

**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 1999

**Robert A. Cerasoli
Inspector General**



The Commonwealth of Massachusetts
Office of the Inspector General

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September 2000

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 Senate Post Audit and Oversight Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit and Oversight Bureaus

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

Much of the Office's work during 1999 focused on promoting efficiency, effectiveness, and accountability in the operation of government. For example, my Office completed an intensive two-year review, initiated at the direction of the Legislature, of the business operations of 24 Commonwealth charter schools. Although the intent of the 1995 charter school law was to promote accountability as well as innovation by permitting charter schools to operate independently under charters granted by the Commonwealth, my Office's review revealed a lack of sound business systems and practices at some charter schools as well as

inadequate oversight of charter schools' business operations by the Commonwealth. These findings were detailed in a 144-page report issued by my Office in November. Like other public and private organizations, charter schools need basic business systems and procedures that are designed to promote efficiency and accountability and to protect the public's substantial investment. My Office has continued to focus on the need for improvement in this area of charter school operations.

My Office also reviewed major transactions between the public and private sectors during 1999, including four Central Artery/Third Harbor Tunnel Project building contracts, the proposed procedures for awarding trade contracts for the Boston Convention and Exhibit Center construction project, the proposed lease by the Commonwealth of private property in New Bedford for a campus facility to be used by the University of Massachusetts at Dartmouth, and the proposed merger of Quincy Hospital and the Boston Medical Center. In each case, my Office provided detailed recommendations aimed at increasing public protections without sacrificing efficiency. As the public sector continues to experiment with nontraditional approaches to areas such as procurement, contracting, and real estate development, vigilant oversight to ensure public accountability is essential.

My Office's work has continued to reflect my dual commitment to both detection and prevention of fraud, waste, and abuse. For example, an Office investigation, conducted jointly with the State Police and the Office of the Attorney General, resulted in the sentencing in 1999 of a Boston Elections Commission supervisor. Another Office investigation, assisted by the State Police and the Federal Bureau of Investigation, resulted in the sentencing in 1999 of a former Massachusetts Bay Transportation Authority Resident Engineer and a former Vice President of Modern Continental Construction Company, Inc.

On the prevention side, I have continued to expand the Massachusetts Certified Public Purchasing Official (MCPPO) program by adding two new seminars in 1999 to the three core three-day MCPPO seminars offered by my Office. Our seminars attracted more than 950 participants in 1999 and 207 participants received MCPPO designations. In addition, the Office's team of lawyers handled 2,421 requests for technical assistance and bid protests involving local government procurements. In my view, 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. Accordingly, I will continue to devote resources to the MCPPO program and my Office's other prevention-oriented activities.

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. M.G.L. c. 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 school district. We also use the *Procurement Bulletin* to inform local officials about the results of our work in other jurisdictions.

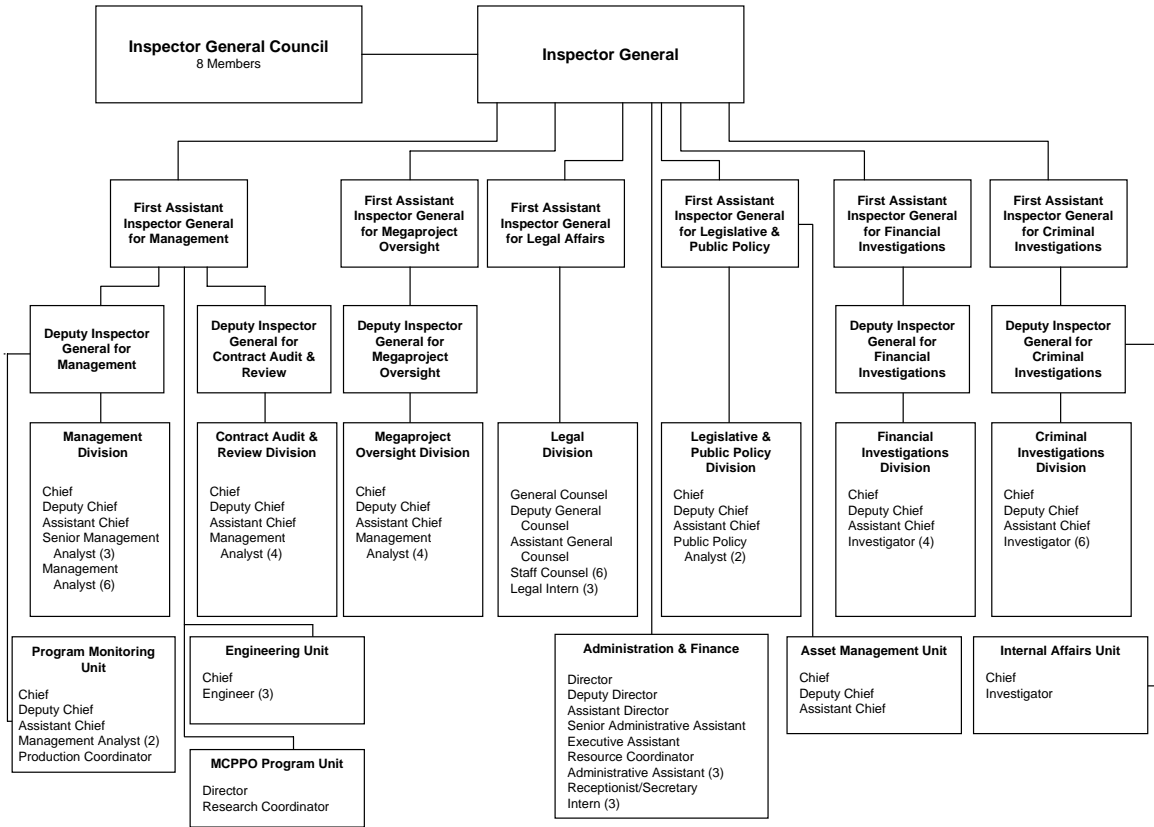
In 1998, the Office launched an Internet website to facilitate dissemination of lessons learned. New and recent Office reports and instructional manuals as well as all of the Office's *Procurement Bulletins* are available on the website. The website also provides information on current MCPPO program offerings and schedules.

Of course, effective detection of fraud, waste, and abuse 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 2000 is \$2,260,448. Although the Office has 118 authorized staff positions, only 50 staff positions were filled in

fiscal year 2000 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 1999 calendar year.

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Operational Reviews

Review of Commonwealth Charter Schools

In November 1999, the Office issued a report entitled *A Management Review of Commonwealth Charter Schools*. Legislation authorizing the establishment of public charter schools in Massachusetts was enacted in 1993 as Massachusetts General Laws Chapter 71, Section 89. A charter school office within the Department of Education (DOE) is responsible for overseeing and providing technical assistance to charter schools. Chapter 46 of the Acts of 1997, which amended the charter school law, directed the Office of the Inspector General to conduct a study of operations, practices, and activities at the established charter schools in the Commonwealth.

"This report identifies weaknesses in the contracting practices, internal controls, and procurement procedures of many charter schools in this review. If left uncorrected, these weaknesses are likely to undermine the schools' ability to achieve their educational objectives; they also jeopardize the interests of state taxpayers whose dollars fund those schools."

– IG report, November 1999

The report findings focused exclusively on the business policies and practices of the 24 Massachusetts charter schools within the scope of the Office's review. Prior to this study, charter school business operations had received little scrutiny. Both nationally and within Massachusetts, the debate over the charter school movement has focused primarily on educational effectiveness. The philosophy of the charter school movement is that charter schools should be free to use whatever means and processes they choose as long as the educational results are satisfactory. While charter schools are required to comply with some of the same laws and regulations – such as health, safety, and antidiscrimination laws – that apply to other public schools, charter schools are not subject to the same legal rules governing their business operations. Unlike other public schools in Massachusetts, charter schools are not required to procure supplies, services, and real property using the competitive procedures of M.G.L. c. 30B. In addition, charter schools are permitted to incur short-term debt without being subject to the legal restrictions on borrowing by Massachusetts cities and towns. Massachusetts charter schools are monitored and overseen by the state

Department of Education (DOE), which is empowered to award, renew, and revoke their charters.

The Office's report identified weaknesses in the contracting practices, internal controls, and procurement procedures of many charter schools. For example, five charter schools had executed contracts with private management contractors containing unfavorable compensation provisions posing unwarranted risks to the interests of the schools. Two charter schools had incurred substantial interest charges by deferring payment of fees owed to their management contractors from year to year; these same schools had borrowed funds from their management contractors without written loan agreements specifying the interest rate and repayment schedule.

In addition, the Office found that 13 of the 24 charter schools had no written procedures governing their procurements of supplies, services, or equipment. Five charter schools had been repeatedly criticized by their independent auditors for failing to institute basic business controls such as detailed budgets or accounting manuals. These unsound business practices did not serve the interests of charter school officials, students, or parents, nor of the state taxpayers who fund charter schools. Although the DOE had informed charter schools that they are obligated to follow sound business practices – including the adoption of written procurement procedures that maximize competition – as conditions of their charters, the DOE had not taken steps to monitor compliance with these requirements.

The Office's review also revealed that some charter schools were not operating within budgetary limitations imposed on charter schools by the state's tuition formula; instead, they had incurred substantial debts in order to supplement their state tuition payments and other sources of income. The Commonwealth could, in some circumstances, be liable for the outstanding financial obligations of these schools if the DOE revoked or failed to renew their charters. Thus, the financial exposure of these charter schools could pose significant risks to state taxpayers.

The report's major findings were as follows:

Contracts with Private Management Contractors

- Four management contracts for educational services contained no contractor performance requirements measuring students' academic achievement.
- Management contracts executed by some charter schools contained compensation provisions that posed unwarranted risks to the charter schools and taxpayers.

- Management contracts executed by five charter schools contained provisions that could restrict public use of educational curricula and other intellectual property developed with public funds.
- The DOE's management contract approval process has been unsystematic and inconsistently implemented.

Conflict of Interest Issues

- The composition of some charter school boards of trustees could undermine the boards' ability to fulfill their fiduciary duties to the schools they serve.
- The DOE has provided no guidance to charter schools concerning the requirements of the conflict of interest law.

Loans

- Loan agreements between charter schools and their management contractors could render the schools excessively dependent on their management contractors while reducing the schools' contracting leverage.
- State taxpayers could be liable for unpaid debts of charter schools that lose their charters.

"[A] management contractor that administers and oversees a school's financial operations and also loans money to that school has a potential conflict of interest, especially if the management contractor is involved in deciding whether and how much money the school should borrow."

– IG report, November 1999

Financial Management and Oversight

- The lack of uniformity of the audited financial statements submitted to the DOE by charter schools reduces their usefulness as a financial monitoring tool.
- Three charter schools exhibited warning signs of financial problems that, if uncorrected, could jeopardize their future viability.
- Independent auditors of 17 charter schools reported deficient internal control systems that could adversely affect the efficiency and integrity of the schools' business operations.

- DOE oversight of charter schools' financial condition and business practices has been inadequate.

Procurement Procedures

- More than half of the 24 charter schools lacked written procurement procedures.
- The written procurement procedures adopted by nine charter schools did not require advertised competition for purchases of supplies, services, and equipment.

"Despite the competitive model on which charter schools were founded, the charter school movement has not taken the lead in applying similar market principles to charter schools' business transactions. . . ."

– IG report, November 1999

Facility Leasing

- Charter schools' unadvertised, noncompetitive real property transactions are vulnerable to waste and abuse.
- Some facility information provided to the DOE in the charter school applications has proved speculative and unreliable.
- Charter schools have not complied with the beneficial interest disclosure requirements contained in M.G.L. c. 7, §40J.

Efficient, cost-effective business practices that reduce the risks of waste and abuse will further a charter school's educational mission. Conversely, inefficient business practices that invite waste and abuse will consume resources that could and should be devoted to improving the educational performance of the charter school's students. Strengthening charter school business operations is therefore in the interests of all charter school stakeholders: the schools themselves, parents, students, and state taxpayers. The report recommended the following measures aimed at strengthening charter school business operations through the implementation of two policy initiatives: best value contracting and proactive oversight:

- The DOE should strengthen and systematize its oversight of charter schools' business operations and financial condition.
- The DOE should require each charter applicant to submit a detailed business plan for administering the school's operations and finances.

- Charter schools should be required to use the competitive procedures of M.G.L. c. 30B to procure supplies and services, and to acquire and dispose of real property.
- The DOE should provide charter schools with comprehensive information on their legal obligations.
- The DOE should ensure that the Board of Education has approved the terms of all educational services contracts requiring Board approval.
- The DOE should develop and disseminate sample management contract provisions that protect the interests of charter school students, other public school students, and state taxpayers.
- The DOE should contract for and disseminate prototype accounting manuals for larger and smaller charter schools.
- The DOE should improve and standardize the annual independent audits conducted at charter schools.
- The DOE should devote the necessary additional resources to ensure effective, proactive charter school oversight.

"I appreciate the hard work of your staff on this review, the manner in which they have conducted it, and the usefulness of the review's findings."

– DOE Commissioner's response to draft IG report, October 1999

In response to a draft version of the report, the DOE Commissioner stated that the Office's review had provided the DOE with valuable information, expressed agreement with many of the major report findings, and identified several measures the DOE was in the process of implementing or had recently implemented to strengthen its charter school oversight function.

SABIS International Charter School Financial Condition

In an April 1999 letter to the Board of Education and the Department of Education, the Inspector General expressed concerns regarding the financial viability of the SABIS International Charter School, whose charter renewal application was under consideration.

Since its inception in 1995, the SABIS International Charter School had contracted for educational and administrative services with SABIS Educational Systems, Inc. The information reported in the school's audited financial statements raised concerns about the school's ability to

repay its financial obligations to SABIS Educational Systems within the term of its charter. According to the school's audited financial statements, the school's outstanding financial obligations to SABIS Educational Systems at year end had increased from \$374,650 in 1996 to \$967,095 in 1998. The school's 1998 audited financial statements showed that the school had deferred payment of \$252,000 in fees and interest charges owed to SABIS Educational Systems for the 1997 fiscal year, and that the school had deferred payment of \$651,177 in fees and interest chargers owed to SABIS Educational Systems for the 1998 fiscal year. The 1998 audited financial statements also showed that the school's expenses for the 1998 fiscal year exceeded its revenues by \$361,436.

Analysis of the school's audited financial statements also raised concerns about the school's financial viability. The school's current ratio (the ratio of current assets to current liabilities reported in the school's 1998) had dropped from 1.32 in fiscal year 1997 to .74 in fiscal year 1998. A current ratio of less than one indicates that an entity is unable to meet its current obligations.

In addition, the Inspector General's letter expressed concern that the school's financial obligations to SABIS Educational Systems could create pressure on the school to renew its ongoing contract with SABIS Educational Systems, while reducing the school's leverage in negotiating effective contract provisions that protect the public interest.

The DOE Commissioner responded to the Inspector General's concerns in a June 1999 letter. The Commissioner's letter acknowledged that the school had not been timely in paying accrued charges owed to SABIS Educational Systems. However, the letter expressed the opinion that, based on a review of the school's finances over its first three years of operation, the DOE's staff had identified a pattern of financial viability and stability. According to the Commissioner's letter, the school had provided the DOE with a written statement that it expected to have repaid all debt to SABIS Educational Systems by June 30, 2000. On June 29, 1999, the Board of Education voted to renew the school's charter for an additional five-year period.

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 1999 the Office received 131 complaints, 99 of which were reported on the Office's toll-free hotline.

The Office often forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside the Office's jurisdiction or would be more appropriately handled by another agency with jurisdiction over the matter. Some of the agencies to which this Office reported complaints in 1999 include the Office of the Attorney General, the State Ethics Commission, the Department of Revenue, offices of local district attorneys, and the U.S. Social Security Administration.

M.G.L. c. 12A restricts disclosure of ongoing investigations as well as referred cases in which no official disposition has been made. The Office also works jointly with other federal and state investigatory agencies under nondisclosure agreements that prohibit discussion of a case with anyone not directly investigating the case, including other employees within the Office. Accordingly, the cases summarized below do not constitute a complete listing of all investigations conducted by the Office.

Boston Elections Commission Supervisor Indictment and Guilty Plea

In July 1999, after a joint investigation by the Office, the State Police, and the Office of the Attorney General, a Suffolk Superior Court grand jury indicted a Boston Elections Commission supervisor on charges of larceny over \$250, three counts of filing false tax returns, and three counts of tax evasion. Kevin Hayes, a 20-year employee of the Boston Elections Commission, allegedly ran a ticket resale business at the Park Plaza Hotel during work hours while collecting thousands of dollars of pay from the City of Boston. The indictment alleged that Hayes signed attendance records claiming that he had worked a full shift for the City when he was at the hotel selling tickets during much of his regular 7 a.m. to 3 p.m. shift. The ticket business, which operated under the name of KH Tickets, produced gross receipts of more than \$500,000 a year, but Hayes failed to report any income from his ticket business on state income tax returns for 1995, 1996, and 1997.

In December 1999, Hayes pled guilty in Suffolk Superior Court to tax evasion and filing a false tax return. He was sentenced to two years

probation, a \$10,000 fine, and 250 hours of community service. Hayes was subsequently fired from his City job.

The ongoing investigation also led to the resignations of Vincent Cawley, Hayes' supervisor, and Abe Hantout, Chairman of the Elections Commission. In response to this case, Mayor Thomas Menino hired the consulting firm of McKinsey & Company to conduct a management and operational review of the Elections Commission.

Sentencing of Former MBTA Resident Engineer and Former Official of MBTA Construction Contractor

In April 1999, a former MBTA Resident Engineer and a former Vice President of Modern Continental Construction Company, Inc. were sentenced in Federal District Court as a result of an Office investigation of 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. Former MBTA Resident Engineer Joseph Monteiro was sentenced 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. Former Modern Continental Vice President Massimo Marino was sentenced to probation of two years and 10 months and a \$10,000 fine. Monteiro had been fired by the MBTA after being indicted in 1998; Marino had resigned from his position with Modern Continental as part of a 1998 settlement agreement (discussed below).

The Office's 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 had 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 had fined Valentim \$10,000 and continued his case without a finding for two years under pre-trial probation.

Under an August 1998 settlement agreement, Modern Continental had 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.

MassHighway Bridge Safety Investigation

The Office initiated an investigation of alleged safety and construction quality problems on a Massachusetts Highway Department (MassHighway) project to replace two bridges in Avon. Based on visual inspections of the bridge structures by two Office engineers and reviews of MassHighway project documents, the Office questioned whether MassHighway had adequately addressed a significant safety issue. In 1998, after testing of concrete cores from the center pier of one replacement bridge indicated that the concrete did not meet the design engineer's specifications, MassHighway had informed the contractor that it would not be allowed to install beams on the bridge until the issue was resolved. The contractor had conducted additional concrete tests and subsequently installed the beams on the bridge.

However, MassHighway records indicated that its own staff disagreed with the method and interpretation of the concrete analysis performed for the contractor. The records contained no documentation that MassHighway's design engineer rendered an opinion or that MassHighway accepted the test results and authorized the installation of the steel beams. The documents provided to the Office included memoranda regarding credits to be sought from the contractor for the low-strength concrete used in the construction of the pier cap.

In a November 1999 letter, the Office advised MassHighway of its concerns regarding the safety of the bridge structure. The Office's letter recommended that MassHighway promptly obtain a written opinion on the safety of the bridge from its design engineer or another independent registered professional structural engineer licensed by the Commonwealth of Massachusetts. The letter also requested that if MassHighway had already obtained such an assurance, a copy of the opinion be forwarded to the Office. The Office advised MassHighway of other project design and construction problems identified by the Office, such as poor concrete finish quality, omission of expansion joints from the original design, and project drawings that lacked the designer's stamped professional seal, signature, and date.

In a December 1999 letter, MassHighway advised the Office that it had previously reviewed the strength of the concrete on the bridge in question and, with its design engineer, determined that the bridge was structurally safe. MassHighway's letter also stated that MassHighway had required all bridge drawings to be properly stamped and had properly signed off on the bridge drawings.

Investigation of Unlicensed CA/T Project Trucks

An Office investigation of Central Artery/Third Harbor Tunnel (CA/T) Project trucks disclosed that a number of independent drivers under contract to general contractors were driving unlicensed, unregistered, and uninsured trucks. The Office, working in cooperation with the New Hampshire Department of Public Safety, identified some trucks operating with expired, out-of-state license plates. The Office provided this information to the State Police, which assigned its truck team to the case. As a result of the Office's investigation, the State Police stopped, towed, and levied fines on unlicensed, unregistered, uninsured trucks operating on the CA/T Project.

State-Funded Homeless Shelter Complaint

In response to a complaint alleging misappropriation of resources (improper use of office space and computers) at a state-funded homeless shelter, the Office conducted an investigation that confirmed the allegations. The shelter received donations of used computers intended for use by the shelter and its residents. Several residents were repairing and upgrading donated computers using the shelter's facilities and equipment and then selling the computers for personal gain. The Office's investigators disclosed the results of their investigation to shelter managers. In a letter of agreement sent to the Office, the shelter stated that the residents would be ordered to cease operations. Subsequent inquiries revealed compliance with this agreement.

Update: Town of Avon Cross Connection Control Program

A 1997 Office investigation led to sweeping changes to and major savings for local businesses participating in the Town of Avon's Cross Connection Control Program, a state and federally mandated program that protects the town's water supply. Under the program, businesses install equipment to prevent backflows of chemicals into the main water supply. The Office's 1997 investigation revealed that the Water Department's contract with a private firm to administer the program had been awarded in violation of the competitive requirements of M.G.L. c. 30B and was therefore invalid. In response to the Office's recommendations, the Town terminated its relationship with the private firm that had managed the program since its inception and assigned responsibility for control and management of the program to the Water Department.

Under the new system, the Town has significantly reduced program costs for the local business community. The Town no longer requires all local businesses to install backflow devices; only new and existing high-hazard businesses are required to do so. Moreover, local businesses were previously required to pay the private firm \$65 for each backflow device

tested; depending on the number of devices, businesses typically paid testing fees ranging from \$65 to as much as \$650. However, the current Water Department Superintendent has since instituted a flat testing fee of \$65 per business, regardless of the number of backflow devices tested. According to the current Water Superintendent, the Office's investigative efforts have assisted the Water Department in implementing a highly effective and manageable Cross Connection Program that benefits both the Town and the businesses of Avon.

Preliminary Investigation Reports to Other Agencies

In those instances in which the Office determines that a matter would be best handled by another agency, the matter is reported to the other agency after a preliminary investigation. Examples during 1999 include the following:

Alleged conflict of interest. The Office reported to the State Ethics Commission and the Division of Registration an alleged conflict of interest involving the award of contracts by a school department employee to companies owned by relatives of school committee members.

Alleged theft of town property. The Office reported to the State Ethics Commission an allegation that a town official had removed an antique desk from City Hall and had later attempted to sell the desk for personal gain.

Alleged improper diversion of funds. The Office reported to the State Auditor and the Department of Revenue an allegation that a mayor had improperly diverted funds restricted for a specific purpose to a general fund account under his control.

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Central Artery/Third Harbor Tunnel Project

Monitoring

An interdisciplinary team within the Office monitors the design and construction of the Central Artery/Third Harbor Tunnel Project (the Project), scheduled to be completed in 2004 and estimated by federal officials, as of August 2000, to cost as much as \$13.9 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 in 1996 provided funding for additional oversight initiatives.

Legislatively Mandated Reviews

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 Project] shall begin prior to the review and approval of the Inspector General.” The Office initiates the review once the Project provides notification that the Project plans to advertise for bids for a specific contract. The Office then performs a preliminary review of the contract, most often before the Project advertises the contract. The Office completes the review after monitoring the bid process and any design or specification changes that occur during the process.

Ventilation Building 1 Construction Contract

The Office provided the Project with preliminary comments for the statutorily mandated review of the contract for Ventilation Building 1, located in the Fort Point Channel area, in March 1999. In August 1999, the Office forwarded to the Project final review comments and granted final approval for the Project to proceed with this contract.

The Office’s review of documents relating to the Project’s Ventilation Building 1 revealed that the Commonwealth had apparently paid twice for the design of a portion of the contract. In addition, B/PB had prepared the final design drawings for a portion of the building; thus, B/PB as project

manager was reviewing and approving its own work in circumvention of the Project's system of accountability. The Office's review disclosed no evidence that the Project had prepared a life-cycle cost analysis comparing the operating and maintenance costs of different design options; it also disclosed that the Project had failed to comply with certain public notice requirements contained in M.G.L. c. 149. The Office also expressed concern that certain project drawings had not been stamped, signed, and dated by a professional engineer registered in Massachusetts. On this ventilation building and on Ventilation Building 5 in South Boston, the Office warned of potentially costly problems arising from site access delays. The Office advised the Project that some of the issues identified in the Office's reviews might warrant withholding approval for the commencement of work on these two contracts under Section 67 of Chapter 205 of the Acts of 1996.

In its response to the Office's preliminary review, the Project acknowledged that certain items, including a claims avoidance review, had not been completed at the time of the Office's review. The Project agreed to provide pertinent documents as soon as they were completed. With respect to other issues, such as site access and changes during the bid process, the Project disagreed with the Office's conclusions. The additional material provided by the Project was sufficient to warrant the Office's approval to proceed, but not to allay ongoing concerns regarding the potential for cost overruns and delays.

Ventilation Building 5 Construction Contract

In March 1999, the Office provided the Project with preliminary comments for the statutorily mandated review of the contract for Ventilation Building 5, located in South Boston. In April 1999, the Office provided final review comments and granted conditional approval to the Project to proceed with the contract. The Office required the Project to obtain all necessary permits before granting final approval to proceed. The Project notified the Office in July 1999 that it had obtained the necessary permits for the contract. As a result, the Office provided final approval to proceed with this contract in August 1999. The Office's review comments for this contract included the following:

Access Restraints: The Office noted that the construction schedule was dependent upon the progress and completion of work assigned to other construction contracts. The Office therefore recommended that the Project ensure that there were no access restraints, which could lead to costly contractor delay claims.

Design Changes: The Office recommended that the Project not defer significant design alteration to the bid process or beyond, since doing so would lead to change orders and increased costs.

Project Costs: The Office reminded the Project that any increased costs on individual contracts due to higher-than-expected bids should be reflected in cost estimate adjustments to avoid problems with estimating total Project costs and budget requirements.

Life-Cycle Cost Analysis: The Office noted that the Project had not prepared a life-cycle cost analysis comparing future operating costs for different design options.

M.G.L. c. 149: The Office noted that the Project had failed to comply with certain public notice requirements contained in M.G.L. c. 149.

In response to the Office's preliminary review comments, the Project argued that to wait to award contracts until the site was accessible would cause delays and increase costs. The Project also stated that it would make every effort in future contracts to ensure that design alternates, cost containment and constructability reviews were conducted in advance of the bid period.

Ventilation Building 8 Construction Contract

In September 1999, the Office provided its statutorily mandated review and granted final approval of the contract for Ventilation Building 8, located next to the Fleet Center in downtown Boston. The Office's review of documents relating to the Project's Ventilation Building 8 disclosed that the building design interfered with an easement granted to the Fleet Center by MassHighway, necessitating significant redesign work estimated to cost the Project \$2.5 million more than originally planned. The Office questioned the Project's failure to consider some of the cost savings identified during the redesign effort, such as elimination of some rooms and simplification of the roof design. The Office estimated that a value engineering review of the design could have generated cost savings of as much as \$1 million. The Office also found that the Project had not conducted a formal claims avoidance review for the contract, nor had the Project completed a formal life-cycle cost analysis for the contract.

The Office criticized the Project for considering cost control measures only in response to unanticipated cost increases, rather than implementing such measures in the normal course of business. The Office also criticized the Project's practice of allowing design work to be authorized based on oral direction from Project staff, in contravention of the procedures set forth in the design contract. The Office expressed concern about possible errors and inconsistencies in the design drawings, including fire protection drawings. Finally, the Office found that hundreds of drawings lacked a stamped seal or dated signature of a professional architect or engineer registered in Massachusetts.

In its final letter of approval, the Office noted that although none of the unresolved issues was sufficient to cause it to withhold approval, the Project should address the remaining problems. The Project argued, as it had on other occasions, that the “fast track” design method accounted for some of the actions criticized by the Office and disputed the Office’s cost calculations. Nevertheless, the Project Director conceded that design changes could have been identified earlier and agreed to remedy problems in the fire protection design, which the Office had identified during its review.

East Boston Toll Facility Construction Contract

In November 1999, the Office forwarded final review comments to the Project and granted final approval for the Project to proceed with the East Boston toll facility construction contract, estimated at \$7.5 million. The Office had provided the Project with preliminary review comments in 1998, including a recommendation that the toll booth canopy be redesigned. The Project had put the contract on hold and redesigned certain elements of the toll facility, apparently heeding the Office’s advice and reportedly saving \$1.5 million.

The Office’s 1999 review of the redesigned toll facility contract included the following comments:

Life-Cycle Cost Analysis: The Project did not prepare a life-cycle cost analysis to compare future operating costs for different design options, although knowing potential operating and maintenance costs would have permitted the owner/operator to plan for financing these future expenses.

Unclear Drawings: Project staff concerns about unclear specifications were not fully addressed during the contract bid process. The Office noted that bid packages should include clear information to avoid confusion and change orders during construction.

Approval of Drawings: Project drawings were not stamped, signed, and dated according to the procedures of the Massachusetts Board of Registration for Professional Engineers. The Office recommended that the Project comply with state regulations.

Design Costs: Design work for this contract cost nearly as much as half of the Project’s estimated cost to construct the facility. Noting that this ratio was much higher than the eight percent benchmark used by the Designer Selection Board for this building type, the Office concluded that the design cost was unnecessarily expensive.

Cost Savings: Project redesign efforts consistent with the Office’s recommendations had saved \$1.5 million. However, the Office concluded

that more could have been saved if the Project had considered this redesign much earlier in the process.

The Project took issue with many of the Office's review comments. The Project asserted that staff used life-cycle cost information during preliminary design development, that unclear drawings had been revised, that design costs were reasonable compared with other complex Project facilities, and that designs were cost efficient.

None of the remaining issues identified in the 1999 review caused the Office to withhold approval. However, the Office strongly recommended that the Project again review the concerns and respond accordingly.

Report on Statutorily Mandated Reviews of CA/T Building Construction Contracts, 1997 - 1999

In December 1999, the Inspector General released a report containing the four statutorily mandated reviews of Project building contracts that the Office had performed since its 1996 report, as well as all Project responses to the reviews. These four reviews, summarized above, identified a number of issues, including costly over-design, safety issues, compliance problems with state regulations, unclear contract specifications, and a continuing failure to apply rigorous cost containment measure on CA/T contracts. The report also included a November 1996 Office letter summarizing significant issues and common themes from all reviews completed since 1994.

"Although the Project has been generally responsive to this Office's concerns, we are not in accord on all matters. Project management disagrees with this Office's contention that the Project should apply cost-containment measures such as value engineering reviews and claims avoidance reviews to all significant Project contracts."

- IG report, December 1999

Technical Assistance

Request for Qualifications and Proposal (RFQ/P) for the Central Artery Corridor Master Plan

In November 1999, the Project asked for technical assistance from the Office in reviewing the Request for Qualifications and Proposal (RFQ/P) for the Central Artery Corridor Master Plan. The Office suggested strengthening the selection process by clarifying certain elements of the proposal, especially the evaluation criteria. In December 1999, the Office

provided additional assistance, particularly on issues important to the selection committee appointed by the Massachusetts Turnpike Authority Chairman.

The Office recommended that the Project fully disclose the selection process and evaluation criteria and adequately document all decisions, including the rationale for the ratings accorded each of the individual proposals. The Office also recommended that attendance at interviews with proposers be limited to the proposer and Committee members and that the work products of top-ranked proposers not be displayed during the selection process. To do otherwise would have unfairly favored some proposers over others.

In addition, the Office recommended that the Project clarify the scope of services and public role of the master planner and ensure that the RFQ/P submittal requirements tied directly to the scope of services. The Office also arranged for a spokesperson from the State Ethics Commission to attend a meeting of the Committee to advise the members of their obligations under the law and to answer questions.

The project incorporated many of the Office's suggestions, including more clearly articulating the selection criteria, incorporating the selection criteria in the RFQ/P, simplifying the rating system, and impressing upon the Committee the importance of carefully documenting its decisions. *The Project selected a master planner in February 2000.*

Public Notice Requirements

In April 1999, the Office informed the Project that it had not complied with the public notice requirements contained in M.G.L. c. 149 for two recently advertised construction contracts. As a result, in May 1999, the Project requested technical assistance from the Office to examine the Project's overall compliance with the public notice requirements related to its construction contracts. Project staff also informed the Office that the Project anticipated a new pool of smaller contractors, and asked for the Office's recommendations on educating them about Project requirements and helping them through the bid process. In response to the educational element of the request, the Office provided material it had developed for a series of public procurement seminars.

In August 1999, the Office provided the Project with the results of its review. The review determined that the Project had generally complied with statutory public notice requirements. However, the Project had not complied with the requirement contained in M.G.L. c. 149, §44B that the list of contractors requesting bid documents be updated daily, posted in the awarding authority's office, and sent weekly to the *Central Register*. The Project agreed to comply with this requirement in the future.

Update – MMARS Access

In July 1998, the Project had asked for technical assistance from the Office in determining the feasibility of inputting Project payments directly into the Massachusetts Management Accounting and Reporting System (MMARS). In December 1998, the Office had recommended that the Project ensure that internal controls comply with MMARS procedures, that the 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 planned use of special departmental employees (SDEs) to perform MMARS data entry.

In March 1999, the Project replied that it did not deem it necessary to contact the State Ethics Commission regarding the use of SDEs for MMARS data entry. Further, the Project asserted that the involvement of SDEs in no way presented a conflict of interest. In April 1999, the Office responded by reiterating the Office's recommendation that the Project present the specific facts of the situation to the State Ethics Commission.

Joint Projects

Project Oversight Coordination Commission

In October 1996, pursuant to Section 2B of the July 1996 Transportation Bond Bill, the Inspector General, 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 an earlier legislative directive.

Both plans provided for joint oversight of the 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 and in each year following, including 1999. No additional funds have been appropriated since 1996, despite repeated requests from the Commission collectively and its member agencies individually.

"The CA/T Project has entered its peak construction period and is now spending about \$3 million each day. Focused and proactive oversight efforts remain necessary to address and to deter fraud, waste, and abuse."

– Letter from Attorney General, State Auditor, and Inspector General accompanying second summary report of the CA/T Project Oversight Coordination Commission, August 1999

The August 1999 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 through 1999, while others were not launched until late 1999 and will continue through the end of the Project.

- During 1999, staff of the Offices of the State Auditor and the Inspector General began to plan a coordinated review of Project force accounts. 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 Project-related work and then bills the Project for the costs). In 1997, the Commission agencies curtailed work until the U.S. Department of Transportation Inspector General had completed a review.
- Consistent with its long-standing concern over the vulnerabilities of the contractual arrangement between the Commonwealth and B/PB, the Office launched another in a series of reviews aimed at recommending changes that increase the likelihood that B/PB would be held accountable for its work. The Attorney General and the State Auditor remain ready to assist as needed, but chose in 1999 to defer to the Inspector General's ongoing initiatives in this arena.
- After receiving a complaint, and before launching an independent investigation, the Office of the Attorney General consulted with the Office to determine whether the Office might have received the same complaint. The Office advised the Office of the Attorney General that the Office had already obtained certain documents and conducted interviews regarding the matter. By reviewing documents previously obtained by the Inspector General, the Office of the Attorney General was able to speed its resolution of the matter.
- During discussions of oversight target areas, the agencies discovered that each had an interest in the Project's insurance program. In 1997,

the member agencies agreed that the Office of the State Auditor would take the lead. In 1999, the Office provided to staff from the Office of the State Auditor documents obtained in a separate but related case.

- In 1997, also as part of the start-up effort, the Offices of the Inspector General and the Attorney General joined forces to help ensure that the Project was effectively pursuing legitimate claims against contractors and consultants through the cost recovery program. During 1999, the Office continued its work, concentrating on a management review of closed cases, while the Attorney General's staff continued to examine opportunities to pursue cases that were still under review for possible legal action.
- In three cases that included, but were not limited to, potential violations of the public bidding laws, the Office briefed the Office of the Attorney General on the issues and sought input from those charged with enforcing the applicable laws.
- 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 Project to providing assistance in policy analysis and management reviews.
- The Office's staff continued to be available to brief legislative staff on Project-related issues and to assist legislative and Commission member staff in understanding the vulnerabilities of the contractual arrangement between the Commonwealth and B/PB.
- The Office also alerted the Commission that the CA/T Project Finance Plan, which was due by statute to the Legislature in September 1999, was long overdue. The Plan had still not been provided to the oversight agencies by the end of 1999, despite numerous inquiries from the Office.

Senior staff of the three member agencies continued to meet at least monthly throughout 1999 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 1999, 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.

The Commission also pursued another avenue of oversight coordination that was included in the Supplemental Plan: coordination with federal

oversight agencies with an interest in the Project. The U.S. Department of Transportation Inspector General launched an inquiry into the Project's October 1998 Finance Plan, a document that had been provided to the Federal Highway Administration as well as the State Legislature, pursuant to reporting requirements that appeared in the statute creating the Metropolitan Highway System (M.G.L. c. 81A, §17). The Office has cooperated with federal officials and will remain available to provide information and assistance as appropriate.

The Legislature did not provide additional funding for Project oversight in 1999. The Office has continued to pay for the Commission's administrative expenses, including the salary of the legislatively mandated Executive Director position, from the remainder of the Office's portion of the original \$2 million allocated in 1996 for additional oversight by all three agencies.

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 1999, the program's seminars, presented in 10 different Massachusetts locations, attracted over 950 attendees.

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 Massachusetts Firefighting Academy, the Massachusetts Association of School Business Officials, the Plymouth County Water Works Association, the and the City of Chelsea. Presentation topics included "An Introduction to M.G.L. c. 30B," "An Introduction to M.G.L. c. 30B and the Compensating Balance Law," and specialized topics such as sole-source procurement and the use of proprietary specifications.

Publications

The Office publishes a range of materials designed to educate and inform local procurement officials, provide guidance on best value contracting, and disseminate lessons learned. All publications listed in this section are available from the Office's website: www.state.ma.us/ig.

In 1999, the Office published four issues of the *Procurement Bulletin*, a newsletter distributed to approximately 4,800 procurement officials and other interested parties 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, provides legislative updates, and highlights special topics in procurement.



In 1999, for example, the *Procurement Bulletin* included articles on information technology procurements, drafting performance specifications, bid protest avoidance tips, and consumer protection resources. In prior years, the *Procurement Bulletin* has highlighted procurement of electricity in a deregulated environment, best value procurement, efficient purchasing practices, techniques for maximizing competition, procurement of legal services, and other timely issues. Current and past issues of the *Procurement Bulletin* can be downloaded from the Office's website.

Other Office procurement publications available from the Office's website include:

- *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.
- *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.
- *Practical Guide to Drafting Invitations for Bids and Requests for Proposals.* This 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

In 1999, the Office responded to 2,429 inquiries about M.G.L. c. 30B, resulting in 3,721 telephone calls. The Office's team of procurement attorneys regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The team also responds to requests from local officials and aggrieved bidders by reviewing bid and proposal documents for compliance with M.G.L. c. 30B. The Office uses an informal dispute resolution process to resolve bid protests fairly and efficiently without litigation. The remainder of this

section presents examples of various types of local procurement reviews completed by the Office during 1999.

City of Cambridge Living Wage Ordinance – Request for Review. In response to a request from the City’s Legal Counsel, the Office reviewed a proposed living wage ordinance for potential conflicts with M.G.L. c. 30B. The Office advised the City that the proposed ordinance, which required contractors receiving City contracts valued at \$10,000 or more to pay their employees living wages, would not violate M.G.L. c. 30B. The Office also commented that, as a constitutional matter, a provision to prohibit a contractor from receiving City contracts for up to three years might require the City to establish a hearing procedure to provide due process to contractors contesting debarment. The Office advised the City that a less complicated method of implementing the living wage ordinance would be to consider addressing a contractor’s record of compliance as part of a determination of bidder responsibility under M.G.L. c. 30B. The proposed ordinance was adopted.

City of Somerville Living Wage Ordinance – Request for Review. In response to a request from the City Solicitor, the Office reviewed an early version of a proposed living wage ordinance for potential conflicts with M.G.L. c. 30B. The proposed ordinance required bidders on City service contracts to submit two bid prices: a bid price providing for the payment of the required wage and an alternate bid price if the ordinance were waived. The Office advised the City that, unlike M.G.L. c. 149, the public building construction bid law, M.G.L. c. 30B does not include a provision pertaining to the use of alternates; accordingly, the Office recommended that the City avoid the use of alternates whenever possible. The Office noted that if the City wished to except any contracts from the wage ordinance because the ordinance’s application would not be in the City’s best interest, the City except the contract prior to soliciting bids or proposals. The Office also recommended a method of soliciting alternate bids using a rule for award that identified one low bidder. Finally, the Office commented on a provision to prohibit a contractor that violated the ordinance from receiving City contracts for three years. The Office noted that this provision effectively constituted debarment and could raise due process issues. The Office advised the City that considering a contractor’s record of compliance as part of a determination of bidder responsibility would be a less complicated method of addressing the City’s concern.

City of Lynn Proposed Ordinance – Request for Review. In response to a request from the City Solicitor’s Office, the Office reviewed a proposed ordinance pertaining to real estate brokerage services for potential conflicts with M.G.L. c. 30B. The Office determined that the proposed ordinance did not conflict with M.G.L. c. 30B, provided that City-owned properties were disposed of in accordance with the M.G.L. c. 30B

provision governing real property dispositions. The proposed ordinance was adopted.

City of Boston School Department – Request for Guidance. In response to a complaint and request from the School Department’s Legal Advisor, the Office reviewed the award of a contract for school buses. The Office’s review focused on the issue of whether the Department acted within its discretion in awarding the contract to a vendor that offered a brand-name vehicle not listed in the specifications. The Office determined that the Department’s IFB permitted vendors to submit brands equal to those listed in the specifications and that the provision in the IFB stating that requests for “or equal” items should be submitted prior to the bid opening was not mandatory. Accordingly, the Office advised the School Department that it had complied with M.G.L. c. 30B in awarding the contract to the vendor.

Town of Southbridge – No-Bid Contract. The Office reviewed a matter, referred by the Office of the Attorney General, concerning the applicability of M.G.L. c. 30B to a contract between the Town of Southbridge and a private vendor for construction and services performed at the Town’s landfill and recycling facility. The Town maintained that the contract was exempt from the construction bid laws under a provision of M.G.L. c. 30B governing certain contracts for construction and services at facilities owned by private parties. The Office advised the Town that this provision of M.G.L. c. 30B was inapplicable to the Town’s contract because the facilities in question were owned by the Town. The Office also noted that the M.G.L. c. 30B exemption does not exempt contracts for construction and services at privately owned facilities from all bidding requirements; rather, it permits awarding authorities to use M.G.L. c. 30B bidding procedures for these procurements. The issue was ultimately resolved in court.

City of Lowell Parking Security Management Services – Bid Protest. In response to a complaint, the Office reviewed the City’s procurement of municipal parking security management services. The RFP had required each proposer to include illustrative examples of security operations manuals in its proposal submission. One proposer had failed to submit its operations manual, or illustrative examples of an operations manual; however, its proposal stated that it would provide the City with a copy of its manual if requested to do so. The City had rejected the proposal as nonresponsive. However, the Office advised the City Solicitor that the omission constituted a minor informality under M.G.L. c. 30B and that the City should have asked the proposer to provide the missing information at the time of the proposal opening. The Office noted that doing so would have enabled the City to preserve the benefit of additional competition on the contract.

“The minor informality provisions in the public bidding laws exist to prevent creating a mechanical process where common sense is checked at the door and perfectly good bids or proposals are eliminated because a piece of paper or form is not provided.”

– Office letter to Lowell City Solicitor, August 1999

City of Revere – No-Bid Contracts. The Office received a complaint that the City of Revere was making payments from the Educational Telecommunications Program (ETP) for contracts that had not been competitively procured, in violation of M.G.L. c. 30B. The City had been advised by its City Solicitor that these contracts were not subject to M.G.L. c. 30B. The Office advised the City that M.G.L. c. 30B contained no provision exempting contracts using ETP funds from the competitive procurement requirements of M.G.L. c. 30B. After consultation with the Office, the City Solicitor expressed agreement with the Office’s analysis and indicated that he would advise all City departments using ETP funds to comply with M.G.L. c. 30B.

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The MCPPO Program

In 1999, 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 as well as providing resources to answer questions which will arise in the future. The instructors were very helpful and seem to be very dedicated and professional. Overall, a very well planned and executed program. Thank you."

– 1999 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 and information technology.
-

- 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.

“What seemed so huge and unintelligible is now understandable and seemingly manageable. Thank you for helping to clarify so much. Great job.”

– 1999 Supplies and Services Contracting seminar participant

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 1999, the Office continued to offer 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 Contracting**, 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.

“So glad I came – this should be required for new public officials with authority to spend money!”

– 1999 Public Contracting Overview seminar participant

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 over 2,400 inquiries on procurement laws in 1999; they also benefit from the exchange of knowledge and ideas among the seminar participants themselves.

“This was an excellent course to help me to continue to do the job I have been entrusted to do.”

– 1999 Design and Construction Contracting seminar participant

"I am impressed with the ability of the instructors to teach so many different government groups and address all of the varied questions. The instructors also put the participants at ease in regard to future questions and problems etc. After the seminar I will feel very comfortable in calling any of the instructors and know that I will receive a very personal response."

- 1999 Supplies and Services Contracting seminar participant

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. The following table illustrates the designations awarded by the Office in 1999.

| <u>Designation</u> | <u>Number</u> |
|---|---------------|
| MCPPO | 123 |
| Associate MCPPO | 13 |
| MCPPO for Supplies and Services Contracting | 49 |
| Associate MCPPO for Supplies and Services Contracting | 12 |
| MCPPO for Design and Construction Contracting | 6 |
| Associate MCPPO for Design and Construction Contracting | 1 |
| Total | 204 |

MCPPOs must maintain their knowledge and skills and document at least 60 hours of continuing professional education to achieve recertification every three years.

"This was a terrific seminar. A lot of material, but we were given a great overview and the manual will be a great resource. Thanks to all the instructors who participated."

- 1999 Design and Construction Contracting seminar participant

Also in 1999 the Office introduced two new seminars. The Office developed **Bidding Basics and Contract Administration** in response to municipalities' requests to provide training in basic legal requirements for procuring and administering contracts under M.G.L. c. 30B. This half-day seminar, which has no prerequisites, was offered to three municipalities that requested assistance.

Electric Utility Restructuring and Public Power Procurement, a one-day seminar, was presented jointly by staff from the Department of Energy

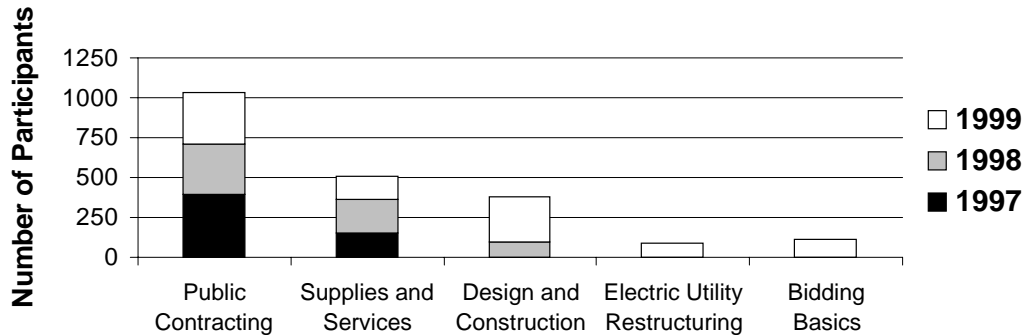
Resources and the Office. With the deregulation of the Massachusetts electric industry following the Electricity Restructuring Act of 1997, municipalities began to have choices in energy purchasing. In order to assist municipalities in the new market, the Office and the Division of Energy Resources jointly developed this seminar to present impartial information for intelligent purchasing decisions.

“All I really wanted to get out of this seminar was: Should my town be involved in doing something? I received excellent information on this and now I feel able to explain why our town isn't doing anything right now, in case I'm asked. It is great that the OIG is so proactive in providing this sort of training to municipal officials, it is so helpful and the presenters are always informed, pleasant and responsive.”

– 1999 Electric Utility Restructuring and Public Power Procurement seminar participant

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 Electric Utility Restructuring and Public Power Procurement and Bidding Basics and Contract Administration were both first offered in 1999.

MCPPO Seminar Attendance



During 1999, the Office delivered MCPPO seminars in Amherst, Andover, Boston, Falmouth, Nantucket, Northampton, Somerville, Taunton, Worcester, and Yarmouth. The program attracted more than 950 participants, some of whom attended two or more seminars.

The table on the next page lists the number of seminars delivered and total attendance at each seminar.

| | <u>Number</u> | <u>Attendance</u> |
|--|---|--|
| Public Contracting Overview | 9 | 322 |
| Supplies and Services Contracting | 6 | 151 |
| Design and Construction Contracting | 11 | 281 |
| Electric Utility Restructuring and Public Power Procurement | 4 | 92 |
| Bidding Basics and Contract Administration | 3 | 109 |
| Total | <hr style="width: 50px; margin: 0 auto;"/> 33 | <hr style="width: 50px; margin: 0 auto;"/> 955 |

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 (CEU). Seminars also qualify for professional development points (PDP) required of school business administrators under the state's education reform act.



In June 2000, the Office became a registered provider of continuing education for the American Institute of Architects Continuing Education System (AIA/CES). AIA members who participate in MCPPO program courses will receive continuing education credit from the AIA.

"I came to this seminar with the expectation that it would be inferior to private sector and academic offerings – and was I wrong. The quality of instruction was as good as or better than any [Massachusetts Continuing Legal Education] course I've taken. The concern of the instructors that the students master the material was self-evident. They were also highly professional, kind and encouraging. Well done!"

– 1999 Public Contracting Overview seminar participant

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Effective and Ethical Contracting

Boston Convention and Exhibit Center Construction Project

In May 1999, the Inspector General wrote a letter to the Massachusetts Convention Center Authority (MCCA) to comment on its proposed procedures for awarding trade contracts for the Boston Convention and Exhibition Center construction project. Chapter 152 of the Acts of 1997 authorized the MCCA to develop and construct the project using either the procurement procedures set forth in legislation or alternative methods developed by the MCCA upon consultation with the Inspector General and the Commissioner of the Division of Capital Asset Management.

The Inspector General noted that although Chapter 152 called for an independent prequalification committee consisting of private contractors and designers, the MCCA's proposed procedures would have minimized the independent committee's role by relegating it to "prescreening" applicants to ensure that they meet bonding and other basic requirements. Under the MCCA's proposed procedures, the project's construction manager, rather than the prequalification committee, would have determined which of the prescreened trade contractors would be allowed to bid on the project.

"[I]t is the view of this Office that the MCCA's proposed procedures – even with recent revisions – render this public construction project vulnerable to excessive costs, favoritism in the award of contracts, and collusion."

– IG letter to MCCA outside counsel, May 1999

In addition, the prequalification process described in Chapter 152 appeared to call for allowing contractors who meet the project standards to compete for work. In contrast, the MCCA's proposed procedures would have given the construction manager the power to select three (or, in some instances, fewer than three) finalists from the pool of qualified contractors. Only the construction manager's favored few would have been permitted to bid; all other contractors that met or exceeded the project standards for experience, capacity, past performance, safety, and other criteria would have been denied the opportunity to compete.

The Inspector General recommended that the MCCA amend its proposed procedures to:

- give the prequalification committee a meaningful role in establishing eligibility criteria and in determining which contractors meet those criteria;
- develop objective standards for prequalification and apply those standards to establish the pool of qualified contractors;
- allow all qualified contractors to bid; and
- award the contract to the lowest eligible and responsible bidder, unless either the construction manager or the MCCA can document a reasonable justification for rejecting that bidder, and the MCCA approves the rejection.

The Inspector General also recommended that the threshold for soliciting bids or proposals for contracts awarded by MCCA for the project be reduced from \$750,000 to \$100,000.

In response to the Inspector General's concerns, the MCCA revised its proposed procedures to give the prequalification committee responsibility for establishing criteria and determining which trade contractors were qualified to bid on the project, and to allow all prequalified contractors to submit bids. The MCCA reduced the threshold for soliciting bids or proposals from \$750,000 to \$500,000. The MCCA did not adopt the Inspector General's recommendation to require contract award to the lowest eligible and responsible bidder.

Springfield Convention Center Design Services

In July 1999, at the request of the MCCA, the Office offered its opinion on a proposed contract for design services in connection with the expansion, renovation, and construction of a civic and convention center in the City of Springfield.

In 1997, the Legislature had authorized the MCCA to undertake the project and appropriated \$48.5 million to complete it. A feasibility study commissioned by the MCCA showed that the proposed project would cost a minimum of \$63 million. The MCCA also obtained cost estimates that placed the cost of completing one part of the proposed project – the renovation of an existing arena – at approximately \$16 million.

The MCCA was therefore confronted with the decision of whether or not to proceed with the arena renovation in light of the study finding that the entire project would cost more than the amount appropriated for it. The MCCA was considering the feasibility of awarding a contract for design services that included both the arena renovation and the eventual convention center construction.

After reviewing the statutory provisions applicable to the MCCA project, the Office concluded that the MCCA was prohibited from entering into a contract for design services or construction unless its Executive Director certified that the cost for the design or construction work was within project cost limits established by an appropriation. Based on its interpretation of the statutes, the Office recommended that the MCCA not proceed with a contract for design services that included the design of the proposed convention center.

As an alternative, the Office suggested that the MCCA consider establishing separate scopes of work for the arena renovations and for the convention center construction, selecting a single designer for both projects, and awarding a contract for the arena renovations with the proviso that if and when adequate funds were appropriated for the convention center project, the MCCA would contract with the designer for that work, provided the arena design work was satisfactory. The Office also recommended establishing a lump-sum design fee for each of the two scopes of work and notifying all designers interested in the project of the MCCA's intent to use a single designer for both scopes of work. The MCCA adopted the Office's recommendations.

Route 3 North Design-Build-Operate-Finance Contract

In April 1999, the Governor signed into law Chapter 53 of the Acts of 1999, which authorized the Commonwealth to contract with a developer to design, construct, finance, and operate Route 3 North for a 30-year term. The project will add one lane in each direction and replace all bridges and structures on the 21-mile highway between Burlington and the New Hampshire border.

In a May 1998 letter to the Joint Committee on Transportation, the Inspector General provided comments on the then-pending bill. He expressed strong reservations about the proposed use of alternative financing and the lack of safeguards to ensure full and fair competition for all contracts. Subsequently, the Office proposed amendments to ensure that all project contracts, including bond counsel and financial advisory services, would be competitively bid; require a periodic review of the project plans by an independent value engineering expert; and ensure that the state would share in any revenues generated by third-party leases. The Inspector General also proposed establishing a special unit within the Office to review and oversee the project. The final legislation incorporated two of the Office's recommendations: requiring periodic value engineering and ensuring that not less than 50 percent of revenues generated by third-party leases would benefit the state.

In September 1999, the Executive Office of Transportation and Construction (EOTC) contacted the Office to request advice on the

contracting process. EOTC had received six responses to its request for qualifications, which was originally issued in May 1998. The Office observed EOTC's interviews with the six respondents. Following the interviews, EOTC narrowed the proposers down to a shortlist of three.

Subsequently, the Office advised EOTC on how best to implement value engineering in the project, observed three meetings of the Route 3 North Project Advisory Council, and attended numerous meetings with EOTC staff, including some with its selection committee and consultants. On several occasions, the Office provided advice on issues related to the Request for Proposals (RFP) process. In a November 1999 letter, the Office offered formal comments on the evaluation process specified in the draft RFP. The Office recommended that EOTC revise the RFP to:

- clarify how the technical and price proposals would be evaluated and rated,
- require documentation of evaluation decisions and specific recommendations for changes to improve proposals, and
- specify that proposal clarifications and revisions resulting from the process must be in writing.

In December 1999, EOTC issued the final RFP, which had been revised to address most of the issues raised by the Office's letter.

MBTA Procurement of Paratransit Services

In response to a complaint, the Office reviewed the two-phase process used by the Massachusetts Bay Transportation Authority (MBTA) to procure paratransit services for a program called "The Ride." The Office determined that the MBTA had complied with the two-phase procurement process described in its procurement manual and had a rational basis for its decision to reject two proposals from one vendor. However, the Office's review identified two shortcomings in the RFP process that rendered the MBTA vulnerable to the charge that the complainant's proposals were unfairly eliminated from the competition. Specifically, the four topics that the MBTA required proposals to address did not match the review committee's evaluation criteria, and the process included no objective standards for scoring proposals or written rationales for the numerical scores assigned by the MBTA to each proposal.

The Office summarized its findings in a August 1999 letter to the Chairman of the MBTA. To ensure the accountability of future procurements, the Office recommended that the MBTA amend its procurement procedures. Specifically, the Office recommended the following changes:

- The RFP should contain evaluation criteria that directly correspond to the proposal requirements.
- The RFP should include clear, objective standards that will be used to rate proposals.
- The review committee should prepare written rationales to explain the factors they considered and the standards they applied in rating proposals.

American Bar Association Procurement Code Revision

The American Bar Association (ABA) created the Model Procurement Code in 1978, a model upon which M.G.L. c. 30B was based. The Office has filed legislation over the years to bring the state purchasing system in line with this model code. In 1998, the ABA formed a committee to revise the Model Procurement Code. The Office reviewed a draft of the revised code that was submitted to the Section of State and Local Government Law and the Section of Public Contract Law.

“The proposed new ‘special procurement’ provision would tend to undermine some of the fundamental purposes of the Model Procurement Code, including fostering broad-based competition for public contracts and providing safeguards for quality and integrity in procurement.”

– IG letter to American Bar Association Steering Committee, April 1999

In an April 1999 letter to the ABA Steering Committee, the Inspector General expressed his concerns about a proposal to replace a narrowly drawn provision for procuring certain professional services in the current code with an undefined, new category of “special procurements” exempt from all competitive procurement procedures. The ABA’s stated rationale for creating the new category was to ensure that the code did not dictate only one method for purchasing services. However, the Inspector General’s letter took issue with that rationale, noting that the code’s RFP process gives the procurement officer broad discretion to compare the quality of competing proposals and to weigh factors other than price in selecting a source. The Inspector General urged the ABA Steering Committee to eliminate or narrow the scope of this extremely broad and vague exemption.

Massachusetts Aeronautics Commission Service Contract

In May 1999, the Office wrote a letter to the Massachusetts Aeronautics Commission (MAC) after reviewing MAC’s award of a contract for aviation

jet fuel, aviation gasoline, hanger storage, line services, aircraft maintenance and parts for two helicopters. The Office had received a complaint that the contract award was arbitrary and capricious. The Office's review revealed that the MAC had considered and based its decision on factors that were not expressly delineated in the request for responses (RFR) the MAC had issued, although these factors fell within the scope of the general criteria set forth in the RFR. The Office concluded that the MAC's award was not arbitrary and capricious. However, the Office recommended that, in any future procurement, the MAC expressly incorporate factors that it has identified as important into the specific evaluation criteria stated in the RFR so that a potential proposer can clearly determine whether it meets those criteria in advance of responding to the RFR.

Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority RFP

In September 1999, the Office provided the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority with comments and recommendations on an RFP for a private contractor to provide seasonal or year-round freight transportation service to Martha's Vineyard and Nantucket from an off-Cape location. The Office advised the Authority that the scope of services and evaluation criteria contained in the RFP were insufficiently specific to ensure fair competition and cost-effective price proposals. The Authority subsequently canceled the procurement and issued a revised RFP for seasonal freight transportation service to Martha's Vineyard. The revised RFP incorporated many of the Office's recommended revisions.

Update: *The Northeast Solid Waste Committee Incinerator Project*

During 1999, the Office provided assistance to the 23 Massachusetts cities and towns that make up the Northeast Solid Waste Committee (NESWC). In December 1997, the Inspector General had 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 NESWC communities. In 1997, the Inspector General had recommended that the NESWC communities reject a demand from Massachusetts Refusetech, Inc. (MRI), the owner-operator of the incinerator, for \$48 million to pay for new air pollution controls.

The NESWC communities had followed the Inspector General's advice and submitted the dispute over how much they were required to pay MRI to an independent third-party arbitrator. In addition to disputing the \$48 million cost estimate, the communities challenged MRI's assertion that they were legally liable for the entire cost. In 1998, the communities won a

court ruling that found MRI liable for part of the cost of the air pollution controls. Following the court's decision, the arbitrator determined that the fair and reasonable cost of the required controls was only \$34 million. As a result of the court ruling and the arbitrator's decision to reduce the amount of MRI's claim, the communities were able to negotiate an agreement that required them to pay MRI only \$17 million, half of the \$34 million cost.

In February 1999, the Office provided the NESWC Board of Directors with an analysis of the proposed settlement agreement. The Office advised the NESWC Board that the proposed agreement was fundamentally deficient in three areas:

- The proposed agreement did not contain an enforceable guarantee that the new air pollution controls would bring the incinerator into compliance with current environmental laws.
- The proposed agreement did not contain acceptance test procedures that would verify that the air pollution controls met required performance standards.
- The proposed agreement required the communities to pay the entire \$17 million in advance, before work had even begun on the air pollution controls.

The Office concluded that these deficiencies posed substantial financial risks for the NESWC communities. Noting that the proposed settlement agreement called for the parties to surrender their prior claims under the service agreements, the Office warned surrender of these claims could place the NESWC communities in an even less advantageous bargaining position with respect to future dealings with MRI.

"In this Office's view, failure to insist on fair, reasonable contract terms for the Retrofit project now could jeopardize the financial interests of the NESWC communities for years to come."

- Office letter to NESWC Executive Director and Board, February 1999

After meeting with the Office to discuss concerns with the proposed settlement, NESWC representatives successfully negotiated an amendment to the proposed agreement that substantially addressed the Office's primary concerns. In 1999, the NESWC communities and MRI entered into an agreement to settle this costly dispute for \$17 million.

Update: Refinancing of Certificates of Participation for the Plymouth County Correctional Facility

In April 1999, the Plymouth County Correctional Facility Corporation reported to the Office that refinancing its certificates of participation realized more than \$22 million in savings. The savings will be used for new construction, funding for the Capital Repair and Replacement Fund, and debt service reduction.

"I am confident that the process we have chosen to follow has and will continue to safeguard the taxpayer interest in conformity with the recommendations of the Inspector General."

– September 1999 memorandum from Plymouth County Sheriff Peter Forman

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 November 1998, the Plymouth County Sheriff had requested the Inspector General's comments and recommendations on the 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.

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 refinancing. The Inspector General's letter detailed a series of recommended safeguards to protect state taxpayer interests in the event that the Executive Office for Administration and Finance (EOAF) decided to authorize the proposed refinancing plan.

In a March 1999 letter, the EOAF Chief Development Officer and Assistant Secretary for Capital Resources informed the Plymouth County Sheriff 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. For example, with respect to the design and construction of the new administration building and warehouse, the letter advised the Plymouth County Sheriff that any substantial deviations from the Inspector General's recommendations required formal approval in advance by a unanimous vote of the Corporation and that the reasons for such deviations had to be provided in writing to EOAF and to the Inspector General.

Update: MBTA Consultant Contracting

In early 1999, the Office conducted a follow-up review of written contracting procedures in place at the Massachusetts Bay Transportation Authority (MBTA). A 1995 report issued by the Inspector General, *Review of a Consultant Contract Procured and Administered by the MBTA*, had identified deficiencies in the MBTA's consultant selection and contracting practices and recommended corrective measures.

The Office's 1999 review showed that the MBTA's written procedures and guidelines for design and consultant contracts had improved and were comprehensive in some areas. The capital management system described to the Office by MBTA staff appeared to be contributing to better tracking of payments to consultants in relation to task completion. With respect to emergency procurements, the MBTA's Regulations of the Board of Directors authorized the General Manager to award emergency contracts in excess of \$250,000; however, the regulations did not specify emergency procurements procedures for smaller contracts, nor did they require the solicitation of informal quotations, bids, or proposals when feasible.

In an April 1999 letter to the MBTA General Manager, the Inspector General summarized the results of the Office's follow-up review and suggested that the MBTA consider adopting and disseminating more detailed emergency procurement procedures in order to ensure that emergencies are addressed efficiently and cost-effectively. The Inspector General also noted that five of the 24 consultant contracts authorized by

the MBTA between January 1996 and August 1998 included supplemental agreements that increased the dollar value of their base contracts by more than 100 percent. The Inspector General recommended that the MBTA continue to monitor and control its use of supplemental agreements.

“The number and size of the supplemental agreements authorized by the MBTA in recent years underscores the importance of continuing to monitor and control the use of supplemental agreements.”

– IG letter to MBTA General Manager, April 1999

Real Estate Dealings

The Office reviews a variety of real property transactions each year to ensure that the public interest is adequately protected. In addition, the Legislature frequently mandates that the Inspector General review and approve 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 for submission to the Legislative Committees. The Office also reviews and comments on the deeds and agreements effecting the conveyances.

State Lease of the Star Store Property in New Bedford

Chapter 457 of the Acts of 1996 authorized the Division of Capital Asset Management (DCAM) to negotiate and enter into a lease with a selected developer (the Star Store) for land and buildings in the city of New Bedford to be used by the University of Massachusetts at Dartmouth for a campus facility. The Inspector General had strongly opposed and urged the Governor to veto this legislation. Chapter 457 provided that the lease price could not exceed the fair market value of the parcel as determined by an independent appraisal. The law also required the Inspector General to review and approve the appraisal and methodology used to determine the fair market rent of the 20-year lease. The Inspector General was also required to approve the terms of the lease.

The appraiser, using the “Use Value” approach, determined the total market value rent of the parcel to be \$49,815,782 for a 20-year term. In a September 1999 letter, the Inspector General notified the DCAM Acting Commissioner that the Office approved the appraisal and methodology used to arrive at the determination of the market value rent of the building for its specialized use.

“[I]t is important to point out that in 1996 this Office had strongly recommended that Governor Weld veto the legislation that created this entire process. Therefore, this letter should not be interpreted to mean that the public interest is protected in this transaction.”

– IG letter to DCAM Acting Commissioner, September 1999

However, the Inspector General raised concerns regarding the lease agreement: in particular, the Inspector General pointed to the financial impact of the section of the lease agreement requiring the Commonwealth

to pay the real estate taxes on the Star Store's property. Typically, educational institutions in the Commonwealth are exempt from real estate taxes pursuant to provisions within M.G.L. c. 59. In this lease agreement, however, the Commonwealth on behalf of the University as the tenant would be financially responsible for the payment of the local real estate taxes because the taxes would be assessed to the owner of the property. A \$20 million commercial property assessment of this completely renovated Star Store property could therefore result in the Commonwealth's assumption of an additional rent payment for taxes of approximately \$620,000 annually.

In order to decrease the Commonwealth's tax liability, the Inspector General recommended that the City enter into a tax increment financing agreement with the developer/landlord, thereby providing a tax incentive for the developer/landlord to invest in New Bedford's Commercial Area Revitalization Central Business District. The Inspector General recommended a nominal tax payment, in a range not to exceed \$50,000 annually.

The Inspector General also expressed concern regarding the rider to the lease stating that the Commonwealth would be obligated to pay the landlord base rent and "additional rent" consisting of the landlord's actual operating expenses. The Inspector General noted that routine property maintenance services are the responsibility of the landlord and should normally be included in the Commonwealth's rental payments. The Inspector General also recommended that DCAM be accorded sufficient authority to approve or disapprove the landlord's initial operating budget and any changes thereafter.

"In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively."

– IG letter to DCAM Acting Commissioner, September 1999

In October 1999, the New Bedford City Council concurred with the Inspector General's recommendation and approved a tax increment financing agreement and a nominal tax payment of \$50,000 per year. DCAM amended the lease to provide the Commonwealth with sufficient authority to approve or disapprove the Landlord's operating budget and any changes thereafter. In November 1999, the Office fulfilled its statutory obligation pursuant to Chapter 457 of the Acts of 1996 and approved the Commonwealth's lease of the Star Store Property located in the City of New Bedford.

Worcester Site Selection

Chapter 189 of the Acts of 1998 required the Inspector General to comment on the final site selection procedures developed by the Division of Capital Asset Management (DCAM) for the new downtown Worcester Courthouse. In a March 1999 letter, the Inspector General advised the DCAM Commissioner that the site selection procedures prepared by DCAM were consistent with the provisions of Chapter 189. However, the Inspector General noted that DCAM was required to comply with all site selection provisions contained in Chapter 189, including certain requirements that were not specified in the site selection procedures reviewed by the Office. For example, Chapter 189 required the Commissioner to award the site selection contract to the responsible and responsive offeror submitting the most advantageous proposal based on the evaluation criteria set forth in the request for proposals and the terms of the negotiated contract. Chapter 189 also required the Commissioner to prepare a public, written report of the reasons for the selection decision and any subsequent decisions to negotiate with additional proposers.

State Land Conveyance to a Named Party in Harwich

Chapter 199 of the Acts of 1997 required the Office to review and approve the appraisal and methodology used to determine the full and fair market value of a parcel of Commonwealth land in the town of Harwich. This legislation authorized the conveyance of state-owned property to an abutter, notwithstanding laws regarding competitive disposition of state real property. The abutter had built a two-story garage and driveway that encroached on state-owned conservation land. The Inspector General had strongly opposed and urged the Governor to veto this legislation in 1997.

In a September 1999 letter, the Inspector General notified the DCAM Acting Commissioner that the Office had not approved the appraisal and methodology used in the determination of the full market value of the Commonwealth's parcel. In the Office's opinion, the appraisal did not conform to the requirements of the Uniform Standards of Professional Appraisal Practice. In addition, the pictures in the appraisal cut off a major portion of the garage's second floor, and its size and scale were not adequately depicted.

"It appears that the appraiser has purposefully chosen to downplay the abutter's improvements that encroach upon the State's Cape Cod Rail Trail."

– IG letter to DCAM Acting Commissioner, September 1999

The Inspector General's letter also criticized the Building Department and the Zoning Board in the Town of Harwich. The owner of the property adjacent to this state property received a building permit and variances to construct a one-car garage within less than 10 feet from the property line. Neither the Building Department nor the Zoning Board had required a professional survey of the owner's lot prior to construction to ensure that the location of the structure would conform to the permit and variance granted by the Zoning Board. Without an accurate plot plan, the private owner violated the variance he was granted. He ultimately constructed a two-car, two-story garage with a full basement, with a portion of the garage/driveway situated across the property line on the Commonwealth's Cape Cod Rail Trail.

In addition, the Inspector General's letter pointed out that because the Commonwealth's parcel is part of the Cape Cod Rail Trail located on a former railroad right-of-way, a public hearing and authorization for the construction from the Secretary of the Executive Office of Transportation were required prior to proceeding with a building project. Chapter 199 of the Acts of 1997 did not address compliance with these two state permit issues.

DCAM did not submit a revised appraisal to the Office in 1999.

Belchertown Land Conveyance to the Belchertown Economic Development Industrial Corporation

Chapter 353 of the Acts of 1996 required the Inspector General to review appraisals, proposed release deeds, 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 DCAM Commissioner to sell, lease, or otherwise convey parcels for "full and fair market value." In October 1998, the Office had approved the conveyance of the three parcels to the Belchertown Economic Development Industrial Corporation.

The Office reviewed the release deed for Parcels B, D, and E in 1999. In a February 1999 letter to the DCAM Commissioner, the Inspector General recommended a reversion clause requiring that the parcels revert back to the care and control of DCAM in the event that use or development of the parcels ceases to be consistent with the terms, conditions, and restrictions in the authorizing legislation, and any further disposition be subject to the real property provisions of M.G.L. c. 7. Due to a zoning change, the appraisals of Parcels B, D, and E are currently being revised. The Office is awaiting an updated appraisal from DCAM.

Due to a zoning change, DCAM must revise the appraisals of Parcels D and E. DCAM did not submit revised appraisals to the Office in 1999.

DET Lease in Worcester

In response to a request from a state senator, the Office reviewed the award of a lease by the Department of Employment and Training (DET) in Worcester. Although DCAM is responsible for acquiring leased real property on behalf of the Commonwealth for use by state agencies, M.G.L. c. 7, §40H permits DCAM to delegate leasing authority to an agency, provided that the agency follows the statutory process detailed in DCAM's *Real Property Leasing and State Office Planning Manual*.

In a September 1999 letter, the Office advised the senator of the Office's finding that the DET had followed the applicable legal requirements as well as those set forth in DCAM's manual. The DET had solicited and evaluated competitive proposals based on qualitative criteria and Commonwealth policy objectives. The DET had awarded the lease to the highest-ranked proposal, notwithstanding its significantly higher cost. DCAM's manual and M.G.L. c. 7 allow an agency with delegated authority to procure leased space to weigh factors other than price in determining which space is most advantageous to its needs.

"DET's decision to lease office space that carries a higher occupancy cost than other available space reflects a judgment call that was within the agency's discretion to make."

– Office letter to Senator Richard T. Moore, September 1999

The DET assigned scores to proposals and prepared a written explanation for its rating on each of the criteria for each proposal. A review of the evaluations showed that the top-ranked proposal was rated highest for several reasons, including building condition and access to public parking.

DEM Leases for Telecommunication Towers in Wellfleet and Sandwich

Chapter 88 of the Acts of 1997 authorized the Department of Environmental Management (DEM) to lease fire towers in state parks to telecommunications companies. The law requires the Inspector General to review the leases. During 1999, the Office reviewed proposed telecommunications leases at the Wellfleet Fire Observation Tower and the Sandwich Fire Observation Tower. In April 1999 letters, the Inspector General informed the DEM Commissioner that, based on the Office's review of materials submitted by DEM, the language contained in both lease agreements appeared to protect the Commonwealth's interests in these dispositions.

South Hadley Housing Authority Sale of Land

Chapter 200 of the Acts of 1998 authorized the South Hadley Housing Authority to sell a parcel of land and retain the proceeds for maintenance, remodeling, or improving its housing. In a January 1999 letter, the Office notified the Executive Director of the South Hadley Housing Authority that the Authority had not published the reason for its decision to dispose of the parcel at a price below the parcel's appraised value in the *Central Register*, as required by M.G.L. c. 30B, §16(g). The Office's letter noted that the purpose of this requirement is to permit an opportunity for public comment on the intention of the public body. Although the Authority had already sold the parcel, the Office advised the Authority to comply with the publication requirement and to ensure that future dispositions include this step, when applicable, prior to any property transfers.

Financial Oversight

Department of Medical Assistance: Orthopedic Footwear Benefits, Policies, and Procedures

During 1999, the Office provided ongoing information to the Department of Medical Assistance (DMA) and the Office of the Attorney General regarding a pervasive pattern of overcharging by many of the Commonwealth's major orthopedic footwear suppliers. The Office first discovered and notified DMA of these improper billing practices in 1998 during the course of the Office's comprehensive, legislatively mandated investigation of the Orthopedic Footwear Program administered by DMA. In order to stem the ongoing overpayments, the Inspector General had directed Office staff to notify DMA and the Office of the Attorney General of the overpayments during the course of the investigation, rather than awaiting its completion.

During the investigation, the Office reviewed 21,703 transactions between DMA and the 15 highest-volume providers of orthopedic footwear to the Medicaid program, representing approximately 93 percent of the statewide annual dollar expenditure. The Office also reviewed the complete 14-year transaction history of one orthopedic footwear provider. The Office expanded the scope of the investigation upon discovery of additional and significant problems in the Medicaid orthopedic footwear program.

In response to the information provided by the Office during the investigation, DMA:

- expeditiously tightened procedures and revised certain sections of the regulations governing the provision of orthopedic footwear benefits,
- retained a consultant to analyze and modify its reimbursement methodology for durable medical equipment,
- hired a new program manager and a full-time consultant to work in and oversee the durable medical equipment area, and
- undertook audits of certain providers identified by the Office's investigation as having submitted questionable claims.

In April 2000, the Inspector General issued a comprehensive, 184-page investigative report documenting the Office's findings of widespread fraud and abuse in the Medicaid orthopedic footwear program. The Office identified major weaknesses in the management controls of the Medicaid Program. It found that enterprising providers, accommodating doctors,

and unrelenting recipients exploited those weaknesses for more than \$4 million in wasteful expenditures. The report, entitled "Department of Medical Assistance: Orthopedic Footwear Benefits, Policies, and Procedures," also recommended that DMA institute a series of additional corrective actions to strengthen its administrative regulations and management controls governing the program.

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 letters dated March, April, and September 1999, the Inspector General Office notified Springfield Technical Community College that, based solely upon the information submitted to the Office by STCCAC, he concurred with STCCAC's award of each of the following contracts to the lowest responsible and eligible bidder:

- a \$109,250 contract for modifications to a cooling tower,
- a \$156,428 contract for construction of a generator out building,
- a \$109,612 contract for parking lot renovations, and
- a \$516,243 contract for retrofit roofing.

Salem State College Assistance Corporation

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 Salem State College Assistance Corporation (SSCAC). SSCAC is supported by public funds, but is exempt from state bidding statutes. In reviewing SSCAC's proposed contracts, the Office examines the competitive procurement procedures followed as well as the contract terms.

The Office reviewed the proposed financing agreement offered by the Massachusetts Development Finance Agency (MassDevelopment) totaling \$2.64 million for the renovation of a building owned by SSCAC. According to the SSCAC, the Executive Office of Administration and Finance (EOAF) required that SSCAC borrow money for the renovation project through MassDevelopment in order to receive a \$1.96 million grant from EOAF.

In a January 1999 letter, the Inspector General advised the SSCAC Chairman that the financing agreement appeared to be within the discretion of SSCAC.

The Office also reviewed a contract and bid specifications issued by SSCAC for the renovation of Enterprise Center Building #3. In a February 1999 letter, the Inspector General advised the SSCAC Executive Director that, based solely upon the accuracy of the information submitted to the Office by SSCAC, the Office concurred with SSCAC's award of the contract to the lowest responsible and eligible bidder.

Update: Massachusetts Public Health Biologic Laboratories

During 1999, the Office continued to support the efforts of the Office of the Attorney General and the University of Massachusetts (UMass) to recover the Commonwealth'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. This work contributed to a successful settlement in 2000 that the Office of the Attorney General estimated will increase the Commonwealth's share of royalties by \$60 million over 30 years.

Chapter 334 of the Acts of 1996 had mandated the transfer of the Massachusetts Public Health Biologic 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 Biologic Laboratories. These findings were detailed in a December 1996 report issued by the Inspector General entitled *A Report on Certain Activities and Practices of the Massachusetts Public Health Biologic Laboratories*.

The Office's report revealed how the Director and Deputy Director of the Biologic 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 Biologic Laboratories. The two officials assigned exclusive rights to the process to the Biologic 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 Biologic Laboratories acting on behalf of the Commonwealth provided that MedImmune, a private company, would receive most of the profits from the drug.

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 Biologic Laboratories, and, to a lesser extent, the Commonwealth, receive royalties on the new product in lieu of RespiGam royalties.

In response to 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 Biologic 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 a January 1999 letter, the Comptroller advised the Inspector General that the transfer of financial accounting and management of certain programs from MHRI to the Commonwealth had been satisfactorily completed, with the exception of two pending issues:

- A \$10,022 contractual payment for which the DPH had billed MHRI three times was still in dispute, and
- The Biologic Laboratories account remained in escrow under MHRI control, pending the outcome of negotiations conducted by attorneys from MHRI, the Office of the President of UMass, and the Office of the Attorney General.

In May 2000, the Office of the Attorney General announced a settlement enabling the Commonwealth to regain ownership of the patents and licensing rights for RespiGam. The Commonwealth will receive all future royalties from the sale of rights to and receive significantly increased royalties from the sale of Synagis, and any future successor drugs, in Massachusetts and Maine. The Commonwealth will recover ownership rights to Cytogam, receive all future royalties on the sale of Cytogam in Massachusetts and Maine, and increase its share of royalties from the sale of Cytogam elsewhere from 80 percent to approximately 85 percent. The Commonwealth will also recover ownership of other products developed at the Biologic Laboratories. According to the Office of the Attorney General, based on recent sales and current estimates, the increases in the Commonwealth's share of royalties over the next 30 years

could total \$60 million. Finally, the settlement resolved several financial issues involved in the transfer of the Biologic Laboratories from DPH to UMass and the termination of MHRI as the Commonwealth's agent in operating the Biologic Laboratories, resulting in repayment of approximately \$1.4 million to the Commonwealth by MHRI.

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Legislative Reviews

The Office is obligated under its enabling statute, M.G.L. c. 12A, to review all legislation filed in each Legislative session. 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 the 1999 session, the Office commented on hundreds of pieces of legislation. This section highlights some of the major legislative work of the Office during 1999.

Merger of Quincy Hospital and Boston Medical Center

In August 1999, the Inspector General wrote to the Joint Committee on State Administration to oppose House 4533, a Home Rule Petition to authorize the City of Quincy and Quincy Hospital to transfer the operation and control of Quincy Hospital to Boston Medical Center. The City needed Legislative approval by September 1, 1999 and \$12.1 million in state funding by October 1, 1999. The Office was concerned with the ambitious timeline the City had agreed to in order to secure the merger and raised issues surrounding conflicts of interest and the disposition of the hospital's real property.

After numerous discussions with representatives of Quincy Hospital, Boston Medical Center, City officials, and the Legislative delegation, the Inspector General recommended amendments to the Home Rule Petition including a provision requiring the newly created Corporation to be operated in a manner which ensures that no part of its net earnings or assets benefit any private individual and that the Corporation comply with all applicable laws prohibiting self-dealing or otherwise relating to conflicts of interest. The Inspector General also recommended a reversion clause to ensure that now and in the future, the real property could only be used for the provision of health care services consistent with the intent of the legislation. The Inspector General also recommended several technical amendments. The City of Quincy amended its Home Rule Petition and the amended bill was enacted as Chapter 94 of the Acts of 1999, which was signed into law by the Governor in October 1999.

Hale Hospital

The Senate Counsel asked the Inspector General to review and comment on Senate 2022, a Home Rule Petition intended to allow Hale Hospital in the city of Haverhill, the last municipally owned hospital in the Commonwealth, to compete in the current health care market. Hospital officials stated in their testimony before the Committee on Health Care that

the petition represented an effort to balance the goal of assuring the hospital's survival with the values of maintaining it as a public and publicly accountable institution.

In a November 1999 letter, the Inspector General advised the Senate Counsel that, while he did not disagree with the overall intent of the legislation, some of its provisions were inconsistent with the concept of a publicly accountable institution. Specifically, the bill sought broad exemptions from certain statutes designed to protect the openness and accountability in government. The Inspector General's letter pointed out that the bill would exempt public officials controlling the use of public funds from M.G.L. c. 268A, the state's conflict of interest law. Exempting these dealings from the conflict of interest law would expose taxpayers to the risk that public employees who negotiated business dealings and awarded contracts on behalf of the Hospital could be influenced by their personal financial interests.

In addition, the Inspector General strongly opposed a section that would exempt design, construction, renovation, or repair work undertaken by Hale Hospital on this City-owned property from competitive procurement laws. These exemptions would expose taxpayers to the risks posed by no-bid contracts and deprive taxpayers of other safeguards contained in public procurement laws, such as contractor prequalification and the requirement to obtain performance and payment bonds on major construction projects. Finally, the Inspector General opposed proposed exemptions from the open meeting and public records laws.

"If and when a scandal or controversy arises in the future, the Legislature will surely be held accountable for not having asked the right questions or not having added appropriate safeguards."

– IG letter to Assistant Senate Counsel, November 1999

After numerous meetings and discussions with Hale Hospital officials, the hospital's outside counsel, and legislators, Hale Hospital agreed to narrow the scope of the bill's exemptions from the conflict of interest law and public records law. However, Hale Hospital did not agree to eliminate the exemptions from the prevailing wage and filed sub-bid provisions of the construction bid laws. The bill was not enacted in 1999.

MBTA Parking Facility in Natick

In July and September of 1999, the Inspector General wrote to the House Committee on Ways and Means expressing reservations about Senate 1785, a bill that would authorize the Town of Natick to enter into a lease

agreement with the Massachusetts Bay Transportation Authority (MBTA) or its assignee for a term not to exceed 99 years for the purposes of constructing, operating, and maintaining a public parking facility. As written, the bill would have authorized the MBTA to assign its lease with the Town of Natick to a private party without conducting an advertised competition. It would also have exempted the Town from the 25-year limit statutorily imposed on municipal real estate leases with the MBTA for parking lots. Although the Inspector General was not opposed to the construction of an MBTA parking facility in Natick, the Inspector General did oppose authorizing the MBTA to assign a 99-year lease agreement to a private party without competition.

"This Office questions the legitimacy and wisdom of enabling a state authority to circumvent the bond limits imposed on it by the Legislature."

– IG letter to House Committee on Ways and Means, September 1999

The Inspector General also raised concerns about the MBTA's plans to fund the project by creating its own special-purpose, nonprofit corporation to issue revenue bonds. By resolution, the MBTA's Board of Directors voted to guarantee the debt of this nonprofit, making up any shortfalls between the Natick facility's parking receipts and the lease payments to the corporation from general revenues of the MBTA. Considering these facts, the Inspector General disagreed with the MBTA's assertion that the proposed financing would not be subject to the legislative bond cap on MBTA borrowing. The Inspector General objected to permitting the MBTA to exceed its statutory bonding authority. In effect, the MBTA's financing plan would shift a portion of what is essentially long-term debt to the Commonwealth's operating budget without legislative authorization. In the view of the Inspector General, this financing arrangement represented a willful effort to avoid legislative approval, circumvent the Commonwealth's bond cap, and mislead the public and the Legislature on the extent of the MBTA's debt obligations. The Inspector General urged the Legislature to subject this financing arrangement to close scrutiny and to consider whether or not the Legislature had conferred upon state authorities the power to enter into alternative financing arrangements without express legislative authorization.

In January 2000, notwithstanding the objections of the Inspector General, Senate 1785 was enacted by the Legislature and signed into law by the Governor as Chapter 181 of the Acts of 2000.

Transportation Bond Bills

During the 1998-1999 legislative session, the Office reviewed and commented on two transportation bond bills. The transportation bond bills addressed bond authorization requirements of the Massachusetts Bay Transportation Authority (MBTA) as well as other transportation-related needs, including additional funding for the Central Artery/Tunnel (CA/T) Project.

In March 1999, the Inspector General recommended that the Legislature amend House 3962 to clarify its intent regarding the MBTA's use of an alternative project delivery method. In addition, the Office recommended changes to the time allowed for the Office's review of proposed alternative methods of procurement, since the time allowed in the bill was unrealistically short. In the same letter, the Office joined with the Attorney General and the State Auditor in requesting the Legislature's support for funding of additional independent oversight of the CA/T Project.

In a letter to the Joint Committee on Transportation in October 1999, the Inspector General recommended amended language to ensure the continuation of the legislatively mandated "review and approval" role the Office had exercised since 1996 with respect to all construction contracts for public buildings on the CA/T Project.

In November 1999, the Office wrote to the Senate Committee on Ways and Means opposing a section of House 4865 that would permit the MBTA to use alternative methods of procurement for design and construction, including but not limited to A+B bidding, design-build, and design-build-operate. As written, the section effectively specified the use of one alternative: construction manager-at-risk. The Office recommended language setting forth minimum procedures and requiring that all contracts be awarded through an open and fair, publicly advertised process and be subject to the approval of the Secretary of the Executive Office for Administration and Finance. The Office stated that it would be available to assist the MBTA in facilitating an open and fair competitive process for the purposes of this as well as other projects in its construction pipeline.

Furthermore, House 4865 did not appear to authorize any form of alternative financing for the single pilot project authorized by the bill. Financing for this pilot project would be subject to authorization by the Governor and the Legislature; therefore, the Office recommended that House 4865 be amended to state that no alternative financing was authorized by the bill.

A provision from House 3962 mandating a continued review and approval role for the Office was included in Chapter 87 of the Acts of 2000, which was enacted by the Legislature and signed into law by the Governor in

May 2000. A provision allocating \$1 million for costs associated with the Central Artery/Tunnel Oversight Coordination Commission, including \$275,000 for the Office's work, was enacted by the Legislature and signed into law by the Governor as Chapter 235 of the Acts of 2000 in August 2000. In June 2000, House 4865 was enacted by the Legislature and signed into law by the Governor as Chapter 125 of the Acts of 2000. The law requires the procurement process for the pilot project to be determined in conjunction with the Inspector General. It also provides that "such procurement process shall not require an alternative means of financing unless specifically authorized by the general court."

Provincetown Pier

In October 1999, the Inspector General wrote to the Joint Committee on Commerce and Labor expressing reservations about House 4648, a bill authorizing the Town of Provincetown to create a public corporation for the purposes of leasing and revitalizing a Town-owned pier. Although he did not oppose the intent of the legislation, the Inspector General raised concerns about several provisions of the bill that could have permitted the corporation to circumvent the state's construction bid laws. To address these concerns, the Inspector General Office proposed five amendments to:

- ensure that redevelopment of the Town-owned pier would be undertaken in accordance with the applicable provisions of the state's designer selection and public construction laws prior to its lease to the public corporation.
- remove from the bill language permitting the Corporation to circumvent the Commonwealth's construction bid laws simply by leasing its property.
- ensure that redevelopment or improvement to any property owned or leased by the corporation would be subject to the Commonwealth's designer selection and construction bid laws when customized improvements exceed the thresholds set in the statute.
- replace an unrestricted lease term with a lease term consistent with the 10-year restriction contained in M.G.L. c. 40.
- require the corporation to establish a maintenance reserve fund from lease revenues to help ensure that funds are available for both routine and unforeseen pier maintenance.

In January 2000, a new draft of House 4903 incorporating four of the five amendments recommended by the Inspector General was substituted for the original bill. The redrafted bill was enacted by the Legislature and

signed into law by the Governor as Chapter 13 of the Acts of 2000 by the Governor in January 2000.

Update: Authorization of MWRA Lease-Leaseback Transactions

In May 1999, the Inspector General wrote to the Chairman of the House Committee on House Ways and Means to recommend that the House reject House Budget Amendment 312, which would have granted the Massachusetts Water Resources Authority (MWRA) the authority to execute so-called “sale-leaseback” or “lease-leaseback” transactions. The Inspector General had opposed similar legislation in the previous legislative session. The amendment would have allowed the MWRA to enter into disposition and leaseback arrangements with investors seeking to reduce their taxable incomes. In return, the MWRA would have received a one-time cash infusion of millions of dollars. The Inspector General has repeatedly stated that permitting such negotiated deals would create opportunities for favoritism, abuse, and corruption. In addition, the U.S. Internal Revenue Service has determined that such leaseback transactions effectuated solely to avoid taxes are improper.

The Inspector General expressed concern about the lack of safeguards in the amendment to protect ratepayers as well as the credit risk the MWRA would assume. The Inspector General also expressed concern that passage of the amendment would generate ill will toward the Commonwealth on the part of the federal government at a time when the Commonwealth’s congressional delegation was seeking federal funding for major capital projects. The House rejected House Budget Amendment 312.

“As always, this Office warns 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.”

– IG letter to House Committee on Ways and Means, May 1999

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 1999 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 retained 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 would assist local procurement officials in conducting efficient, best value procurements in compliance with the law.

House 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 million. The proposal would also shore up the state's contractor certification 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 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 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 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, which are currently

subject to virtually no statutory rules requiring advertised competition for real property transactions, would be required to undertake these transactions in a prudent, fair, and competitive manner.

House 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 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 on a strictly voluntary basis.

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