identified significant problems in one town's completed school renovation project, the Office developed recommendations for all school districts to prevent similar problems in the future, and we mailed a copy of the report to each district. We also use the *Procurement Bulletin* to inform local officials about the results of our work in other jurisdictions.

Of course, where fraud, waste, and abuse do occur, effective detection is essential. The Office receives many complaints alleging fraud, waste, or abuse in government. The Office evaluates each complaint to determine whether it falls within the Office's jurisdiction and, if so, whether it merits action by the Office. Some complaints are closed immediately or after a preliminary inquiry fails to substantiate the allegations; others lead to management reviews or investigations. When 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 United States Attorney.

The Office's budget for fiscal year 1999 is $1,973,448. Although the Office has 104 authorized staff positions, only 49 staff positions were filled in fiscal year 1999 because of budget constraints. The following chart illustrates the Office's organization and approved staff positions.

Office of the Inspector General
Organization Chart



This report summarizes the projects and activities completed by the Office during the 1998 calendar year.

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Investigations

The Office's investigations of criminal and civil violations of law arise from a variety of sources, including complaints received in writing or by telephone, information developed during the course of other Office reviews and activities, and requests for assistance by other investigative agencies such as local and state police. In 1998 the Office received 125 complaints, 85 of which were called in on the Office's toll-free hotline.

The Office often reports complaints to other agencies if a preliminary investigation reveals that the complaints are outside the Office's jurisdiction or within the jurisdiction and expertise of another agency. Some of these agencies to which the Office reported complaints in 1998 include the Massachusetts Attorney General, the United States Attorney General, the State Ethics Commission, local district attorney offices, the U.S. Social Security Administration, the U.S. Department of Justice Immigration and Naturalization Service, the U.S. Department of Health and Human Services, and the U.S. Postal Service.

Theft and Extortion on MBTA Old Colony Railroad Restoration Project

An Office investigation uncovered the large-scale theft of railroad ties and steel rails as well as extortion of free construction work and building materials on the Massachusetts Bay Transportation Authority (MBTA) project to restore the Old Colony Railroad. The investigation was assisted by the Massachusetts State Police and the Federal Bureau of Investigation. The Plymouth County District Attorney prosecuted the Commonwealth's case; the United States Attorney in Boston prosecuted the federal case.

In July 1998, a Plymouth County Grand Jury indicted Jose N. Valentim, an employee of Modern Continental Construction Company, Inc., on two counts of larceny pursuant to a scheme over $250. The Superior Court fined Valentim $10,000 and continued his case without a finding for two years under pre-trial probation.

"A public official abused his position for personal gain. Instead of blowing the whistle on the corrupt official, a high-level Modern officer sought to unlawfully influence him."

– U.S. Attorney Donald K. Stern, August 1998

In August 1998, a Federal Grand Jury indicted former MBTA Resident Engineer Joseph Monteiro on 16 counts of corruption, including extortion, mail fraud, and witness tampering. The indictment alleged that Monteiro used the leverage inherent in his official position to demand free work and materials from former Modern Continental Vice President Massimo Marino. According to the indictment, Monteiro's actions were connected to his plan to tear down two buildings on his property in Marion, Massachusetts in order to prepare his property for construction of a new home. Monteiro was fired by the MBTA after the indictment.

Former Modern Continental Vice President Massimo Marino was separately charged with one count of providing and causing others to provide free work and materials costing over $10,000 to Monteiro, intending to influence Monteiro's actions in a way that was favorable to Modern Continental. Marino then took steps to conceal the benefits provided to Monteiro under this arrangement. Marino waived indictment and pled guilty. Under an August 1998 settlement agreement, Modern Continental Construction Company agreed to pay $300,000 to the United States and $200,000 to the Commonwealth of Massachusetts; to institute significant organizational changes, such as ethics training programs, designed to prevent further illegal and unethical conduct in the future; and to accept Marino's resignation.

In April 1999, Monteiro was sentenced in Federal District Court to a five-month term of home detention, followed by a two-year term of supervised release; a $15,000 fine; and a $200 special assessment. Marino was sentenced to probation of two years and 10 months and a $10,000 fine.

Illegal Dumping at the Seekonk Landfill

At the request of the Town of Seekonk, the Office investigated allegations of illegal waste disposal activities at the Town landfill between 1987 and 1993. In December 1998, the Inspector General issued a report entitled *Review of the Seekonk Landfill*. The report documented the events leading up to the discovery of large amounts of construction and demolition waste illegally dumped in wetlands and groundwater at the Town's composting site. The Office's investigation revealed that the former Superintendent of the Seekonk Department of Public Works (DPW) illegally constructed a composting site in a wetland area near the landfill. As a result of this individual's actions, the Town had to expend significant sums on unanticipated capping and closure costs. In addition, the Town may be required to undertake groundwater remediation in the future. The Office also found that the investigation conducted by the Massachusetts Department of Environmental Protection (DEP) was inadequate to disclose wetlands and dumping violations.

The report findings were as follows:

- The Town of Seekonk constructed a composting site in wetlands.
- The Composting Registration Form submitted to the Commonwealth by the Town did not accurately report and describe plans and characteristics of the proposed composting site.
- During construction of the composting site, significant amounts of construction and demolition waste were deposited into wetlands and groundwater.
- The Department of Environmental Protection's earlier investigation was inadequate to reveal that construction and demolition waste had been dumped beyond the landfill limit in a wetlands area.

> ***"The Seekonk landfill case offers vitally important lessons about one municipality's failure to provide sufficient control and supervision of the official responsible for operating its landfill and composting operation."***
>
> – IG report, December 1998

In 1996, the Seekonk Board of Selectmen voted to cap the area constituting the composting pad. This unplanned project required the Town of Seekonk to expend an additional $59,410 to cap the 12,300 square-foot portion of the composting pad, which is now part of the Fall River landfill. Moreover, although DEP has concluded that groundwater remediation at the landfill is unnecessary at this point, remediation may be required in the future, depending upon future test results. The higher-than-anticipated landfill closure costs and continued uncertainty about health and safety issues at the landfill are the consequences of the former DPW Superintendent's failure to operate the landfill and construct the composting site in accordance with the rules established by the Town of Seekonk and approved by DEP.

In response to a draft version of the report, the Town of Seekonk maintained that the Town bore no responsibility for any wetlands violations caused by its former DPW Superintendent. The Office disagreed. Although the Office's investigation disclosed no evidence that the Board of Selectmen or other Town officials were aware of the former DPW Superintendent's actions, the Superintendent's position description clearly stated that the Superintendent was to be supervised by the Board of Selectmen. This case illustrates the importance of ensuring that public officials responsible for landfill operations are qualified, receive appropriate training, and are supervised effectively.

In response to the draft report, the DEP took issue with the report's finding that the DEP's investigation was inadequate to reveal that landfilling and composting had occurred in a three-acre wetland where landfilling was

prohibited. The Office stood by its finding. Although the DEP approved the 1978 site assignment documents – which included the approved landfill limits – the DEP did not consult these documents when it received the Town's composting application and when it subsequently investigated the allegation of illegal dumping. Had the DEP done so, the DEP would have discovered the former DPW Superintendent's landfilling and composting activities in the three-acre wetlands area.

Moreover, in investigating the allegation, the DEP did not dig test pits to determine whether the contents of materials dumped and buried violated DEP regulations and threatened groundwater. Rather, the DEP relied on statements of the former DPW Superintendent and the former Chairman of the Conservation Commission, (who himself had relied on the former DPW Superintendent's statements) in concluding that wetlands were unaffected by the dumping.

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 Project (the Project), scheduled to be completed in 2004 and estimated, as of 1998, to cost more than $11 billion. The team is funded in part by an interdepartmental service agreement between the Office and the Massachusetts Turnpike Authority (MassPike). The team focuses its efforts on reviews originating primarily from three sources: staff assessments of management systems that are particularly vulnerable to waste and abuse, 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 Central Artery/Third Harbor Tunnel (CA/T) Project Oversight Coordination Commission, through which the Legislature provides funding for additional oversight initiatives.

OFFICE INITIATIVES

Use of Anchor Bolts on the $78.2 Million Tunnel Finishes Contract

In December 1998, the Inspector General issued a report entitled *A Review of the Central Artery/Tunnel Project's Use of Anchor Bolts on the C05B1 Tunnel Finishes Contract*. The report documented examples of poor design coordination and unclear contract specifications that led to the payment of $850,000 for two no-bid change orders. The Office believes the report will assist the Project as it completes design and awards the remaining tunnel finishes contracts valued at more than $200 million. The report contained the following findings:

- Poor design specifications created construction difficulties that cost almost $800,000 to resolve.
- The Section Design Consultants (SDC) prepared poor design specifications for anchor bolt installation.
- The SDC prepared unclear testing procedures.
- The Project paid the contractor to test improperly installed anchor bolts.
- Bechtel/Parsons Brinckerhoff (B/PB) issued a change order to compensate the contractor for poor subcontractor performance.
- The Project did not consult with the tunnel designers before allowing the contractor to drill through steel reinforcement in the tunnel roof.

> ***"Although design is nearly complete, opportunities still exist to ensure that construction contract specifications are clear and complete, and to ensure that there is adequate coordination between design and construction contracts. With care and commitment, the Project can avoid future cost increases and ensure a high quality facility."***
>
> – IG report, December 1998

The change orders reviewed in this report related to work necessitated by ambiguous contract specifications and poor contractor performance. Project management claimed that most of the $850,000 paid for these change orders was a "reasonable expense" for necessary work. The Office disagreed. Change orders should not have been needed for this work. The Project should have prepared clear specifications and should have anticipated problems. Apparently, there was no effective coordination between roof and ceiling designs. Had the specifications been clear and unambiguous, the construction contract bidders would have included the cost of the work and risk in their bid proposals. By relying on change orders, the Project paid a premium for the extra work and caused confusion during construction.

The Office recommended the following:

- **The Project should develop clear and complete specifications.** The SDC and B/PB should ensure that all construction contract specifications, requirements, testing protocols, and procedures are clear.
- **The Project should coordinate designs.** The Project should ensure that future tunnel roof designs accommodate tunnel ceilings that are to be installed later. This will avoid costly problems, resolve design coordination issues, and ensure that design quality will not be compromised.
- **The Project should hold contractors accountable for shoddy work and poor planning.** Substandard work should be corrected at no cost to the taxpayers.
- **The SDC should review and approve design and specification changes.** This will help to protect the Commonwealth's interests in the event of a facility failure.
- **The Massachusetts Highway Department (MassHighway) should take cost recovery action when costly errors are discovered.**
- **B/PB should ensure that contractors proceed with work only under Project-approved procedures.**

In response to a draft version of the report, the Project took issue with several report findings and stated that the structural integrity of the tunnel was not compromised as the result of core drilling. However, the Project also noted that a new concept for anchoring the ceiling system in other parts of the Project had been adopted and that this change was made based on the lessons learned in the tunnel finishes contract.

Public Information Outreach

In February 1998, the Office provided the Project with comments concerning a preliminary review of the Project's request for qualifications/proposals (RFQ/P) for public information outreach services. The Office offered the following comments:

- More than two-thirds of the scope and objectives focused on public relations. In the Office's view, spending public funds to sell the Project to a public that is already paying for the Project would be wasteful.
- The decision to contract out for these services raised questions as to why the public information staff and subconsultants already in place in the B/PB organization under work program 14 were unable to handle these tasks.
- The RFQ/P was silent on how the "Steering Committee" would assess the qualifications put forward by the proposers or determine which proposal is most advantageous for the Commonwealth. The absence of specific, measurable selection criteria left the contract vulnerable to allegations that this $2 million contract would be awarded on the basis of factors which have no place in fair and open competition.
- The RFQ/P failed to define deliverables or to specify the basis for payment to the consultant. Moreover, the RFQ/P gave no clear indication as to how the Project would determine whether the goals have been met or how the results of an evaluation would be used to determine whether the consultant contract will be extended for another year.
- Many of the special conditions were optional. It was unclear how, when, or by whom a determination would be made on which of these provisions were required or whether an earlier determination might have changed the pool of proposers.
- The full cost of this initiative was not limited to $2 million. There was little doubt that B/PB administrative costs will increase the total cost substantially, whether by displacing other priorities or through costly add-ons to the existing work program.
- The RFQ/P left the door open for a one-year extension to an arrangement that, as written, could have provided payments of nearly $200,000 per month to the winning firm for the balance of 1998. The basis for negotiating the price of any contract extension was not stated.

> ***"In our view, spending public funds for a glossy or elaborate campaign to sell the Project to a public that is already paying for the Project would be wasteful. Low-cost, widely distributed, straightforward, factual information concerning transit options and traffic conditions certainly constitutes a legitimate and necessary 'Outreach Initiative.'"***
>
> – Office letter to Project management, February 1998

In response, the Project stated that an integrated campaign would provide practical traffic and transit messages while educating the public about the benefits and end-state of the Project, and that current staff responsibilities did not permit them to develop, manage, and evaluate the type of initiative envisioned by the RFQ/P. The Project also stated that current B/PB subconsultants did not have this type of initiative listed in their scope of services. In response to the Office's concern about how the qualifications of proposers would be assessed, the Project asserted that the RFQ/P contained the relative weights of how proposers would be evaluated and that all selected firms would be given oral interviews with identical instructions and be given common questions. The Project also stated that the RFQ/P was deliberately silent on the issue of deliverables and that deliverables would be clearly articulated after a contract was negotiated with the top ranked proposer. Finally, the Project noted that the cost of this initiative would be closely monitored, any opportunities for cost containment would be utilized, and that any contract extensions would be negotiated based upon an evaluation of the contractor.

Project staff have kept the Office informed throughout the selection and negotiation process. Consistent with the Office's advice, the Project improved the process by assigning some tasks to in-house staff and clarifying selection criteria. In May 1998, the Project awarded a $2 million public relations contract to Hill, Holiday, Connors, Cosmopulous.

Update: Materials Testing Laboratory

In December 1998, the Office informed the Executive Office of Transportation and Construction (EOTC), the Massachusetts Bay Transportation Authority (MBTA), Massachusetts Port Authority (MassPort), MassHighway, MassPike, and the Project that some potential exists for reducing the cost to these entities of materials testing services. The letter was a follow-up to the Office's December 1997 report, *A Review of the Central Artery/Tunnel Project's Materials Testing Laboratory Function*, concerning the cost of materials testing services on the Project. The report concluded that cost-savings potential existed for the Project's materials testing program. The Office's review of other materials testing programs revealed that some entities paid different prices for the same

services offered by testing firms. In addition, some entities performed these testing services in-house and did not rely on outside firms.

> ***"[F]ew firms (approximately five) in Massachusetts currently compete for public sector testing work. However, pooling quantities might entice vendors to offer lower prices and/or attract other vendors from within or outside of Massachusetts to compete."***
>
> – Office letter to Project, December 1998

The Office recommended the following options to EOTC and the other entities included in the review:

- **Establish a statewide material-testing laboratory.** The resources currently being used by individual entities could be pooled to create one central laboratory.
- **Establish a statewide blanket contract for testing services.** This would eliminate the need for entities to procure contracts individually, allow different entities to pay one price, and pool quantities in an attempt to get the best price.
- **Establish interagency agreements for testing services.** An entity that does not have an in-house testing function may want to contract for services from another entity instead of relying upon outside testing firms.
- **Improve communications between agencies.** This may enable the different entities to learn from each other, thereby improving their respective materials testing and construction activity.

Update: Early Opening of the Third Harbor Tunnel

In December 1997, the Office provided the Project with a review of costs for the early opening of the Ted Williams Tunnel. The purpose of the review was to provide information that the Project might find useful in the management of future early openings. The Office's examination found that the Project overestimated the financial benefits of this acceleration. Since the Project may make other attempts to accelerate certain portions of the Project to achieve early openings, the Project may find the Office's review instructive.

The Office's concern was that costly early opening initiatives will increase the burden to Massachusetts taxpayers. In light of decreasing federal

financial participation[1] 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 should clearly outweigh the costs for the initiative to make financial sense at this point in the life of the Project.

In February 1998, Project management responded by asserting that the early opening provided at least $23 million in road user and other economic benefits and that the Project stood by the original calculation of the cost of the accelerated tunnel opening, the economic benefits provided by it, and by the decision to include toll revenue in the calculation of benefits. Based on the Project's written response and earlier actions, the Office anticipates no change in the Project's practice of spending large sums of public money to make up for schedule delays and then justifying the decision with highly questionable savings estimates.

TECHNICAL ASSISTANCE

Resident Engineer's Filing System

In February 1998, the Office provided the Project with the results of a technical assistance review of the resident engineer's (RE) filing system. The Project had requested that the Office review the RE's filing system to determine if it was adequate to meet the needs of the Project. The review consisted of an examination of the quality and maintenance of key documents that comprised the RE filing system. In May 1996, the Office had provided similar assistance to the Project by completing a technical assistance review of B/PB's construction management practices, including compliance with procedures governing the RE filing system. One objective of the February 1998 review was to determine whether the Project had remedied weaknesses in the RE filing system and documentation requirements previously identified.

The review disclosed that weaknesses still exist in the collection and maintenance of information by B/PB field staff. As part of the review, Office staff examined the RE files in five construction contract site offices and interviewed relevant B/PB staff. The review showed the following:

[1] The Transportation Equity Act for the Twenty First Century (TEA-21), the five-year federal transportation funding plan passed in June 1998, provides for a much lower federal contribution to the Project than in previous years. According to the Central Artery/Tunnel Project Finance Plan submitted by MassPike in October 1998, the federal share of Project costs will decline from 81 percent to 48 percent under TEA-21.

- Staff in four out of five contracts reviewed appeared to do an adequate job in preparing the Field Engineer Daily Reports (FEDRs). However, the quality of reporting varied from contract to contract. The most significant problem still revolved around the timely submission and review of these reports.
- In two of five contracts reviewed, deficiency reporting remained inconsistent. Staff did not record all deficiency reports in the FEDR, on drawings, or in payment records.
- B/PB staff did not maintain RE drawings according to Project procedure.
- Staff in three of five contracts reviewed did not clearly label or organize photographic records.
- In some cases, the RE offices failed to follow through on the corrective actions recommended by the in-house quality assurance audit team.

To address these concerns, the Office recommended the following:

- MassHighway should hold B/PB accountable for ensuring that FEDRs contain all required information including change order work and contractor deficiencies. B/PB should ensure that staff prepare, review, and approve these reports in a timely manner.
- MassHighway should hold B/PB accountable for consistently recording deficiency report information in proper documents.
- B/PB should maintain the resident engineer drawings according to Project procedure.
- B/PB staff should adequately maintain photographs and the Project should develop better guidelines and procedures for maintaining photographs.
- B/PB should ensure that RE office staff take action to correct any procedural deficiencies identified by internal or external audit staff.

The Office also interviewed B/PB field staff about the filing system. Most staff believed that the system served its intended purpose but was cumbersome and required a large resource commitment. Most staff also stated that the computer-based correspondence control register was impractical, slow, and unreliable. Most field offices maintain a register by hand or in another software package.

The Office's written report of its review acknowledged the Project's initiatives in the field, including a new construction management computer system, modified change order procedures, clarified RE guidelines, and investigation of scanning and portable computer technology for use in the field. However, the Office cautioned the Project that compliance with new

and pre-existing procedures must be maintained or management initiatives will not impact the Project as intended.

> ***"On the basis of your previous recommendations on this subject and upon our own analysis prompted by internal audits, we have reassigned some of the responsibilities for maintaining contract drawings during the construction phase and are in the process of deleting others."***
>
> – Project letter to Office, April 1998

The Project responded to the review in an April 1998 letter. The Project Director stated that the Project agreed with recommendations concerning FEDRs, RE drawings, and quality assurance. The Project stated that it agreed that FEDRs should be completed accurately and in a timely manner and that the Project would continue to ensure that FEDRs are completed on time. In response to a recommendation concerning RE drawings, the Project acknowledged that "all field offices have not been regularly and fully in compliance with our Project Procedures with regard to annotating contract drawings to reflect changes during the construction phase." The Project informed the Office that as a result of the Office's finding, responsibilities for the drawings had been reassigned and Project Procedures would be revised.

The Project did not agree with the Office's recommendations concerning deficiency reports, and stated that Project procedures have been revised to delete the requirement for REs to maintain photographic records.

MMARS Access

In July 1998, the Project asked for technical assistance from the Office in determining the feasibility of inputting payments from the Project directly into the Massachusetts Management Accounting and Reporting System (MMARS). With the Office's assistance, the Project and MassHighway reached an agreement concerning the Project's use of the MMARS system. The Office also recommended that the Project ensure that internal controls comply with MMARS procedures, that Project controls be subject to a periodic independent review, and that the Project request an opinion from the State Ethics Commission on the Project's use of special departmental employees to perform MMARS data entry. In a December 1998 letter, the Office advised the Project that the assistance was complete and offered to provide further assistance if the Project so requested.

LEGISLATIVELY MANDATED REVIEWS

East Boston Toll Facility Construction Contract

Under Section 67 of Chapter 205 of the Acts of 1996, "no construction or contractual agreement for construction [in connection with the ventilation of buildings, utility facilities, and toll booths as part of the CA/T Project] shall begin prior to the review and approval of the Inspector General." The Office initiates its review once the Project provides notification that the Project plans to advertise for bids for a specific contract. The Office then attempts to complete a preliminary review of the contract before the Project advertises the contract. The Office then later completes the review after monitoring the bid process and any design or specification changes that occur during the process.

In September 1998, the Office transmitted its comments pertaining to a statutorily mandated review of the East Boston Toll Facility construction contract. The Office's review of the toll facility contract identified a number of issues.

Cost containment: During this and previous reviews conducted at the Legislature's direction, the Office found inconsistencies between the Project's stated commitment to cost containment and its use – or apparent lack of use – of many of its own cost containment mechanisms. For example, the Project performed no independent value engineering study for this contract, and the Office could find no evidence that the Project performed so-called claims avoidance and constructability reviews for this contract.

Overall cost: In 1993, the Project estimated that construction of the toll facility would cost $5 million; the 1998 cost estimate was nearly $10 million. Also, the Office questioned the need to spend more than $2 million to design a facility that will cost approximately $10 million to build. This is much higher than the approximately eight percent design to construction cost ratio used by the Designer Selection Board for buildings costing between $5 million and $10 million.

Toll canopy cost: The Office expressed concern about the cost of the toll canopy. The canopy has a distinct design that is not ordinarily seen for a toll canopy or roof, but which was incorporated in this instance because of aesthetic considerations. The Office predicted that more money – at least 20 percent of the total contract costs – will be spent to construct this canopy.

Life-Cycle cost analysis: The Project did not prepare a life-cycle cost analysis for the toll facility. Such an analysis should have been done to compare the maintenance costs of various design options as well as to

identify different construction materials that might reduce future maintenance expenses.

Design calculations: An inspection of design calculations relating to wind loads on the toll plaza canopies revealed no evidence that these calculations were reviewed or checked by a senior architect or engineer at the design firm responsible for these calculations. Also, the employee who did the calculations was not a registered engineer in Massachusetts when the calculations were completed. The calculations did not appear to take into account wind against the north side of the canopies or the impact of wind loading of the size and weight of signage on the canopies. The lack of a thorough and complete review of wind load calculation created a potential public safety hazard.

Wind tunnel testing: The Project did not perform wind tunnel testing for the canopy design, claiming that it was not required under the Massachusetts Building Code. The Office disagreed and strongly recommended that the Project revisit that issue.

In response to the Office's review, the Project stated that it remained committed to cost containment and had recently initiated a contract by contract review as part of this commitment. The Project claimed that $1.9 million in savings has been identified from the toll facility contract, and pointed out that the contract was not for a single building, but rather for a number of separate and distinct structures, each with special requirements.

The Project expressed agreement with the Office's concerns about the proposed cost of the toll plaza canopy. The Project subsequently initiated design changes that will save the Project an estimated $1.1 million. The Project asserted that life-cycle cost information was used during preliminary design development. In response to the Office's concerns about design calculations, the Project stated that it is common practice for unregistered but qualified engineers to perform calculations, and that a registered engineer later checked and signed all calculations. The Project stood by its position that the building code does not require wind tunnel testing.

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

In keeping with the multi-agency teamwork envisioned by the Supplemental Plan, the Inspector General agreed to absorb initial administrative expenses and staff support for the Commission. Setting up the new commission – and providing office space and equipment – consumed a significant portion of the Office's oversight budget and staff resources during 1997.

The Commission issued its first *Summary Report* of activities in mid-1998. In a letter transmitting the report to the Legislature, the Inspector General and the other Commission members sounded a cautionary note:

> Fierce competition for state and federal transportation dollars makes the Commission's job more important than ever. The CA/T Project – with its $10.8 billion price tag – is a concern for all taxpayers of the Commonwealth. Without tough cost controls and independent oversight, the price of the CA/T Project will continue to rise. Proactive oversight measures on the CA/T Project are vital to containing costs and saving money. . . . An effective and independent state oversight effort will assure the taxpayers that funds are not unnecessarily spent on the CA/T Project at the expense of other transportation projects throughout the state.
>
> Because of the Legislature's foresight, we now have a unique forum for overseeing this enormously complex and costly public works project. But we can advance beyond our successes to date only with funding to carry us beyond the start-up phase and into the heavy construction phase of the CA/T Project.

The July 1998 *Summary Report* contained a detailed description of the activities of the Commission and its individual members. The following examples were among the initiatives originally contemplated in the Supplemental Plan. Several of these jointly coordinated undertakings spanned 1997 and 1998, while others were not launched until late 1998 and will continue through the end of the Project.

- During discussions of oversight target areas, the agencies discovered that each had an interest in the CA/T Project's insurance program. In 1997, the offices agreed that the State Auditor's Office would take the lead. The Office has provided documents and background information to the State Auditor's Office as needed.
- In 1997, also as part of the start-up effort, the Office and the Attorney General's Office joined forces to help ensure that the Project was effectively pursuing legitimate claims against contractors and consultants through the cost recovery program. During 1998, the Office continued its work, concentrating on a management review of closed cases, while the Attorney General's staff began to examine opportunities to pursue cases that were still under review for possible legal action.
- Early in the life of the Commission, all three members had expressed interest in the contractor payment process, including so-called force accounts (agreements by which a utility or other entity uses its own employees to perform CA/T Project-related work and then bills the CA/T Project for the costs). In 1997, the Commission agencies curtailed work until the United States Department of Transportation Inspector General had completed a review. During 1998, the Auditor and Attorney General deferred to the Inspector General's initiatives in the area with the understanding that aspects of the review could be referred to other member agencies.
- Because of expertise developed during its decade-long monitoring effort and engineering resources, the Office continues to provide 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 providing assistance in policy analysis and management reviews.
- In 1998, a staff person from the Office was assigned to work jointly with the Auditor's staff on the CA/T Project audit effort, thus providing additional resources to ongoing audit initiatives. This sharing of resources and expertise exemplifies the cooperation intended by the creation of the Commission.

Senior staff of the three member agencies continued to meet at least monthly throughout 1998 to discuss the activities of each of their offices, discuss plans for the following month, and share information on cases and other Project activities. Four times in 1998, the Commission invited members of the Legislature to participate in meetings aimed at coordinating oversight activities, exchanging information (including the progress of legislation), and ensuring that the Commission properly included legislative concerns in its agenda.

Unfortunately, the legislative conference committee on the 1998 transportation bond bill did not adopt sections that would have provided additional funding for CA/T Project oversight. As a result, the Inspector General determined that he would continue to pay for the Commission's administrative expenses, including the salary of the Executive Director, from the remainder of the Office's portion of the original $2 million allocated in 1996 for additional oversight by all three agencies. The Inspector General's decision will significantly limit his ability to respond to another legislative charge: to examine the CA/T Project financing plans. It is unclear whether 1999 legislative actions will include additional funding to enable the Office to follow through on the oversight initiatives already launched and to fully respond to CA/T-related legislative mandates.

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Operational Reviews

Qualifying Contractors for Public Building Projects

In September 1997, at the request of several members of the Legislature, the Office initiated a review of three deficient public construction projects undertaken in 1996 by Anchor Contractors, Inc., for the Towns of Carver, Medfield, and Millis. The Towns had identified numerous deficiencies in the contractor's performance on each of the projects, including defective workmanship, inadequate staffing and scheduling, and failure to pay subcontractors. The contractor also failed to complete the projects. By 1998, all three municipalities had invoked the contractor's performance bonds.

> ***"Reforming the current system of qualifying contractors for public building contracts is essential to ensuring that Massachusetts awarding authorities and taxpayers obtain high-quality construction services at competitive prices. . . . Competition among qualified vendors is the key to best-value contracting in construction as well as other areas of public procurement."***
>
> – IG report, August 1998

The Office reviewed the process by which Anchor Contractors was certified by the Division of Capital Asset Management and Maintenance (DCAMM)[2] and then deemed qualified by the three municipalities. The Office also conducted a broader examination of the current system of certifying and qualifying contractors for public building projects.

In August 1998, the Office issued *Qualifying Contractors for Public Building Projects: A Case Study and System Review*. The report revealed that Anchor Contractors had made false statements in its certification application to the DCAMM and Update Statements to the three municipalities. The report also identified weaknesses in the current system for qualifying public building contractors, including inadequate review of contractors' financial condition, overly generous limits on the dollar value of public work contractors may undertake, and understaffing of the Commonwealth's contractor certification function. The report recommended the following reforms:

[2] Chapter 194 of the Acts of 1998 changed this agency's name from the Division of Capital Planning and Operations (DCPO).

- Standards for eligibility to bid on public building contracts should be raised.
- DCAMM's capacity to identify and disqualify ineligible and nonresponsible contractors should be strengthened.
- Legislation protecting awarding authorities and their designers from litigation in connection with contractor performance evaluations should be enacted.
- Effective measures should be instituted to enable awarding authorities to reject unqualified low bidders.

In response to the report, the Commissioner of Capital Asset Management and Maintenance pledged to give all of the Inspector General's recommendations serious consideration in revising the contractor certification forms and procedures.

> ***"All of the recommendations in your draft report for improving the certification process merit serious consideration."***
>
> – Letter from Capital Asset Management Commissioner Palermo to Inspector General Cerasoli, August 1998

The recommendations in the Office's August 1998 report formed the basis of legislation proposed by the Inspector General to reform the contractor qualification system. This proposed legislation, described in detail in the final section of this report, was filed in the 1999-2000 legislative session.

Local Government Procurement Assistance and Enforcement

The Office provides extensive technical assistance to local government officials on Massachusetts public procurement laws. The Office encourages effective and ethical public purchasing by local governments by providing training and professional development; publishing manuals, *Procurement Bulletins*, and other publications; and answering inquiries, complaints, and protests.

Training and Professional Development

The Office administers the Massachusetts Certified Public Purchasing Official (MCPPO) program, established in 1997 and discussed in the next section of this report. The Office designed the MCPPO program to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement. In 1998, the program's three seminars, presented in five different Massachusetts locations, attracted over 600 attendees.

> ***"It is a very real pleasure to hear from local officials about state services that really make a positive impact. You and your staff are to be congratulated on a job well done."***
>
> – Letter from Representative Provost to Inspector General Cerasoli, January 1999

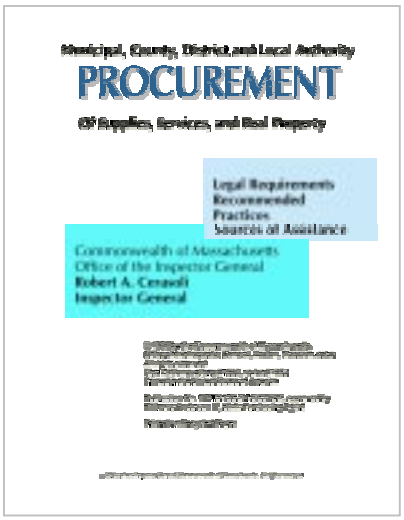
In addition to the seminars provided as part of the MCPPO program, the Office contributed speakers on public procurement laws at conferences and seminars sponsored by the Massachusetts Collectors and Treasurers Association, the City Solicitors and Town Counsel Association, the Massachusetts Firefighting Academy, the Plymouth County Auditors, the Revere Public Schools, and the Town of Wareham. Presentation topics included "An Introduction to M.G.L. c. 30B," "Overview of the Designer Selection and Construction Bid Laws," and "An Introduction to M.G.L. c. 30B and the Compensating Balance Law," as well as specialized topics such as sole-source procurement and the use of proprietary specifications.

Manuals, Procurement Bulletins, and Other Publications

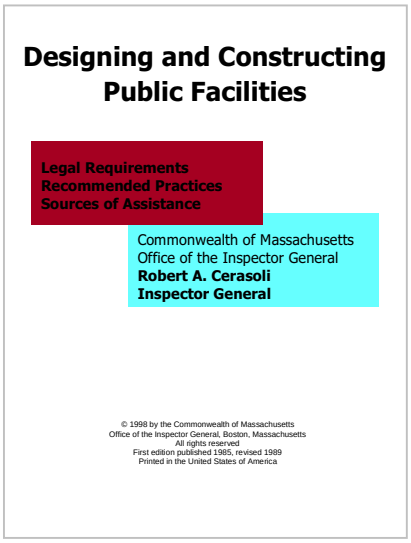
The Office publishes a range of materials designed to educate and inform local procurement officials, provide guidance on complying with state laws

and regulations, and disseminate lessons learned. All of the publications listed in this section are available from the Office's website.

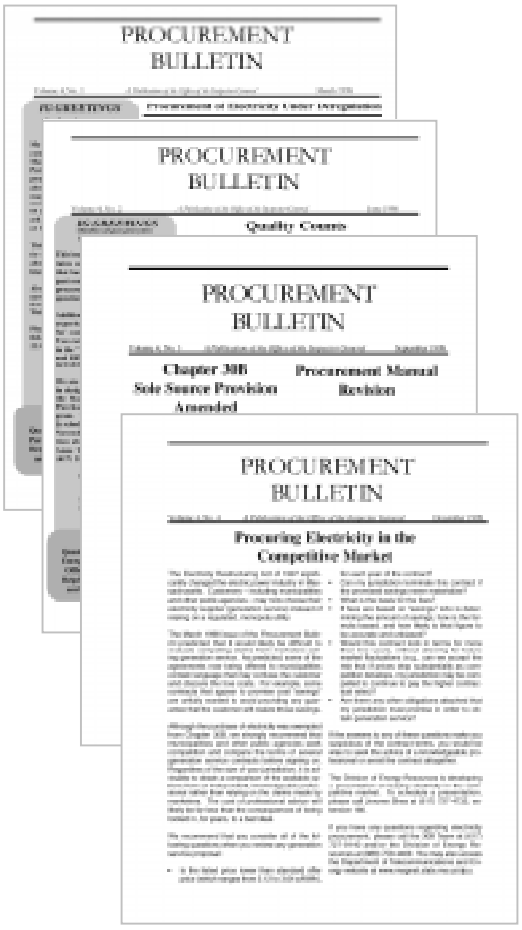
In April 1998, the Office released a revised edition of its manual on *Municipal, County, District and Local Authority Procurement of Supplies, Services, and Real Property*. This manual provides an overview and a step-by-step guide to using M.G.L. c. 30B to obtain best value in procuring supplies and services, disposing of surplus supplies, acquiring and disposing of real property, and procuring small construction-related contracts. This version of the manual, which was first published in 1990 and revised in 1995, reflects the most recent changes to M.G.L. c. 30B. The manual also provides information on avoiding bid protests, the Inspector General's role in resolving bid protests, and treatment of "special cases" such as sole-source acquisitions; emergency procurements; and extension, renewal, and purchase options. Many of the standard forms used in M.G.L. c. 30B procurements are included in the manual appendix. The manual is available on the Internet at no charge; the Office also distributes the manual to participants in the MCPPO program Supplies and Services seminar.



In December 1998, the Office issued a revised version of its manual on *Designing and Constructing Public Facilities*. This manual provides detailed information on the statutory requirements governing procurement of design and construction services; it also offers practical advice for public officials who manage or oversee public construction projects. The Office issued earlier versions of the manual in 1985 and 1989; the 1998 version reflects a decade of change and additional experience in capital project procurement and delivery. The new edition also incorporates recommended best practices, such as effective project planning, value engineering, contract administration, and thorough reviews of bidder qualifications. The appendix of the manual contains standard forms required for Massachusetts public construction contracts. The manual is available on the Internet at no charge; the Office also distributes the manual to



participants in the MCPPO program Design and Construction Contracting seminar.



In 1998, the Office published four issues of the *Procurement Bulletin*, which has a mailing list of 3,600 procurement officials across the state. Launched by the Office in 1994, the *Procurement Bulletin* summarizes current procurement-related news and issues, addresses frequently asked questions about M.G.L. c. 30B, and highlights special topics in procurement. In 1998, for example, the *Procurement Bulletin* included articles on the procurement of electricity in a deregulated environment, construction contractor qualification, best value procurement, and bid protest avoidance tips. In prior years, the *Procurement Bulletin* has highlighted efficient purchasing practices, techniques for maximizing competition, bid procedures for building repair and maintenance, procurement of legal services, and other timely issues. Current and past issues of the *Procurement Bulletin* can be downloaded from the Office's website.

In April 1998, the Office issued a revised edition of *Practical Guide to Drafting Invitations for Bids and Requests for Proposals for Supplies and Services.* The *Practical Guide* includes general tips for writing invitations for bids (IFBs) and requests for proposals (RFPs), a model IFB, and instructions on how to modify that model to create an RFP.

Inquiries, Complaints, and Protests

During 1998, the Office responded to 1,929 inquiries about M.G.L. c. 30B. 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 municipal procurement reviews completed by the Office during 1998.

Town of Wilmington RFP Cancellation – Town's Position Upheld. The Town of Wilmington requested the Office's assistance regarding a municipality's right to cancel an RFP to dispose of real property under M.G.L. c. 30B. The Town had cancelled the RFP and was sued by a disappointed proposer. The Office advised the Town that, in Office's opinion, a municipality retains the right to cancel a real property RFP after the opening of proposals when it determines, in good faith, that cancellation is in its best interest.

Town of Westborough Golf Course Restaurant Lease – Town's Position Upheld. In response to a complaint, the Office reviewed the Town of Westborough's RFP to lease restaurant facilities at the Westborough Country Club. The Town had selected the vendor offering the highest income to the Town, based on graduated lease payments over a five-year period. The Office concluded that while the RFP did not expressly state what payment methods were acceptable, it did not prohibit this payment method. The Office determined that as long as the Town compared prices on an equitable basis, and the lease award was based on criteria set forth in the RFP, the Town had acted within its discretion under M.G.L. c. 30B, §16.

City of Worcester Consultant Services Agreement – Illegal Contract Award. The City requested the Office's opinion regarding the applicability of M.G.L. c. 30B to a consultant services contract. The City had entered into a $144,000 contract with a private company to provide relocation and property management assistance to residents and businesses affected by the Route 146 Connector Project. The City had not conducted an advertised competition. The Office determined that the contract had been awarded in violation of M.G.L. c. 30B.

Town of Holbrook Consultant Services Contract – Deficient RFP Process. The Office reviewed the RFP process used by the Town of Holbrook for preparation of an updated master plan. The Office found that the Town had not complied with several statutory requirements of M.G.L. c. 30B, §6. Specifically, the Town had not documented its rationale for using an RFP process, had not opened price proposals so as to avoid disclosure to the individuals evaluating the proposals, and had not rated the proposals in accordance with the statutory rating scheme. Given numerous substantive statutory violations, the Office recommended that the Town reprocure the contract in compliance with M.G.L. c. 30B, §6.

Town of Scituate Golf Course Management Contract – Deficient RFP Process. In response to complaints, the Office reviewed the Town of Scituate's RFP for management of the Widow's Walk Municipal Golf

Course. The Office found that the Town had rated proposals using evaluation criteria that were not included in its RFP. The Office also found that the Town had accepted $50,000 in cash in lieu of the RFP's requirement for a $100,000 performance bond. The Town had decided to readvertise the RFP. The Office recommended that the Town revise the RFP to include the additional criteria before readvertising.

Blandford Water Department Water Main Installation Projects – No-Bid Contracts. In response to a complaint, the Office reviewed the Town of Blandford Water Department's procurement of construction work for water main installation projects on Gore and North Blandford Roads in Blandford. The Office found that the Department had not advertised for sealed bids for a $11,624 purchase of construction materials, and that the total cost of a water main installation project that was not bid exceeded $17,000.

City of Everett Baseball Field Construction Projects – No-Bid Contracts. At the City's request after the project had been completed, the Office reviewed the City of Everett's procurement of sod, laser-grading services, and sand to construct a baseball field with a total cost of approximately $40,000. The Office found that the City had avoided the M.G.L. c. 30B sealed bidding requirement by separately procuring the sod and laser-grading services from a single vendor, thereby creating the appearance of bid-splitting. The City had also directed the purchase of an additional $22,000 in sod from the same vendor by asking private donors to pay the vendor directly. As a result, the vendor received $31,900 without ever being required to submit a competitive bid. The Office advised the City that to avoid the appearance of improperly steering city work, the City should have advertised for competitive bids for the entire project, and then sought donations to fund a portion of the contract.

Town of Uxbridge Property Rental – Long-Term Property Rental Agreement. In response to complaints, the Office investigated the rental by the Town of a cottage on Pout Pond in Uxbridge. The Office found that the Town, through its Conservation Commission, had been renting the property to a private individual for approximately 15 years, without a written lease agreement, for $75 per month. Three separate appraisals had established the fair market rental value as $450 per month. The Office advised the Town to establish a lease term, rent the property at fair market value, and comply with the public notice requirements of M.G.L. c. 30B, §16(b).

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The MCPPO Program

In 1998, the Office of the Inspector General continued and expanded the Massachusetts Certified Public Purchasing Official (MCPPO) program. Created in 1997, the program promotes excellence in public procurement by fostering:

- 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 seminar was very informative. I learned a lot of things that help me to perform my position at a greater capacity. I am very glad I took advantage of this opportunity."***
>
> – 1998 Public Contracting Overview seminar participant

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. These procurements involve massive expenditures of public funds. The need for government to invest in expertise for this function is especially great now, for the following reasons:

- 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 the deregulated electricity market.
- The public has a negative perception of public procurement because of the defense procurement scandals of the 1980s, 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.

In 1998, the Office offered three 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; **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; and **Design and Construction Contracting**, which provides training in the procurement laws governing public construction in Massachusetts and in effective design and construction contract administration.

Each seminar provides instruction by experts using a variety of teaching methods – including lecture, discussion, and small group exercises – and concludes with a written examination. Seminar attendees benefit from the expertise of the Office's procurement specialists, who answered close to 2,000 inquiries on procurement laws in 1998; they also benefit from the exchange of knowledge and ideas among the seminar participants themselves.

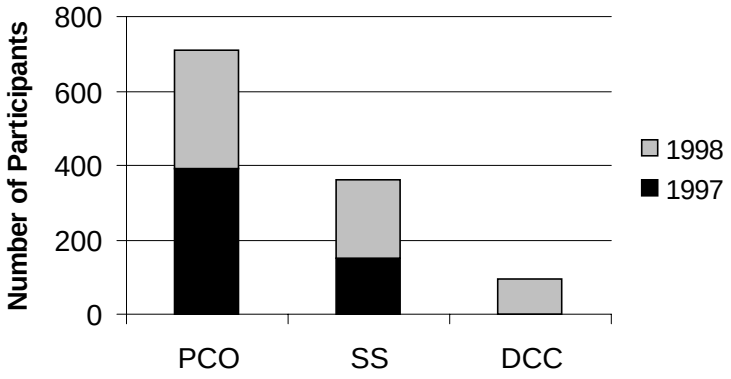
> ***"Part of the value of the course is that the instructors are also actually working in the field and are very grounded in reality. Likewise, I learn a ton from the folks to my right and left in the class."***
>
> – 1998 Supplies and Services seminar participant

During 1998, the Office delivered MCPPO seminars in Amherst, Boston, Chicopee, Hyannis, and Taunton. The program attracted more than 443 participants, some of whom attended two or more seminars. The following table lists the number of seminars delivered and total attendance at each seminar.

Seminar Name	Number	Attendance
Public Contracting Overview	8	318
Supplies and Services	6	209
Design and Construction Contracting	3	96
Total	17	623

As the seminar attendance chart below shows, the number of individuals benefiting from the MCPPO program has increased substantially since the program's inception in 1997. Note that Design and Construction Contracting was first offered in 1998.

MCPPO Seminar Attendance



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 become eligible to apply for various MCPPO designations. In 1998, 67 participants received MCPPO designations: 25 MCPPO, 36 MCCPO for Supplies and Services, and 6 Associate MCCPO for Supplies and Services. 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 1998 the College Credit Recommendation Program of the American Council on Education recommended the MCPPO courses for undergraduate and graduate credit. In 1997 the National Association of State Boards of Accountancy (NASBA) registered the Office of the Inspector General as a sponsor of continuing professional education. Registration by NASBA allows the Office to award Continuing Professional Education (CPE) credits for participation in MCPPO seminars. 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.

In fiscal year 1998, the MCPPO Program earned $25,520 in excess of the Office's retained revenue authorization. The additional money was returned to the General Fund. Current information on the MCPPO program is available at the Office's website.

Effective and Ethical Contracting

DCAMM Emergency Construction Waivers

In response to complaints forwarded by the Office of the Attorney General, the Office initiated a review of emergency construction projects undertaken by the Bureau of State Office Buildings and the Division of Capital Asset Management and Maintenance (DCAMM).[3] In May 1998, the Inspector General issued a report, *Emergency Construction Projects: Review of Selected State Office Building Contracts*. Based on an initial review, the Office identified two major emergency construction projects for in-depth review. These projects were anticipated by state officials long before the required advertising and bidding procedures were waived under the emergency provisions of M.G.L. c. 149. The emergency work entailed the purchase, installation, and repair of cooling equipment in the Saltonstall and McCormack State Office Buildings.

> ***"By investing the necessary resources in proper maintenance of state-owned assets, the Commonwealth would reduce the need for more expensive construction work in the future – and for emergency contracts that do not promote fair competition and cost-effective contracting"***
>
> – IG report, May 1998

The emergency provisions of M.G.L. c. 149 are intended to preserve the health or safety of people or property, and not necessarily to promote fair competition and cost-effective contracting. The procurements summarized in the Inspector General's report illustrated some of the disadvantages of using informal emergency procurement procedures in place of the open, competitive bidding procedures required by M.G.L. c. 149. These contracts were not publicly advertised. Several lacked detailed specifications. In one case, vendors were allowed to submit proposals for a wide variety of financial arrangements whose relative costs could not readily be compared. In another case, the vendor simply received a no-bid contract. It is thus in the Commonwealth's interest to minimize the number and size of emergency procurements of construction materials and services.

The Office's report did not dispute DCAMM's decision to invoke the emergency provisions of M.G.L. c. 149 in 1996 to address the cooling

[3] Chapter 194 of the Acts of 1998 changed this agency's name from the Division of Capital Planning and Operations (DCPO).

problems in two state office buildings. However, it was striking that state officials anticipated these problems months – and even years – in advance, but either could not or did not address them before they became genuine emergencies.

To address the need for improved maintenance of state office buildings and reduce the Commonwealth's reliance on emergency construction contracts, the Inspector General recommended that:

- the Governor and the Legislature ensure that reserve accounts earmarked for preventive maintenance and repairs of state office buildings are adequately funded and managed;
- the institutional and reporting relationship between DCAMM and BSOB be clarified; and
- the maintenance funding and program implementation provisions contained in the House Ways and Means 1999 budget proposal be enacted.

The enacted FY 1999 budget included over $5 million in funding for routine and emergency maintenance projects. An outside section of the budget (Section 290) authorized and directed DCAMM to conduct a survey of scheduled, emergency, and deferred maintenance and repairs. The section also required DCAMM to develop a management plan for maximizing the useful life of the Commonwealth's capital assets.

> ***"We agree strongly with both of your conclusions. The administration has long supported financial mechanisms that provide the discipline to set funds aside for capital repairs in state office buildings."***
>
> – Letter from Secretary of Administration and Finance Baker to Inspector General Cerasoli, April 1998

In his response to the Inspector General's report, the Secretary of Administration and Finance agreed with the report's conclusions and agreed to clarify the lines of authority between BSOB and DCAMM. The DCAMM Commissioner also endorsed the report's recommendations.

Construction Law Reform Task Force

A Construction Reform Task Force convened by the state's Secretary of Administration and Finance held a series of meetings in 1998 to examine the state's construction practices and procedures. The Task Force brought together staff from state agencies and authorities that manage

public works and public building construction projects to develop recommendations for streamlining the design and construction process.

The Office of the Inspector General participated in the Task Force by serving on an Advisory Board that included industry representatives and other interested parties. The Task Force issued a report in May 1998, summarizing its recommendations for change. The Task Force recommendations included changes proposed by the Inspector General to improve the contractor qualification process, institute value engineering reviews on major projects, and provide professional training to public officials managing construction projects.

In the months following the May 1998 Task Force report, the Secretary appointed staff from several state agencies to draft legislative proposals to implement Task Force recommendations. The Office provided the Secretary with extensive comments on these draft legislative proposals. In a November 1998 letter, the Inspector General cautioned the Secretary that:

- a proposal to authorize state agencies to use "off the books" borrowing to fund public construction without legislative approval would undermine the state's system of capital planning and debt management and could jeopardize its credit rating;
- an open-ended proposal to authorize unspecified alternative procurement methods for the award of construction contracts would not ensure fair and open competition;
- a proposal to amend the designer selection law to increase the project dollar threshold for Designer Selection Board (DSB) jurisdiction from $100,000 to $10 million would render the DSB all but irrelevant; and
- providing training for public officials responsible for overseeing public construction projects is an essential component of sound management and the prevention of fraud, waste, and abuse.

The Inspector General's November 1998 letter offered legislative language that would help accomplish the objectives of the Task Force without compromising essential fiscal controls or competitive procurement principles. The Inspector General provided the Secretary with proposed project criteria and procurement procedures for design/build projects, based on models developed by the American Bar Association's Model Procurement Code Revision Project, the American Consulting Engineer's Council, the American Society of Civil Engineers, and the American Institute of Architects.

The Secretary indicated that he would consider the Inspector General's recommendations in finalizing his legislative proposal. At the end of 1998, the Secretary's proposed legislative amendments had not been finalized.

In 1999, the Governor filed House Bill 4288 to amend the state's design and construction statutes. That legislation includes provisions to which the Inspector General had objected, including the authorization of "off the books" borrowing and the open-ended authorization of unspecified alternative procurement methods.

Privatization of Municipal Water and Wastewater Facilities

In 1998, the Office continued to comment on proposed legislation and to provide advice and technical assistance to communities planning to privatize municipally owned water and wastewater facilities. These long-term privatization arrangements transfer management responsibility and control over water and wastewater systems to private companies. Because water and wastewater systems are monopoly utilities, a transfer of control from the public sector to the private sector is a high-stakes venture. The Office counsels public officials to seek independent, professional advice from legal, financial, and technical experts before embarking on a complex undertaking of this magnitude.

Devens Commerce Center Wastewater Privatization Project. In June and July of 1998, the Inspector General registered strong opposition to a House Ways and Means amendment to Senate Bill 2029, which amended the enabling act that created the Devens Enterprise Commission. The House Ways and Means amendment, which was submitted by the Massachusetts Development Finance Agency (MDFA), would have authorized the Government Land Bank, an instrumentality of the Commonwealth, to obligate public funds to repay the entire cost of developing a sewerage and wastewater system, regardless of whether or not the system is actually constructed or operated.

> ***"This open-ended authorization would permit the Government Land Bank to enter into contracts that expose the state's taxpayers to unjustifiably high financial risks."***
>
> – IG letter to Senator Durand, June 1998

The amendment would also have waived all public bidding laws and other fiscal safeguards for the sewerage and wastewater system. In the Inspector General's view, the project might be a legitimate candidate for alternative construction methods; nevertheless, the legislation should contain procedures that ensure open, fair competition.

The Office met with MDFA officials to discuss the Inspector General's concerns with Senate Bill 2029 and to recommend amendments that would satisfy these concerns; however, the MDFA chose not to adopt these recommendations. Moreover, information provided by the MDFA indicated that there was a substantial risk that taxpayers could end up paying for an underutilized facility; at the time, Devens Commerce Center generated only a small portion of the wastewater capacity that the MDFA had outlined for the privatized facility. Even if other dischargers in the region eventually became sources of additional wastewater, it was not clear that the additional proposed capacity was really needed. According to MDFA officials, private firms had expressed considerable concern about the lack of a revenue stream to pay for the proposed facilities. Although planning and assessment were clearly warranted before any final commitment to the project was made, the proposed legislation did not provide for planning and assessment.

In August 1998, the Governor signed Chapter 266 of the Acts of 1998, which did not incorporate the Office's recommendations.

Greater Lawrence Sanitary District Procurement. The Greater Lawrence Sanitary District owns and operates a wastewater facility that serves five municipalities. In 1997, the Office assisted the District in developing a competitive procurement process for a contract to design, build, and operate an on-site biosolids processing facility. In 1998, the District evaluated the six proposals it received and selected the proposal it determined to be most advantageous. A disappointed competitor contacted the Office, questioning the fairness and legality of the District's selection process. The Office reviewed the District's proposal evaluation process and concluded that the District's actions were consistent with its legislative authorization and with fair competition. *The District awarded the contract in February 1999.*

Springfield Water and Sewer Commission Request for Proposals. The Office worked closely with the Commission in developing a request for proposals (RFP) that would ensure genuine competition and protect the interests of its ratepayers in the long-term privatization of its wastewater system. In an October 1998 letter, the Office provided guidance on drafting evaluation criteria that would provide clear standards to proposers and evaluators as well as an accountable selection process. The Commission modified its RFP in response to the

Office's comments. In October 1998, the District issued the RFP, with a proposal submission deadline of March 2, 1999.

Refinancing of Certificates of Participation for the Plymouth County Correctional Facility

In November 1998, the Plymouth County Sheriff requested the Inspector General's comments and recommendations on the Plymouth County Correctional Facility Corporation's plans to refinance the original certificates of participation for the 1,140-bed Plymouth County Correctional Facility and to build a new administration building and warehouse with a portion of the proceeds. The Corporation had estimated that the proposed refinancing could generate savings of between $21 million and $24 million. The Corporation reportedly intended to use between $11 million and $14 million for the construction of a new administration building and warehouse, to allocate $5 million to a maintenance and repair fund for facility-related costs,[4] and to allocate $5 million to reduce debt service costs to state taxpayers.

Chapter 425 of the Acts of 1991 authorized Plymouth County to enter into a long-term financing lease to fund construction of a new correctional facility for the County. The County created the Plymouth County Correctional Facility Corporation to facilitate the design, construction, financing, and leasing of the new facility. The sale of certificates of participation totaling $11,535,000 was completed in May 1992. This alternative form of borrowing was based on an agreement between the County and the Commonwealth under which the Commonwealth pledged to fund the County's lease payments to the Corporation of the debt service on the certificates of participation over their 30-year term. Over the 30-year financing period, these payments will cost state taxpayers more than $303 million. The Inspector General's July 1997 report on the project, *Lease-Purchase Financing of a Design Build Project: The Plymouth County Correctional Facility*, criticized the project as wasteful and risky. Although the facility's small size and use of modular construction techniques were conducive to lower construction costs, Plymouth County officials concluded that the facility's administrative space was inadequate shortly after the facility began operations.

In a December 1998 letter to the Secretary of Administration and Finance and the Plymouth County Sheriff, the Inspector General noted that the proposed refinancing would increase the Commonwealth's overall debt obligations and that the Commonwealth's previous failure to exercise sufficient oversight and control of the original financing agreements had limited the Commonwealth's options with respect to the proposed

[4] Although the original financing agreement established a Capital Repair and Replacement Fund, this account was never funded.

refinancing. The Inspector General recommended that the Executive Office for Administration and Finance (EOAF) take steps to protect the interests of state taxpayers at every stage if the EOAF decided to authorize the proposed refinancing plan. Specifically, the Inspector General recommended that:

- The Division of Capital Asset Management and Maintenance review and certify the study prepared by the Corporation for completeness, reasonableness, and compliance with existing program guidelines for state correctional facility projects;
- The EOAF ensure that the refinancing agreements guarantee savings to state taxpayers of not less than $5 million and a maintenance and repair fund of not less than $5 million;
- The Corporation select a qualified financial advisor that is not engaged in investment banking services;
- The EOAF review and approve all transaction fees as well as the final terms of the financing;
- The Corporation undertake a competitive designer selection process for the proposed project and that the EOAF approve the final selection;
- The Corporation schedule two value engineering reviews of the project study and design;
- The Corporation bid the proposed construction work on the basis of 100 percent complete plans and specifications and award the construction contract to the lowest eligible and responsive bidder; and
- The Corporation ensure that the construction is overseen by a qualified professional construction manager.

> ***"[I]f the Executive Office for Administration and Finance (EOAF) decides to authorize the refinancing plan proposed by the Corporation, EOAF should take steps to protect the interests of state taxpayers at every stage."***
>
> – IG letter to Plymouth County Sheriff Forman, December 1998

In a March 1999 letter, the Chief Development Officer and Assistant Secretary for Capital Resources advised the Inspector General that the Administration had imposed a series of conditions on the Corporation's refinancing plans. The conditions were fully consistent with the Inspector General's December 1998 recommendations.

Update: The Northeast Solid Waste Committee Project: Planning and Development of a Public-Private Partnership

In December 1997, the Inspector General issued a report entitled *The Northeast Solid Waste Committee Project: Planning and Development of a Public Private Partnership*. The report detailed the history of a project undertaken in the 1970s and 1980s to design, build, and operate an incinerator to dispose of municipal solid waste for the 23 Massachusetts cities and towns that make up the Northeast Solid Waste Committee (NESWC). As of the end of 1997, the NESWC communities were embroiled in a dispute with Massachusetts Refusetech, Inc., (MRI), the owner and operator of the incinerator, over the communities' obligation to pay for new air pollution controls.

In 1998, the NESWC communities rejected MRI's demand that the communities agree to pay more than $48 million. MRI subsequently brought suit in Superior Court, seeking an order requiring the communities to pay the full cost of the air pollution controls. In June 1998, the Superior Court ruled that the terms of the contract between the NESWC communities and MRI requiring the communities to pay for improvements that would primarily benefit MRI violate the Massachusetts Constitution and public policy. On these grounds, the Superior Court refused to order the communities to pay the full cost of the air pollution controls. MRI's appeal of this ruling was rejected by the Massachusetts Appeals Court.

Following the Superior Court ruling, the communities and MRI negotiated an agreement that called for MRI to pay half of the cost of the air pollution controls. The communities continued to dispute MRI's claim that the controls would cost $48 million. This dispute was subsequently submitted to an arbitrator who determined that the fair and reasonable cost of the required controls was approximately $34 million.

Financial Oversight

Springfield Technical Community College Assistance Corporation Contracts

Pursuant to Chapter 185 of the Acts of 1995, the Office reviews and comments on contracts that will exceed $100,000 to be awarded by the Springfield Technical Community College Assistance Corporation (STCCAC). STCCAC is supported by public funds, but is exempt from state bidding statutes. In reviewing STCCAC's proposed contracts, the Office examines the competitive procurement procedures followed as well as the contract terms.

In 1998, the Office worked closely with STCCAC to develop standard contract terms for architectural and engineering services and for construction work on STCCAC projects. In a February 1998 letter to STCCAC, the Office provided an extensive critique of proposed terms for a contract between STCCAC and an architectural firm selected to design renovations for an STCCAC facility. The Office provided recommended language for that contract and for future design contracts to help protect the Commonwealth's interests in STCCAC projects. The STCCAC adopted the majority of the Office's recommendations and incorporated these changes into its design contract.

In March 1998, the Office recommended extensive changes to a draft construction contract for renovations at a STCCAC facility. The Office provided the STCCAC with standard contract terms that help protect the owner's interests in a construction project. In May 1998, the Office recommended a series of changes to a proposed property management agreement submitted by STCCAC. These changes were aimed at clarifying the responsibilities of the parties and the compensation terms. Finally, in a September 1998 letter, the Office recommended extensive changes to a draft construction contract submitted by the STCCAC.

Update: Massachusetts Public Health Biologic Laboratories

During 1998, the Office continued to support the efforts of the Office of the Attorney General and the University of Massachusetts to recover the State's patents on the drug Respiratory Syncytial Immune Globulin-Intravenous ("RespiGam") and to return a greater share of the royalties on this drug and subsequent generation products to the Commonwealth. Chapter 334 of the Acts of 1996 had mandated the transfer of the Massachusetts Public Health Biologics Laboratories from the Department of Public Health (DPH) to UMass, effective January 1, 1997, in response to the findings of the Office's investigation of certain activities and practices

of the Biologics Laboratories. These findings were detailed in a December 1996 report issued by the Inspector General: *A Report on Certain Activities and Practices of the Massachusetts Public Health Biologics Laboratories*.

The Office's report revealed how the Director and Deputy Director of the Biologics Laboratories devised and executed a plan to enrich themselves by misappropriating the Commonwealth's exclusive right to a patented process related to the production of RespiGam developed by state employees at the Biologics Laboratories. The two officials assigned exclusive rights to the process to the Biologics Laboratories' fiscal and administrative agent, the Massachusetts Health Research Institute, Inc. (MHRI), in return for royalty rights for themselves potentially worth $6.3 million. By falsely claiming ownership of the invention, MHRI stood to gain a projected $4.2 million in royalty rights. Agreements executed by MHRI and the Director and Deputy Director of the Biologics Laboratories acting on behalf of the Commonwealth provided that MedImmune, a private company, would receive most of the profits from the drug.

> ***"The sky-high royalties the scientists obtained through secretive side deals will mean less payback for taxpayers who underwrite the research of government agencies."***
>
> – Spotlight Team, *The Boston Globe*, April 1998

MHRI's licensure of RespiGam to MedImmune gave this start-up biotech company a monopoly on drugs to combat Respiratory Syncytial Virus (RSV). In 1998, MedImmune ceased production of RespiGam after the Federal Food and Drug Administration's approval of a potentially more lucrative, second generation anti-RSV drug, Synagis. Under the terms of the existing license agreement, MHRI, the Director and the Deputy Director of the Biologics Laboratories, and; to a lesser extent, the Commonwealth, receive royalties on the new product in lieu of RespiGam royalties.

In February 1998, the Office notified UMass that any proposed financial settlement of this case involving payments of royalties to the Director and Deputy Director of the Biologic Laboratories would require an act of the Legislature in order to be effectuated.

An April 1998 *Boston Globe* article, part of a three-part series on "Public Research/Private Profit," confirmed the findings of the Office's 1996 report that the Commonwealth's patented invention had been assigned without authorization to a private organization. The report recommended that the Attorney General assert the Commonwealth's right to the patent on the

technology and the corresponding royalties that had been improperly retained by the two doctors and two private companies.

In August 1998, following the failure of settlement efforts, the Attorney General filed civil litigation in Suffolk Superior Court against the two doctors to recover patent rights and royalty payments from the sale of drugs developed at the Biologic Laboratories. As of December 1998, the Commonwealth was preparing its case for trial.

Also in response to information revealed in the Office's 1996 report, the state Comptroller, assisted by the State Auditor, conducted a review during 1997 and 1998 that resulted in MHRI's termination as the fiscal and administrative agent for the Biologics Laboratories. The review also led to the transfer of other programs, previously managed by MHRI, to either DPH or UMass. The Comptroller had identified 38 programs, 19 of which were classified as federal grants and 19 classified as retained revenue expenditure accounts that should have been subject to state control through the appropriation process by the Legislature or as expendable trusts established by the Legislature. The Comptroller subjected these programs to review by outside accounting firms to determine the residual balances that should be transferred to DPH or UMass. In May 1998, the Comptroller notified the Office that the financial accounting and reporting work undertaken to transfer certain activities from MHRI to DPH and the UMass was essentially complete.

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Real Estate Dealings

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

Land Transfer to the Campanelli Framingham Trust

Chapter 184 of the Acts of 1997 authorized the Division of Capital Asset Management and Maintenance (DCAMM)[5] to transfer a parcel of land in Natick to the Trustees of Campanelli Framingham Trust. The Act required the property to be conveyed at full and fair market value based on an independent appraisal, taking into consideration the restrictions on its use for open space and its assemblage value to the grantees. The expenses incurred to demolish the existing structures and to loam and seed the site would be deducted from the market value to determine the purchase price.

The Office reviewed three appraisals of the subject property consisting of approximately 11 acres of state land located in the town of Natick. All three appraisal firms considered a $4,050,000 cost for the construction of structured parking when estimating market value. Two firms calculated the value of the land at the market value less the cost of the structured parking, which yielded estimated values of $2,900,000 and $1,620,000. However, a third firm estimated the value of the land to be $3,380,000. The third appraisal observed that the structured parking built on the land made the development more attractive and that the market adjusts for the existence of structured parking by adding 50 to 60 percent of the cost of the parking's construction. The Office approved the third firm's appraisal.

Update: Transfer of Property to the Boston Renaissance Charter School

In January 1998, the Chairman of the Boston Renaissance Charter School wrote to the Office objecting to the Inspector General's rejection in November 1997 of an appraisal of 250 Stuart Street. Section 304 of Chapter 43 of the Acts of 1997 authorized the Commonwealth to sell 250 Stuart Street to the school at full and fair market value, less the value of any improvements made by the charter school, based upon the average of three independent appraisals conducted at the direction and expense of

[5] Chapter 194 of the Acts of 1998 changed this agency's name from the Division of Capital Planning and Operations (DCPO).

DCAMM. The Office had rejected one appraisal's methodology, which assumed that the building would require a full renovation in order to sustain any program of highest and best use. The other two appraisals stated, and the Office concurred, that the tenant had undertaken extensive renovations of the property and that the highest and best use of the property was continued use as a school. Under the legislation, the Inspector General was required to review and approve the appraisals and their methodology and to file a report with DCAMM and the Joint Committee on State Administration.

An additional appraisal was completed in 1998 to replace the appraisal rejected by the Office. The Office agreed with DCAMM's methodology of averaging the three appraisals of the building shell in order to establish a fair and reasonable price for the building. DCAMM and the Office agreed that it was unnecessary to calculate a market value for the tenant improvements because, in effect, that amount had already been deducted from the purchase price by the appraisers. DCAMM's methodology recognized that the value of the property to the school was the value of the building shell plus the actual cost of the tenant improvements. Accordingly, the Office accepted the three independent appraisals of the building shell at 250 Stuart Street, which were $7,000,000, $7,489,732, and $9,500,000. The average of these three appraisals was $7,996,577, which the Office agreed should be the purchase price for the parcel by the school.

Update: Belchertown Land Conveyance to the Belchertown Economic Development Industrial Corporation

Chapter 353 of the Acts of 1996 required the Inspector General to review an appraisal, proposed release deed, and other documents relevant to Parcels A, B, C, D, and E on a plan entitled "Plan of Land in Belchertown." The act also authorized the Commissioner of DCAMM to sell, lease, or otherwise convey parcels for "full and fair market value." In October 1998, the Office approved the conveyance of three parcels, Parcels B, D, and E, to the Belchertown Economic Development Industrial Corporation for nominal consideration. In light of an amendment to Chapter 353 of the Acts of 1996 that altered the determination of the parcels' sale price, the Office concluded that substantial asbestos abatement and demolition costs offset the value of the parcels.

In February 1997, the Office had expressed concerns about DCAMM's conveyance of Parcels A and C to the Town of Belchertown. However, after the amendment to Chapter 353 of the Acts of 1996, the Office approved the sale in 1997.

Update: Wilbraham Land Conveyance

Chapter 175 of the Acts of 1997 required the Inspector General to review and approve an appraisal of the Wilbraham Game Farm. The Office had repeatedly opposed legislation in 1996 and 1997 that would have authorized and directed the Town to transfer the property to a private entity, the Wilbraham Pheasant Farm Trust. The 1996 and 1997 bills also sought exemptions from statutory requirements mandating open, fair competition for real property transactions by cities and towns. The Legislature subsequently enacted Chapter 175 of the Acts of 1997, authorizing the competitive disposition of the Wilbraham property. The legislation incorporated some safeguards recommended by the Office, including an independent appraisal of the market value of the property requiring the Inspector General's review and approval.

In August 1998, the Office rejected the appraiser's determination of the full and fair market value of $220,000 and concluded that the appraiser's methodology was flawed. In response to the Office's concerns, the appraisal was adjusted. In November 1998, the Office accepted the adjusted appraisal of $250,000.

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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 1998 the Office commented on hundreds of pieces of legislation. This section highlights some of the major legislative work of the Office during 1998.

Privatization of Route 3

In May 1998, the Inspector General wrote to the Committee on Transportation expressing reservations about House Bill 5487, which would authorize the state's Executive Office of Transportation and Construction to privatize a 21-mile section of state highway Route 3 between Burlington and the New Hampshire border for up to 40 years. While the Inspector General did not oppose the primary goal of the legislation – to use alternative construction methods for $150 million in highway improvements – the Inspector General raised concerns about the use of a sale-leaseback transaction to finance both the improvements and the operation and maintenance of the highway. The Inspector General noted:

> The rationale for this financing method boils down to this: it allows state lawmakers to approve another major capital project while maintaining the fiction that they are constraining state borrowing. The pretense that the sale-leaseback obligation is not debt merely camouflages the impact of this project on state taxpayers in years to come.

The Inspector General also pointed out that House Bill 5487 lacked basic procurement and contracting safeguards to ensure full and fair competition for the privatization contract, to ensure that the state retains a reasonable measure of control over the financing costs, and to protect the state's vital interests in controlling the highway system.

"I do not question the importance of the Route 3 North project. I do, however, have serious concerns about the rush to seal a novel financing deal without adequate financial analysis and without candid disclosure of its likely financial impact."

– IG letter to Committee on Transportation, May 1998

To address these concerns, the Office proposed four amendments to the proposed legislation. The first amendment would ensure that the project's entire package, including bond counsel and financial advisory services were competitively bid. The second amendment would require a periodic review of the project by an independent value engineering expert to ensure that the state retains a reasonable measure of control over project costs. The third amendment would prohibit inordinate profit by the developer by establishing a contractually agreed-upon profit margin, whereby the state would share in excess revenues generated by third-party leases. The final amendment would create a three-person unit within the Office to review and oversee the project.

In July 1998, a new draft of the legislation, House Bill 5720, was substituted for the original bill. The new draft incorporated the first three amendments proposed by the Office. The bill was not enacted in the 1998 legislative session.

Authorization of MWRA Lease-Leaseback Transactions

In April 1998, the Inspector General wrote to the Senate Counsel to oppose a bill that would have allowed the Massachusetts Water Resources Authority (MWRA) to enter into lease-leaseback arrangements with investors seeking to reduce their taxable incomes. In return, the MWRA would receive a one-time cash infusion of millions of dollars. Lease-leaseback is primarily a financial transaction in which title and ownership remain with the original owner. The Inspector General's letter noted that permitting such negotiated deals would create opportunities for favoritism, abuse, and corruption. In July 1998, the Office sent a second letter to the Senate, strongly recommending that the Senate take no further action on this legislation. The Inspector General's July 1998 letter stated:

> This bill would set the stage for the MWRA to become the first public tax-exempt water and sewer district in the United States to sell multi-million dollar federal tax breaks to industry in exchange for cash, via a "lease/leaseback" transaction. This Office is concerned that passage of this legislation will generate ill will on the part of the federal government toward the Commonwealth at a time when our congressional delegation is battling for federal funding for major capital projects, including the Boston Harbor project and the Central Artery project. . . .
>
> Reduced to its essentials, the proposed arrangement would amount to the MWRA selling $15 to $20 million in federal and state tax breaks to private investors, in exchange for a one-time cash infusion of $5 million, paid to the MWRA by the entity getting the tax breaks.

> Leaseback financing has been the subject of continuing controversy between the federal government and the leasing industry since the 1980s. On at least four occasions between 1984 and 1996, the federal government has passed laws or regulations expressly intended to prevent avoidance of tax by parties participating in multiple-party lease financing transactions. The leasing industry has responded in each instance by developing a variation of the previous leaseback structure intended to create a variation of the previous tax shelter.

The Inspector General noted that while bona fide business purposes exist for taxpayers to lease business property, leaseback transactions effectuated solely to avoid taxes are improper. In such cases, the federal government views such transactions as shams meant to disguise a tax avoidance scheme. In order for the MWRA to trigger the intended federal tax breaks for the lessor-investor under the proposed transaction, the MWRA Board of Directors would have to represent in good faith to the U.S. Internal Revenue Service that the proposed leaseback was not just a paper transaction principally intended to facilitate tax breaks. Based upon the Office's review of material provided to the Office by the MWRA, and the statements made by MWRA officials to the Office, the Office concluded that the MWRA was principally interested in creating and selling tax breaks.

"[T]his Office concludes that the MWRA is principally interested in doing what the IRS has tried to prevent, creating and selling tax breaks."

– IG letter to Senate President, July 1998

The Inspector General's letter also pointed out that transaction fees associated with leaseback financing have sometimes been astronomically large. Reports of a pending lease-leaseback deal involving the Chicago Transit Authority indicated that underwriters and bond counsel would share $9 million in fees. In addition, financial advisors receive additional fees, sometimes in the hundreds of thousands, or even millions, of dollars. The fees in the proposed MWRA deal would likely exceed a million dollars, for the advisor and attorneys alone.

The Inspector General recommended that the State Senate take no further action on the legislation. The Inspector General pointed to the credit risk posed to the MWRA:

> This Office is also concerned that the Authority will assume the credit risk associated with the defeasance investments, integral to the proposed transaction, and

otherwise subject itself to credit risk due to the financing arrangement overall.

The Inspector General also reiterated his long-standing position that selection of underwriters, financial advisors, and counsel should be conducted in an open, competitive, arms-length manner, with the interests of the ratepayers in mind. The legislation, as drafted, did not include such safeguards. House Bill 3680 was not enacted in the 1998 legislative session.

In March 1999, the U.S. Treasury Department issued a ruling effectively prohibiting tax exempt entities like the MWRA from engaging in financial transactions, such as lease-leaseback arrangements, that are primarily designed to enable private investors to avoid payment of their federal income taxes.

State Design and Construction Project Exemptions

In April 1998, the Inspector General sent a letter to the Chairman of the Senate Committee on Ways and Means opposing Senate Bill 2143 and House Bills 5390 and 5427. The bills would have exempted three state projects from the jurisdiction of the Division of Capital Asset Management and Maintenance (DCAMM)[6], as well as from certain laws designed to ensure proper management of public building projects. The Inspector General noted that there was no public policy justification for exempting public building projects from the jurisdiction of DCAMM or of the laws governing public building projects. DCAMM was established in 1980 as the Commonwealth's professional construction and real estate agency in response to the widespread fraud, waste, and abuse that the Ward Commission uncovered.

> ***"Transferring responsibility for public building projects from [DCAMM] and granting exemptions from Chapter 149 is unnecessary and contrary to the best interests of the Commonwealth."***
>
> – IG letter to Senate Committee on Ways and Means, April 1998

In April 1998, the Governor signed Chapter 99 of the Acts of 1998, which incorporated the Office's recommendations on House Bill 5390 and Senate Bill 2143. In August 1998, the Governor signed Chapter 289 of the Acts of 1998, which did not incorporate the Office's recommendations on House Bill 5427.

[6] Chapter 194 of the Acts of 1998 changed this agency's name from the Division of Capital Planning and Operations (DCPO).

Road Tax Evasion Enforcement Program

In June 1998, the Inspector General sent a letter to the Chairman of the House Way and Means Committee supporting an appropriation in the Senate Ways and Means FY 1999 budget of $1,000,000 in the Department of Revenue's line-item for a Road Tax Evasion enforcement program to crack down on those who improperly register their personal and business vehicles out of state and consequently deprive the Commonwealth of tax revenue. The Inspector General's 1997 report, *A Study of Improper Motor Vehicle Registrations*, exposed the issue of tax evasion in registrations of motor vehicles. The report substantiated that extensive fraud has occurred through improper out-of-state registrations and estimated that the fraud cost the Commonwealth and its cities and towns $55 million annually in lost fees and tax revenues. The Office proposed legislation in both the 1997 and 1999 legislative sessions to improve compliance with motor vehicle excise taxes and sales or use taxes. The Governor vetoed the $1,000,000 line item in July 1998.

False Claims

In November 1998, the Inspector General sent a letter to the Office of the Attorney General expressing strong objections to Senate Bill 2150 and House Bill 4164, *Acts Relative to False Claims*. As written, the acts would dramatically change the present reporting landscape, seriously impeding the Commonwealth's ability to effectively detect and prevent false or fraudulent claims against the Commonwealth.

The bills would diminish the ability of the Office of the Inspector General, the Auditor, and the House Post Audit and Oversight Bureau to pursue their obligation to protect taxpayer interests and fulfill their statutory responsibilities by offering a larger monetary reward for reporting false and fraudulent claims against the Commonwealth to the Attorney General. A whistleblower cooperating as a result of information provided in a legislative, administrative, Auditor, or Inspector General hearing, audit, or investigation would stand to receive less monetary reward than if he or she had reported knowledge of the activity to the Attorney General.

The legislation also failed to properly define the process by which a civil false claims investigation would be transformed into a criminal investigation. In the Inspector General's view, there was serious potential for criminal false claims investigations to be compromised by the proposed civil investigative demand power of the Attorney General. In addition, the legislation created potential conflicts of interest for the Attorney General, who is both the Commonwealth's chief law enforcement officer and the statutory representative of the Commonwealth's agencies in civil matters. The bill was not enacted in the 1998 legislative session.

Transportation Bond Bill

During the 1997-1998 legislative session, the Office reviewed the transportation bond bill. This bill was commonly referred to as the "MBTA Bond Bill" because it addressed bond authorization requirements of the Massachusetts Bay Transportation Authority. The Inspector General commented on three versions of the bill: House Bill 4987 of 1997, and House Bills 5432 and 5661 of 1998.

House Bill 4987 of 1997. In November 1997, the Inspector General opposed certain sections of House Bill 4987. House Bill 4987 would have authorized an additional $500 million in short-term borrowing for the Central Artery/Tunnel Project and ratified an agreement between the MBTA and the Executive Office of Administration and Finance. The agreement included payment of $25 million annually for 40 years to MassPike for operations and maintenance costs following the transfer of the final segment of the CA/T Project. In addition to bond authorization requirements of the MBTA, the bill proposed significant changes in previously established public policy, including authorizing the MBTA, MassHighway, MassPike, and MassPort to abandon the Commonwealth public bid laws and use the alternative methods of procurement and construction of their choice on certain projects. The Office objected to the wholesale grant of power to any entity, including authorities, to dispense with essential statutory safeguards at will. The Office recommended amended language that would have allowed for carefully planned, controlled, and evaluated experimentation with alternative methods of procurement and construction, conducted in consultation with the Office. The bill was not enacted in the 1998 legislative session. However, several of the bill's sections concerning financing for the Central Artery/Tunnel Project were incorporated into legislation that was enacted.

House Bill 5432 of 1998. A subsequent version of the bill, House Bill 5432, incorporated much of the amended language the Office recommended to the Joint Committee on Transportation. In May 1998, the Office sent a letter to the Legislature opposing sections of the bill that would have significantly weakened contractor certification requirements for bidders on public building projects in Massachusetts. The bill would have based each applicant's single project limit and aggregate rating limit on the applicant's bonding capacity without review of other factors – such as prior experience and performance – that must be evaluated under the current contractor certification system administered by the Division of Capital Asset Management and Maintenance. The Office worked with the Construction Reform Task Force to develop recommendations for improving the current system by which contractors are certified.

The Inspector General also commented on a revision to the House Bill 5432, which would have combined incompatible procurement methods.

The bill would have authorized the MBTA to use alternative methods of procurement on six pilot projects. The possible alternatives included A+B bidding, design-build, and design-build-operate. The section later required the MBTA to use a construction manager at-risk for each of the projects. While the MBTA could use a construction manager as its agent on any such project, the construction manager at-risk model is itself an alternative method that is incompatible with the other alternatives identified in the section. The Office offered assistance to the Committee in developing a workable design of a pilot project to test alternative methods. The Inspector General endorsed the provisions of the bill that would release funds already approved by the Legislature for additional independent oversight of the CA/T Project. The bill was not enacted in the 1998 legislative session.

House Bill 5661 of 1998. In July 1998, the Inspector General commented on another version of the bill, House Bill 5661. The Inspector General again objected to sections of the bill that would have significantly weakened contractor certification requirements for bidders on public building projects in Massachusetts. Additionally, the Inspector General recommended striking a new section of the bill that would have confused matters by making a major change in the contractor certification law for a period of less than one year.

The Inspector General reiterated his objection to a section of the bill that established a confusing requirement for an alternative method. The Inspector General also objected to language that would have required the Inspector General to evaluate and rank respondents to a request for proposals issued by the MBTA under the pilot project. In the Inspector General's view, an independent oversight official should not be responsible for participating in the MBTA's evaluation and selection process. The bill was not enacted in the 1998 legislative session.

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Legislative Recommendations: 1999 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 1998 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 1999 legislative session. (The pending proposals filed by the Inspector General for the 1999 legislative session will retain their original bill numbers and status at the outset of the 2000 legislative session under Joint Rule 12B of the Legislature's permanent Joint Rules for 1999 and 2000.)

Procurement Reform

The Inspector General's legislation would raise the existing dollar thresholds in M.G.L. c. 30B, which was enacted in 1990. The dollar threshold for contracts requiring advertised competition using sealed bids or proposals would increase from $10,000 to $25,000. The dollar threshold for purchases requiring informal competitive quotations would increase from $1,000 to $5,000. The $10,000 limit on sole-source procurements would be raised to $25,000, and the 10 percent limit on contract increases would be raised to 25 percent. The Inspector General's legislation would also make a number of procedural changes to M.G.L. c. 30B that are designed to clarify and simplify local procurements. These threshold increases and procedural changes will assist local procurement officials in conducting efficient, best value procurements in compliance with the law.

House Bill 83, Amending certain public bidding laws

Construction Reform

This proposal would reform public construction by raising dollar thresholds for bidding requirements, strengthening the contractor prequalification system, introducing value engineering to save money on larger projects, and establishing training standards for public officials responsible for contract oversight. Specifically, this proposal would raise bidding thresholds for public works construction projects and building projects to $50,000 and $100,000, respectively. The current law prohibiting a single designer from performing both the study and the final design on a state project would be repealed, and a value engineering process would be

implemented for projects that will cost more than $1,000,000. The proposal would also shore up the state's contractor prequalification system by giving awarding authorities access to information about contractor performance and by extending qualified immunity to individuals responsible for preparing contractor evaluation forms. Training and certification would be required for owner's representatives who oversee construction projects that involve more than $1 million in state funds. This bill includes the Inspector General's recommendations outlined in his August 1998 report entitled *Qualifying Contractors for Public Building Projects: A Case Study and System Review*.

House Bill 84, Providing for reform in public construction

Motor Vehicle Registration

The Inspector General filed legislation to amend motor vehicle registration procedures in order to improve state tax compliance by individuals and businesses that improperly register their vehicles in another state or in another city or town. This bill establishes criteria to determine whether the owner of a motor vehicle has claimed Massachusetts as his or her principal domicile in order to qualify for an entitlement or benefit reserved for Massachusetts residents. The bill would also require all vehicles operated upon the roads of the Commonwealth to have compulsory motor vehicle liability insurance equal to limits established for Massachusetts motor vehicle owners. The bill provides for an amnesty program during which all penalties customarily imposed for failing to pay motor vehicle excise taxes, sales taxes, and improperly registering a motor vehicle would be waived.

House Bill 85, Improving tax compliance associated with the registration of motor vehicles

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 Bill 86, Technical change regarding the Office of the Inspector General

Real Estate Transactions

The Inspector General filed legislation to establish open and accountable procedures for the acquisition and disposition of real property by independent State authorities. State authorities that currently are under virtually no statutory rules for conducting their real property transactions in a fair above-board, prudent, competitive manner would be subject to these standards.

House Bill 87, Requiring the open and accountable acquisition and disposition of real property by state authorities

Repeal of Exemptions from Competitive Requirements

The Inspector General filed legislation to repeal four unnecessary exemptions from competitive procedures governing local procurements of supplies and services. Contracts for police-ordered towing and storage of motor vehicles, trash and recyclable collections, contracts for retirement board services, and the procurement of insurance would be subject to the competitive requirements of M.G.L. c. 30B.

House Bill 88, Repealing certain exemptions

Interstate Commission on Cooperation

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. An Interstate Commission on Cooperation would be created consisting 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 receive no 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 the offices would provide assistance strictly on a voluntary basis.

House Bill 89, Establishing an interstate commission on cooperation

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 Bill 90, Regulating the establishment and administration of certain funds by state agencies

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. The use of negotiated sales by the Commonwealth would be controlled, and the role of the Finance Advisory Board would be strengthened to ensure that taxpayers' interests are fully protected.

House Bill 91, Improve procedures for the issuance of public debt

Related-Party Transactions

The Inspector General filed legislation to restrict and regulate related-party transactions in contracting for goods and services by the Commonwealth. Under this legislation, a principal, officer, employee, board of directors member associated with any contractor receiving $100,000 or more of gross revenues through contracts with the Commonwealth would no longer be able to participate in any procurement when the person or any member of his or her immediate family has a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the contractor's duties and responsibilities to the Commonwealth.

House Bill 92, Regulating related-party transactions in state contracts