

**Procurement  
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Assistance &  
Enforcement**

# **Office of the Inspector General**

**Commonwealth of Massachusetts**

## **Annual Report**

**January 2000 - April 2001**

**Robert A. Cerasoli**  
**Inspector General**

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

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May 2001

Her 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.*

My appointment to the post of Inspector General in 1991 was a great honor. When I took office, I set an agenda that built on the legacy of the Ward Commission and the landmark work of former Inspector General Joseph R. Barresi, expanded into new oversight areas, and instituted new approaches to preventing fraud, waste, and abuse. As I complete my second and, by statute, my last five-year term as Inspector General, it is fitting that I preface my last annual report with an overview of my Office's work in service to the public over the past decade. The following pages discuss some, but by no means all, of the

projects and initiatives exemplifying my Office's commitment to fulfilling its mission and reflecting the hard work of the Office's small, dedicated staff. A complete listing of the reports and other publications my Office issued between July 1991 and April 2001 follows this letter.

### **Criminal and Financial Investigations**

Throughout my tenure, my Office has worked cooperatively with many other investigative agencies to investigate criminal activities and assist in ensuring that those responsible are appropriately penalized. Our joint cases with the Massachusetts Attorney General, the Massachusetts State Police, the Federal Bureau of Investigation, and the Plymouth County District Attorney have resulted in the sentencing of a Boston Election Commission supervisor, a former Massachusetts Bay Transportation Authority resident engineer, and a former construction company vice president.

In addition, I have accorded a high priority to investigations and reviews into the financial dealings of state agencies and public authorities in Massachusetts. The case with the most far-reaching consequences involved financial services contracting by the Massachusetts Water Resources Authority (MWRA). My Office's investigation revealed the existence of undisclosed private arrangements between the MWRA's financial advisor, Mark S. Ferber of Lazard Freres, and the MWRA's lead underwriter, Merrill Lynch. In December 1993, my Office published a report on the matter. The Office's findings led to a two-year investigation by the Attorney General, the U.S. Attorney, the Federal Bureau of Investigation, the Securities and Exchange Commission, the Internal Revenue Service, and the U.S. Postal Service. Ferber was ultimately convicted by a federal jury of 58 separate fraud and corruption charges, sentenced to 33 months in prison, fined \$650,000, and barred from the securities industry. Lazard Freres and Merrill Lynch agreed to pay a civil fraud settlement in excess of \$24 million, the largest fine in any Department of Justice or Securities and Exchange Commission matter.

The complex and vulnerable area of intellectual property rights was another focus of my Office's investigative work. My Office uncovered a scheme by two Department of Public Health employees to enrich themselves by misappropriating the Commonwealth's exclusive right to a patented process developed by state employees. The Attorney General subsequently filed civil litigation against the two scientists. The settlement that followed will increase the Commonwealth's royalties from the patented process by at least \$60 million over the next 30 years.

Most recently, my Office's investigation of the Central Artery/Third Harbor Tunnel Project – popularly known as the "Big Dig" – exposed deliberate misrepresentations by Big Dig officials of the actual project cost estimates developed by the private management consultant administering the Big Dig project on behalf of the Massachusetts Turnpike Authority. In 1994, the state's private management consultant, Bechtel/Parsons Brinckerhoff (B/PB), had provided the Governor and state officials with a Big Dig cost estimate of almost

\$14 billion, a figure uncannily close to the current \$14.1 billion estimate. B/PB's \$14 billion estimate in 1994 starkly contradicted the \$8 billion estimate offered publicly by Big Dig officials at that time. My Office found that state managers had directed state and B/PB staff to undertake a cooperative effort to maintain the fiction of an "on-time" and "on-budget" \$8 billion project and that local Federal Highway Administration officials acted in partnership with state officials to downsize the Big Dig cost estimate for public relations purposes. A more complete summary of this investigation is included in this report.

### **Wasteful Public Construction Contracting**

At the beginning of my tenure as Inspector General, I pledged to help the Commonwealth enter the next century free of the massive construction scandals that gave rise to the Ward Commission's investigations and creation of this Office more than two decades ago. Accordingly, I have continued the Office's commitment to conducting detailed reviews of selected wasteful or mismanaged public construction projects and using those cases as a mechanism to provide recommendations aimed at preventing similar problems on future public projects.

Some of these projects were large in scope and budget: for example, in reviewing a MWRA project to design and build a \$52 million, three-building complex on Deer Island, my Office found the buildings under construction would be too large for the MWRA's needs, too lavish for a ratepayer-funded wastewater treatment plant on a remote island, and too expensive by as much as \$65 million over the next ten-year period. Other projects reviewed by my Office, although smaller in scope, have yielded important lessons for other public jurisdictions. For example, one of the most frequently requested Office reports provides a detailed management review of a \$7 million middle school renovation project in Needham. The problems encountered on this project illustrated some of the risks of devoting inadequate resources to oversight of complex, multimillion-dollar municipal construction projects.

The success of state and local building projects throughout the Commonwealth depends on the Commonwealth's ability to screen out unqualified construction contractors. My Office has reviewed and made numerous recommendations to strengthen the system under which the Commonwealth certifies construction contractors to bid on public building projects throughout the Commonwealth. For example, at the request of several legislators, my Office reviewed a contractor's poor performance on three municipal building projects and the process by which the contractor was certified by the Commonwealth. As a result of my review, the Division of Capital Asset Management debarred this contractor, its President, and its General Manager from bidding on public work for three years. My Office recommended legislation as well as administrative reforms to shore up the contractor certification system.

## **Flawed Public-Private Partnerships**

Governmental experiments with nontraditional procurement and contracting approaches sometimes benefit private interests while exposing the public to unwarranted financial risks. The Office has closely scrutinized a number of so-called “partnerships” that were promoted as good deals for the public. By disclosing the costs and risks of these arrangements, the Office has successfully prevented the replication of these flawed arrangements for subsequent state and local projects. For example, my Office’s review showed that the Plymouth County Correctional Facility project, a lease-purchase financed design-build project that had been promoted as an innovative public-private partnership that would save taxpayers hundreds of millions of dollars, entailed exorbitant financing costs, proved too small to meet Plymouth County’s needs, and exposed state taxpayers to significant financial risk.

Similarly, the Office’s review of the Northeast Solid Waste Committee (NESWC) project, initiated at the request of a caucus of state legislators who represent the 23 NESWC communities, revealed that the Commonwealth aggressively marketed this design-build project and depicted the project risks as minimal to Massachusetts communities, while inadequate project planning, safeguards, and oversight have burdened current and future Massachusetts taxpayers with massive long-term costs and risks. Based on subsequent advice from the Office, the NESWC communities succeeded in reducing a \$48 million payment demand from the private contractor to \$17 million. More recently, pursuant to Chapter 152 of the Acts of 1997, the Office provided comments to the Massachusetts Convention Center Authority (MCCA) aimed at preventing excessive costs, favoritism in the award of contracts, and collusion on the MCCA’s project to construct a convention center and exhibit hall.

The national trend toward privatization of municipal water and wastewater facilities is yet another area to which my Office has devoted substantial attention. Large environmental service corporations have aggressively promoted these complex, long-term privatization contracts, which transfer unprecedented control over public facilities to private operators and pose substantial financial risks to taxpayers and ratepayers. My Office has worked with officials of several communities, including Leominster, Taunton, and Springfield, to draft legislation, develop competitive procurement processes, and establish contracts that afford some protection from excessive costs and risks. Most recently, my Office criticized the Lynn Water and Sewer Commission’s plans to award a high-risk privatization contract on the basis of flawed cost savings estimates and a selection process that lacked meaningful competition. My Office’s work on this project is summarized in this report.

## **Procurement Training and Capacity-Building**

In recognition of the importance of training and technical assistance as a strategy for preventing fraud, waste, and abuse, I established the Massachusetts Certified Public

Purchasing Official (MCPPO) training and certification program. The MCPPO program is designed to promote excellence in public procurement by bringing professionalism and expertise to the field of public purchasing in Massachusetts. By building the capacity of public purchasing officials to perform their mission-critical functions efficiently, effectively, and ethically in the increasingly complex commercial marketplace, the MCPPO program is an innovative and highly successful component of my Office's prevention strategy. The MCPPO Program meets rigorous national standards for professional development programs and enables qualified participants to earn continuing professional education credits, continuing education units, and professional development points. The American Council on Education's College Credit Recommendation Service has recommended that colleges and universities grant undergraduate and graduate credit for completion of MCPPO seminars. Since the program's inception, my Office has conducted 110 seminars at various locations around the state, serving more than 3,400 attendees. As of April 2001, 359 participants had been certified and awarded an MCPPO designation. The MCPPO program is the hallmark of my Office's capacity-building approach to preventing fraud, waste, and abuse before they happen.

Supplementing the MCPPO program are a host of other prevention activities, such as the on-call technical assistance my Office's specially trained attorneys provide daily to local government officials on Massachusetts public procurement laws. In the 2000 calendar year alone, my Office responded to more than 4,500 procurement-related inquiries. Early in my tenure, I instituted a quarterly *Procurement Bulletin* to provide public purchasing officials across the state with procurement-related information and advice. Over the years, the mailing list for the *Bulletin* has grown to 5,600. My Office also publishes procurement manuals and a *Practical Guide to Drafting Invitations for Bids and Requests for Proposals* to assist public officials with procurement and contracting.

### **Legislative Reviews and Mandates**

During each legislative session, my Office has reviewed approximately 7,000 bills filed in the General Court including legislative proposals submitted by the Governor. Each session my Office has also drafted and submitted several hundred opinion letters to the Legislature and the Governor. These opinion letters have often opposed or recommended amendments to special legislation containing exemptions from statutory requirements for open, fair competition. In many instances, the amendments recommended by my Office have been adopted by the Legislature.

Since 1990 the Legislature has enacted 117 mandates instructing this Office to undertake special studies, reviews, or investigations. Many of these mandates have required my Office to review and approve the methodology and determination of fair market value of public property involved in a conveyance or lease to a named party for a certain use. For example, my Office was required to review and approve the appraisal and methodology used to determine the market value of a 20-year lease with a selected developer for land and buildings in New Bedford to be used by the University of

Massachusetts at Dartmouth for a campus facility. Based on my Office's concerns with a lease provision requiring the Commonwealth to pay the real estate taxes on the developer/landlord's property, my Office recommended that the City of New Bedford enter into a tax increment financing agreement with the developer/landlord. This recommendation was adopted, thereby saving the Commonwealth more than \$12 million.

Another example was a legislative mandate requiring the Office to investigate improper motor vehicle registrations by Massachusetts citizens and businesses and analyze the economic impact of this problem on state sales taxes, motor vehicle excise taxes, and insurance coverage costs. My Office issued a report substantiating that extensive fraud had occurred through improper out-of-state registrations, resulting in lost tax revenues of approximately \$55 million annually. In order to correct this widespread problem, my Office's report proposed legislation advocating tough new penalties for vehicle owners who dodge taxes, fees, and insurance premiums by illegally registering their vehicles out of state or in another city or town.

In 1999, my Office issued a comprehensive, legislatively mandated report examining the business operations and contracting practices of 24 charter schools. In addition to identifying serious deficiencies that, left uncorrected, could jeopardize charter schools' capacity to achieve their mission and protect their financial interests, my Office's report provided detailed recommendations aimed at strengthening charter school governance and operations.

My Office has since issued two additional reports on charter schools whose business operations exhibited a high degree of vulnerability to fraud, waste, and abuse. My Office's November 2000 report concerning the SABIS International Charter School revealed that deficient governance by the school's governing board and deficient board oversight of its contract with a private management contractor resulted in hundreds of thousands of dollars in questionable public expenditures and diminished public accountability. My Office's January 2001 report concerning the Somerville Charter School disclosed that a private, for-profit company, controlled the school's finances, the school's budget, the school's employees, and even the school's annual audit. In addition to recommending improvements at the SABIS International Charter School and the Somerville Charter School, my Office has provided detailed comments and recommendations for improvement in letters to the Lawrence Family Development Charter School and Atlantis Charter School. My Office has also provided extensive comments and recommendations regarding charter school governance and oversight to the Department of Education's charter school office and to the Board of Education.

### **Central Artery/Tunnel Project Oversight**

Since 1991, my Office has issued 14 reports concerning the \$14+ billion Big Dig Project. Some of this work was mandated by the Legislature, other reviews were initiated by my Office, and still others were conducted at the request of Project management. (My



Office's recent investigation of Big Dig finances is summarized earlier in this letter.) For example, my Office's reports on the Big Dig have examined deficient oversight by the Project's private management consultant of an eight-year, \$10.9 million design contract for a state-of-the-art integrated project control system; documented delays, misinformation, management errors, and lack of independence in the value engineering program for the Project; and identified internal audit inefficiencies and resource problems that jeopardized federal reimbursement for the Project.

More recently, my Office issued reports criticizing the Project's handling of change orders on a \$72.5 million tunnel contract and the Project's efforts to implement a cost recovery program. The latter report revealed that over a six-year period, the Project recovered only \$30,000 from more than \$83 million in cost recovery-related change orders.

My Office has also issued scores of letters to and concerning the Big Dig Project. As early as 1991, my Office warned that Project costs would far exceed the Commonwealth's Project estimates; my Office has urged the Legislature and Project officials to scrutinize the full Project cost, including debt costs and operations and maintenance costs. My Office has identified numerous management practices that, if left uncorrected, were likely to obscure problems, increase costs, and hamper the Project's ability to predict and control costs. In particular, my Office has repeatedly pointed out systemic control and accountability problems stemming from the Commonwealth's excessively broad project management contract with and near-total dependence on its private management consultant.

In accordance with legislative mandates, my Office has conducted more than a dozen reviews of Project-related buildings and pilot projects and recommended numerous measures to control costs and improve performance. At the request of the Project, my Office has conducted more than 20 management reviews of Project systems and procedures. My work in this area has focused on identifying systemic vulnerabilities to waste and abuse, identifying opportunities for cost savings, and strengthening the Project's management and oversight practices.

### **The Oversight Challenge**

The activities described in the preceding pages represent only a portion of my Office's ongoing work to promote efficiency, effectiveness, and accountability in the operation of government. My Office's staff have devoted countless hours to other activities that support the Office's mission. Legislation drafting is one such activity: during the last legislative session, the Office filed legislation to streamline and fine-tune M.G.L. c. 30B, the competitive procurement law that applies to municipal, county, district, and local authority procurements of supplies, services, and real property. The Office's recommendations, which were incorporated into the enacted FY 2001 budget, have brought M.G.L. c. 30B up to date, thereby improving the procurement procedures used by the more than 1,500 jurisdictions that are subject to the competitive contracting requirements of the law.

Providing comments and recommendations on ongoing public projects is another oversight activity in which I have invested substantial staff resources. For example, at the request of the Executive Office of Transportation and Construction (EOTC), my Office observed and provided advice regarding the process of selecting and contracting with a developer to design, construct, finance, and operate Route 3 North for a 30-year term. In this and similar cases, the Office has invested time and effort aimed at improving public management of a project in order to reduce the risks to the public of fraud, waste, and abuse. The challenge of providing effective oversight demands that the Office continually expand the scope of and approaches to its important work.

In the cover letter to my first annual report, I said: "These are extraordinary, challenging times in which the need for an independent, apolitical Office of the Inspector General has never been greater." These words are no less applicable ten years later. As I take leave of the Office of the Inspector General, I do so with great pride in all that the Office has accomplished on my watch. All Inspectors General, and I personally, owe a great debt of gratitude to former Inspector General Joseph R. Barresi for his groundbreaking work in the inspector general field. I also wish to express my appreciation to the Office's staff who have served the public so diligently and effectively over the past ten years. I am optimistic that the Office will continue to honor and uphold its legacy; to develop new oversight approaches; and, in so doing, to fulfill its mission to prevent and detect fraud, waste, and abuse in the expenditure of public funds.

Sincerely,

Robert A. Cerasoli  
Inspector General

**Publications of the Office of the Inspector General  
July 1991 – April 2001**

**Reports**

*A Report on the Design and Construction of the University of Massachusetts Computer Science Center, March 2001.*

*A History of Central Artery/Tunnel Project Finances 1994 - 2001: Report to the Treasurer of the Commonwealth, March 2001.*

*Somerville Charter School: Management Issues and Recommendations, January 2001.*

*A Review of the Central Artery/Tunnel Project Cost Recovery Program, December 2000.*

*A Review of the Metropolitan District Commission's Swimming Pool Maintenance and Repair Contracts, December 2000.*

*Central Artery/Tunnel Project: Management Issues and Recommendations 1993-2000, December 2000.*

*SABIS International Charter School: Management Issues and Recommendations, November 2000.*

*The Commonwealth's Contractor Certification System: A Status Report, November 2000.*

*Department of Medical Assistance: Orthopedic Footwear Benefits, Policies, and Procedures, April 2000.*

*Statutorily Mandated Reviews of Central Artery/Tunnel Project Building Construction Contracts 1997-1999, December 1999.*

*A Management Review of Commonwealth Charter Schools, November 1999.*

*A Review of the Central Artery/Tunnel Project's Use of Anchor Bolts on the C05B1 Tunnel Finishes Contract, December 1998.*

*Review of the Seekonk Landfill, December 1998.*

*Qualifying Contractors for Public Building Projects: A Case Study and System Review, August 1998.*

*Emergency Construction Projects: Review of Selected State Office Building Contracts*, May 1998.

*A Review of the Central Artery/Tunnel Project's Materials Testing Laboratory Function*, December 1997.

*The North East Solid Waste Committee Project: Planning and Development of a Public Private Partnership*, December 1997.

*Lease-Purchase Financing of a Design-Build Project: The Plymouth County Correctional Facility*, July 1997.

*A Study of Improper Motor Vehicle Registrations*, March 1997.

*Maintenance and Repair Contracting By the Boston Housing Authority*, February 1997.

*Private Office Space Leasing by State Agencies*, January 1997.

*Statutorily Mandated Reviews of Central Artery/Tunnel Project Building Construction Contracts: 1994-1996*, December 1996.

*A Report on Certain Activities and Practices of the Massachusetts Public Health Biologics Laboratories*, December 1996.

*Value Engineering Change Proposals: A Review of a Central Artery/Tunnel Project Cost Control Program*, December 1996.

*Proposed Disposition of the Massachusetts Highway Department's Wellesley Central Maintenance Facility: A Review Pursuant to Chapter 273 of the Acts of 1994*, July 1996.

*Procuring Energy Management Services: A Case Study*, March 1996.

*A Review of the Oak Bluffs Bathhouse Project*, December 1995.

*Review of a Consultant Contract Procured and Administered by the MBTA*, December 1995.

*Report on the Massachusetts Highway Department's Asset Management System for the Central Artery/Third Harbor Tunnel Project*, November 1995.

*The Pollard Middle School Construction Project in Needham: A Management Review*, June 1995.

*A Review of the Commonwealth's Higher Education Building Authorities*, February 1995.

*Contracting for Parking Lot Management Services by the Metropolitan District Commission, December 1994.*

*Value Engineering: A Review of a Central Artery/Tunnel Project Cost-Control Program, December 1994.*

*Bechtel/Parsons Brinckerhoff's Management of a Design Contract for the Central Artery/Tunnel Project, November 1994.*

*Report on the Massachusetts Highway Department's Internal Audit Function for the Central Artery/Third Harbor Tunnel Project, July 1994.*

*Massachusetts Water Resources Authority: Report on the Procurement of Financial Services, December 1993.*

*The MWRA's Support Building Complex on Deer Island: Too Large, Lavish, and Expensive, December 1993.*

*The Procurement of Pension Investment Management Services by the Department of the State Treasurer, August 1993.*

*Contract Mismanagement: DCPO Wasted \$326,000 on Windows at Tewksbury Hospital, April 1993.*

*Hazards Ahead: The Operations Control Center Complex for the Central Artery/Tunnel Project, March 1993.*

*The DMR Investigations Division: A Critical Review, November 1992.*

*Exclusive Towing Contracts on the Turnpike, October 1992.*

*Repair Plates: Special-Interest Privileges at Public Expense, October 1992.*

*Disposition of State Property: The Elm Bank Case, July 1992.*

*Audit Services Procurement by the Massachusetts Department of Public Works, November 1991.*

*The Massachusetts Turnpike Authority: Self-Preservation at the Expense of Taxpayer Interests, October 1991.*

## **Manuals, Guides, and Bulletins**

*Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*, 4<sup>th</sup> Edition, 2000; 3<sup>rd</sup> Edition, 1998.

*Designing and Constructing Public Facilities*, 4<sup>th</sup> Edition, 2000; 3<sup>rd</sup> Edition, 1998; 2<sup>nd</sup> Edition, 1995.

*Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services*, 2<sup>nd</sup> Edition, 2000; 1<sup>st</sup> Edition, 1998.

*Recommended Code of Conduct for Public Employees*, August 1998.

*Procurement Bulletin* (22 quarterly issues)

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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.

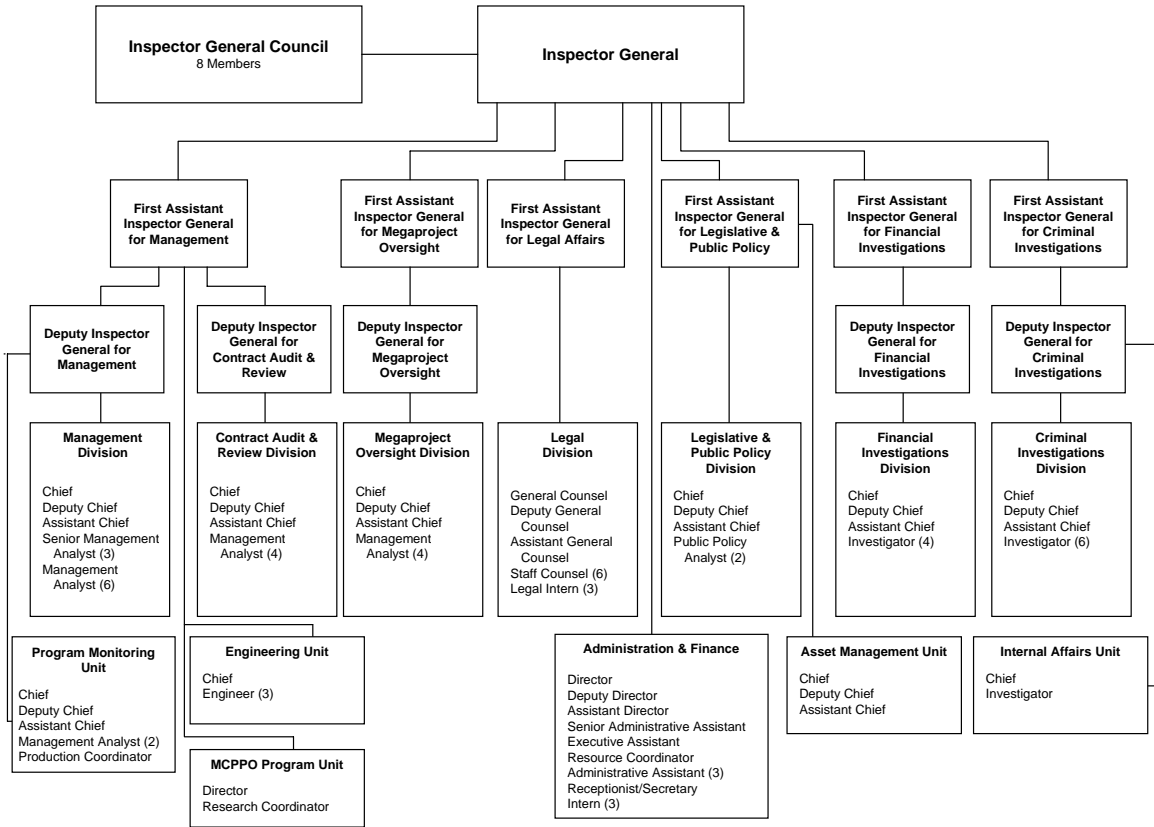
In 1998, the Office launched an Internet website to facilitate dissemination of lessons learned. New and recent Office reports and instructional manuals as well as all of the Office's *Procurement Bulletins* are available on the website. The website also provides information on current MCPPO program 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 2001 was \$2,317,000. Although the Office has 118 authorized staff positions, only 45 staff positions were filled

in fiscal year 2001 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 period of January 1, 2000 through April 30, 2001.

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# Financial Oversight

## Medicaid Orthopedic Footwear Program Investigation

“Evidence outlined in this report shows that enterprising providers, accommodating doctors, unrelenting Medicaid recipients, and lax DMA administrators combined to overwhelm the weaknesses in the Medicaid system.”

– IG report, April 2000

In April 2000, the Office issued a comprehensive, 184-page investigative report documenting the Office’s findings of widespread fraud and abuse in the Medicaid orthopedic footwear program. The report, entitled *Department of Medical Assistance: Orthopedic Footwear Benefits, Policies, and Procedures*, was issued pursuant to an Order of the House of Representatives, House Bill 4949, adopted on September 27, 1997. During the investigation, the Office reviewed 21,703 transactions between the Department of Medical Assistance (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, Boston Boot Makers, Inc. (BBM), which had provided footwear for the Commonwealth’s Medicaid program since 1983. The Office expanded the scope of the investigation upon discovery of additional and significant problems in the Medicaid orthopedic footwear program.

The Office’s report described how more than \$4 million in taxpayer dollars was wasted over the 10-year period between 1990 and 2000. The Office’s investigation uncovered strong evidence that BBM routinely ignored the orders of physicians who prescribed standard orthopedic shoes for their patients. Instead of following the orders of the physicians, BBM commonly gave its Medicaid recipients what they wanted, including high-heeled pumps, summer sandals, mountain boots, and party shoes. The record shows that DMA was in fact purchasing custom-molded shoes for the rest of Medicaid’s orthopedic recipients, other than BBM’s clients, throughout the period reviewed by the Office. After BBM left the Medicaid program, DMA paid an astounding average of \$808 less per pair of orthopedic shoes for the same patients.



**"Medicaid paid \$942 for exact replicas of Hollywood star Fred Astaire's dancing shoes for the son of one of BBM's directors."**

*– IG report, April 2000*

The Office's investigation uncovered pervasive billing irregularities by orthopedic footwear providers that resulted in millions of wasted taxpayer dollars. The providers employed an array of schemes to pad their bills. These included double billing for orthopedic shoes; charging for custom-made shoe inserts that were factory made; billing for orthopedic shoes and duplicating same for component parts; charging for odd-size shoes when standard sizes were provided; and adding a host of other unnecessary charges.

The Office's investigation revealed that DMA knew as early as October 1993 that at least one major orthopedic footwear provider had bilked the Medicaid program by using the same billing schemes later identified by the Office's investigation. However, DMA apparently did nothing to tighten its system for more than five years to prevent other providers from doing the very same thing. During that five-year period, other providers took advantage of DMA by using the very same schemes. However, DMA did not tighten its computerized and administrative claims payment system to correct the systemic problems until the fall of 1998, when the Office brought to DMA's attention that many other of DMA's other orthopedic providers were exploiting the same weaknesses in the system at a cost to the taxpayers of millions of dollars.

**"In order to ensure that the Medicaid program is administered in accordance with the objectives of the Governor and the state legislature, it is obvious that DMA must tighten its administrative regulations and management controls."**

*– IG report, April 2000*

In response to the information and recommendations 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.

## **Review of Central Artery/Tunnel Project Finances**

**“Records show that local FHWA officials acted in partnership with state officials to downsize the Big Dig cost estimate for public relations purposes.”**

*– IG report, March 2001*

In March 2001, after a yearlong review of Central Artery/Tunnel Project (Project) – also known as the “Big Dig” – cost overruns, the Office issued a detailed report to the Treasurer of the Commonwealth, entitled “*A History of Central Artery/Tunnel Project Finances 1994 - 2001.*” The report addressed issues related to the \$1.4 billion Big Dig cost overrun announced in February 2000. The announcement of this overrun followed a December 1999 bond issuance and was prior to a February 2000 bond issuance. By October 2000, Big Dig officials announced that the overrun had increased to \$2.5 billion. This Office examined the history of this overrun and found that it resulted from budget assumptions made in 1994 and 1995 that were accepted by Federal officials. This Office also examined what role federal, state and project officials had in creating and maintaining the assumptions after 1995 and what role they had in failing to disclose the overrun to the state Legislature and the financial markets.

Although the Office of the State Treasurer had conducted an extensive due diligence review in preparation for the December 1999 bond issuance, the Office's investigation uncovered information that was not disclosed to the Office of the State Treasurer. During the pre-sale period for those bonds, the Turnpike Authority's outside counsel acknowledged to Project officials, but not publicly, that the Big Dig faced an almost \$1.4 billion overrun. A late night fax sent by the outside counsel for the Turnpike Authority seven days before the bond sale stated: “These are ‘hard’ numbers, not worse case #'s [numbers].” This fax was sent the night before the Governor and other state officials met with Wall Street analysts to discuss the Commonwealth's bond rating. The Turnpike Authority's

outside counsel initially withheld this disclosure document from the Office under a purported claim of attorney-client privilege. In June 2000, while the Office's yearlong review was still ongoing, the Office brought this document to the attention of the Turnpike Authority Chairman.

**"These are 'hard' numbers – not worst case #s [numbers]."**

*– Document faxed by Turnpike Authority outside counsel before December 1999 bond sale, December 1999*

The Office reviewed more than 100,000 pages of documents related to the period 1994 to 2000 and internal Federal Highway Administration (FHWA) documents related to a detailed budget review conducted in 1995 by FHWA officials. The Office's review revealed many troubling facts about Big Dig finances, including the following:

- **In 1994, Bechtel/Parsons Brinckerhoff (B/PB), the state's management consultant responsible for administering the Big Dig, provided the Governor and state officials with a Big Dig cost estimate of almost \$14 billion, a figure uncannily close to the current \$14.1 billion estimate.** B/PB's \$14 billion estimate in 1994 starkly contradicted the \$8 billion estimate (more exactly \$7.998 billion) offered publicly by Big Dig officials<sup>1</sup> at that time. After B/PB presented its \$14 billion estimate in 1994, state managers directed state and B/PB staff to undertake a cooperative effort to maintain the fiction of an "on-time" and "on-budget" \$8 billion project. Records showed that they did so by applying a largely semantic series of exclusions, deductions, and accounting assumptions that covered-up the \$6 billion difference.
- **Internal FHWA records showed that in 1995, B/PB officials disclosed to local FHWA officials all budget assumptions that Big Dig officials had used to shrink its Big Dig cost estimate from \$14 billion to \$8 billion.** Records showed that local FHWA officials acted in partnership with state officials to downsize the Big Dig cost estimate for public relations purposes. In early 2000, federal officials investigated the cause of the Big Dig cost overrun; they concluded that state officials had deceived local FHWA officials. FHWA records contradicted this conclusion.

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<sup>1</sup> "Big Dig officials" refers to senior Massachusetts Highway Department and Massachusetts Turnpike Authority managers, including the Turnpike Chairman and Project Director, charged with the administration of the Big Dig and the Commonwealth's contract with B/PB.



- **Big Dig and local FHWA officials shirked their fiduciary responsibilities by not disclosing all relevant financial facts to the public, the State Legislature, or - as required by law - the bond markets.**
- **The Governor, the Chairman of the Turnpike Authority, and the Commonwealth's Secretary of Transportation and Construction failed to fulfill their responsibility to implement the reporting requirements of M.G.L. Chapter 3, Section 17 of the Acts of 1997.** The Legislature required semi-annual Big Dig Finance reports that disclosed the true nature of Project costs and Project finances.
- **Big Dig files were reportedly missing, computer hard drives had allegedly been destroyed, and many documents continued to be shielded from the public by attorney-client privilege.**
- **The Office of the State Treasurer ultimately forced Big Dig officials to disclose the cost overrun through its due diligence review of February 2000.**

**"[T]his Office concludes that the current Governor and his appointees have not disclosed the real Big Dig budget story to federal investigators, Congress, the State Treasurer, and the State Legislature. "**

*- IG report, March 2001*

The Office's report called for an independent federal investigation by Congress into the FHWA's role in downsizing the Big Dig cost estimate and for a re-examination of the FHWA-imposed funding cap that has harmed the citizens of Massachusetts by saddling them with billions of dollars in added debt.

As a result of the Office's report, the entire Massachusetts Congressional delegation signed a letter to the Inspector General for the U.S. Department of Transportation requesting that there be an investigation into the allegations contained in the report. Senator John McCain and Congressman Harold Rogers also sent letters to the U.S. Department of Transportation requesting that an investigation be undertaken. The Joint Committee on Transportation of the Massachusetts Legislature called for a hearing into the matter. At this hearing, B/PB's Big Dig Manager confirmed that the Governor was told in 1994 of the \$14 billion cost projection and he also stated that he told the former Project Director that he was concerned "that information should flow higher than [the Director]". The Massachusetts Attorney General also began an investigation and has issued numerous subpoenas. The Securities and Exchange Commission

is continuing its investigation and has issued subpoenas as well. The U.S. Department of Transportation's Office of the Inspector General and the Federal Bureau of Investigation have also initiated investigations. None of the parties referred to in the report have offered official denials of any of the specific allegations. In a press release issued the day after the Office released the report, B/PB stated:

The report confirms that, in accordance with its contracts, Bechtel/Parsons Brinckerhoff (B/PB) provided its clients, the Massachusetts Highway Department and the Massachusetts Turnpike Authority, with complete, timely and accurate information about the actual and estimated cost of completing the CA/T Project. Under those contracts and state law, B/PB fulfilled all of its reporting obligations. The report also confirms that other state and federal officials were simultaneously aware of this information. Beyond satisfying its contractual requirements, B/PB has met or exceeded all standards of professional practice regarding cost control and reporting.

### **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 a June 2000 letter, the Office notified STCCAC that, based solely upon the information submitted to the Office by STCCAC, the Office concurred with STCCAC's decision to award a contract for construction of a retrofit roof for \$466,755.

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## **Investigations**

The Office's investigations of criminal and civil violations of law arise from a variety of sources, including complaints received in writing or by telephone, information developed during the course of other Office reviews and activities, and requests for assistance by other investigative agencies such as local and state police. In 2000, the Office received 138 complaints, 96 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 2000 include the Office of the Attorney General, the Office of the State Auditor, the State Ethics Commission, the Department of Revenue, offices of local district attorneys, and the U.S. Attorney's Office.

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. Many such joint investigations are long range and encompass the majority of investigative resources within the Office. Accordingly, the cases referred to below constitute only a partial listing of investigations conducted by the Office.

The Computer Forensics Unit was created within the Criminal Investigations Division in 2000. This Unit will provide logistical and investigatory support to other units within the Office. Nearly all cases encountered by this Office in the last few years have had computer or digitally maintained records involved at some level. The Unit is charged with the responsibility of collecting, preserving, and analyzing electronic evidence in such a manner that this evidence may be used by prosecutors in subsequent proceedings.

### **Municipal Golf Course Complaint**

In response to a complaint alleging theft, mismanagement, and misappropriation of resources at the city-owned D.W. Field Golf Course in Brockton, the Office initiated an investigation that included long term surveillances that confirmed the allegations. It was determined that receipts for golf cart rentals were not furnished to the players and there was no daily accountability for these rentals. The investigation disclosed

the rental of a substantial number of carts unaccounted for on a weekly and monthly basis, resulting in a significant loss of revenue to the City. Due to the lack of proper accounting procedures employed at the course which prevented an accurate audit against any one individual, criminal charges could not be lodged. In a June 2000 letter to the Mayor, the Office and the Plymouth County District Attorney called for tighter monetary controls and the restructuring of accounting procedures at the course. Internal control changes have been implemented and periodic checks will be made by the Office to ensure compliance.

### **Investigation of Fraud and Failure to Perform Contract by State Registered Home Improvement Contractors**

Working in conjunction with the Weymouth Police Department, the Office conducted an investigation into the fraudulent business practices of two State-licensed home improvement contractors. Sean S. Hicks had contracted to complete numerous improvements to a home in Weymouth. Hicks received five payments for his work, which was less than half completed. Hicks abandoned the project and was alleged to have fled the state. A warrant was subsequently issued for his arrest. Hicks surrendered to authorities and was found guilty on October 25, 2000. Hicks received four years probation and was ordered to pay restitution.

Working in conjunction with the Sandwich Police Department, the Office conducted an investigation into the fraudulent activities of John Murphy, d/b/a Home Improvement and Remodeling. Murphy entered into a contract with a Sandwich homeowner for extensive work at that residence. Investigation disclosed that Murphy had never filed for a building permit. After completing less than half the work at the location, Murphy took his tools and the remaining stock and left the area. Murphy failed to respond to inquiries by the homeowner and the Sandwich Police Department. On April 11, 2000, Murphy was charged with five counts of violation of contractor laws at Barnstable District Court. He was scheduled to appear in court on four separate occasions, but defaulted each time. A warrant, still outstanding as of April 2001, was issued for his arrest.

### **Construction Contractor Debarment**

In October 2000, the Division of Capital Asset Management (DCAM) debarred Anchor Contractors; Peter C. Varrasso, Jr., President of Anchor Contractors; and Peter C. Varrasso, Sr., General Manager of Anchor Contractors. The debarments resulted from the Office's 1998 review of three deficient building construction projects undertaken by Anchor Contractors in Millis, Carver, and Medfield. In all three cases, the municipalities invoked Anchor Contractors' performance bonds. The Office's investigation revealed that Anchor Contractors had made false

statements in its certification application to the Commonwealth and Update Statements to the three municipalities. Based on these findings, the Office's referral to DCAM recommended debarment of Anchor Contractors, its President, and its General Manager. The Office's findings were reported in the Office's 1998 report entitled *Qualifying Contractors for Public Building Projects: A Case Study and System Review*. The debarments will remain in effect for three years. A debarred contractor is ineligible for the award of public contracts during the debarment period.

## **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, or in some instances, an extensive investigation. Examples during 2000 include the following:

*Alleged misuse of low-income housing and related funds.* The Office reported to the U.S. Department of Housing and Urban Development Inspector General the alleged misuse by a housing authority director of low-income housing units and related funds.

*Alleged mismanagement of health care facilities and allegations of no-show employees.* The Office reported to the U.S. Department of Labor and the U.S. Department of Health and Human Services the alleged mismanagement of two health care facilities and the reporting of numerous no-show employees at these locations.

*Alleged conflict of interest.* The Office reported to the State Ethics Commission the alleged conflict of interest involving the award of no-bid contracts to family members and friends of the director of a state research center.

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# **Central Artery/Third Harbor Tunnel Project**

## **Monitoring**

An interdisciplinary team within the Office of the Inspector General monitors the design and construction of the Central Artery/Third Harbor Tunnel Project (Project), scheduled to be substantially completed in 2004 and estimated, as of December 2000, to cost \$14.1 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 (CAT) Project Oversight Coordination Commission, through which the Legislature provides funding for additional oversight initiatives.

### **LEGISLATIVELY MANDATED REVIEWS**

Under Section 56 of Chapter 235 of the Acts of 2000, “no construction or contractual agreement for construction [in connection with the ventilation buildings, utility facilities, and toll booths that are part of the Project] shall begin prior to the review and approval of the Inspector General.” Since 1994, similar language has mandated these reviews, although the Inspector General’s approval before construction could begin was not required until 1996. 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.

### **Dewey Square Air Intake Structure**

The Office completed a review of documents related to the \$10.9 million Dewey Square Air Intake Structure, a planned three-story building that will provide fresh air supply and exhaust capabilities, and facilities for project control systems. The contract includes the building construction, supports for two ventilation fans, exterior site improvements, temporary street lighting, and maintaining the realigned Atlantic Avenue Bypass Roadway.

The Office identified a number of concerns regarding cost, compliance, and planning. The problems disclosed by the Office's review did not merit withholding approval for the contract to proceed into construction and the Inspector General granted approval in May 2001. Nevertheless, the Office urged Project officials to address a number of troubling issues the Office identified as a result of this and previous reviews. The Office warned that if the Project persists in failing to adequately address these and related issues, the Office would consider withholding future approvals:

- **Third-party changes/Architectural features.** The Commonwealth assumed the financial risk of future joint development by paying an estimated \$300,000 to design and soon to construct a feature (curved vault roof) that was included in the contract to conform with the needs of a specific joint development "partner" who may not be able to participate due to lack of funding. The Office expressed concern about the inclusion of architectural features to support plans for future development by third parties that may never materialize and recommended that Project management examine and control carefully the cost of design features for joint-development purposes to ensure that public funds are not wasted.
- **Life-cycle cost analysis.** The Office's review disclosed no evidence that the Project completed a formal life-cycle cost analysis. Properly conducted life-cycle cost analyses identify all costs for acquisition, construction, operations, and maintenance of a facility for its useful life. Knowing potential operations and maintenance costs also allows the operator to assess and plan for financing these future expenses. The Office recommended that Project staff prepare information pertaining to these costs and provide it to the MassPike staff charged with managing CA/T-related functions and financing.
- **Contract drawings.** The Office criticized the Project, as it has in the past, for failing to comply with the requirements of the Massachusetts Board of Registration for Professional Engineers. The Office also identified errors and inconsistencies in the drawings and urged the Project to correct the problems.
- **Construction interface/Access restraints.** The Office expressed concern about the potential for added costs due to contract interface and site access restraints, in part because connecting the air intake structure would be performed under a different contract. The Project has incurred additional costs due to coordination problems in the past. The Office noted that prudent action by the Project, such as efficient site coordination and construction sequencing, would prevent costly delay claims and reduce the risk of changes orders caused by additional mobilization and other delay-related costs incurred by the contractor.



- **Claims avoidance review.** As a result of the Office's inquiry, Project staff purport to have completed this type of review, which aims to mitigate changes and disputes arising from complex design and construction contract interdependencies. Aggressive cost control should include claims avoidance reviews before bids are opened, not afterwards as occurred on this contract.

The Office also noted that the Project had not provided documents to the Office in a timely manner and had not yet complied with certain notification requirements under M.G.L. c. 149.

## **OFFICE INITIATIVES**

### **Project Cost Increases**

In early March 2000, the Office sent a letter to a Special Joint Commission of the Legislature expressing its views concerning the Project's \$1.4 billion cost overrun first reported by Project leadership in February 2000.

The Office advised the Special Joint Commission that state oversight agencies had not received the Project's October 1999 Finance Plan until February 17, 2000 and that the October 1999 Finance Plan provided no warning of the \$1.4 billion overrun. Moreover, the October 1999 Finance Plan was not responsive to the legislative mandate in the Metropolitan Highway System legislation enacted in 1997; this legislation specifically required that the Project report on the status and schedule as well as the Commonwealth's ability to fund the state's share of the Project.

In the letter, the Office reiterated its position that the "partnering" model on which the contractual arrangement among the Massachusetts Highway Department (MassHighway), MassPike, and Bechtel/Parsons Brinckerhoff (B/PB) is based fails to promote accountability and impedes rigorous oversight of the consultant's performance. The Office pointed out that it had warned years ago that Project costs could exceed \$12 billion and had repeatedly criticized Project managers for failing to implement cost containment measures such as value engineering in the early stages of the Project, when such measures could have had the greatest impact.

The Office urged the Special Joint Commission to scrutinize the full life-cycle costs of the Project, including debt costs and operation and maintenance costs. Finally, the Office advised the Special Commission that it had not consistently received timely information from the Project and that no oversight agency, including the Office, has been given access to the Project's Oracle database, despite repeated requests.

In part due to numerous complaints from oversight agencies, including this Office, concerning access to accurate and timely Project information,

federal officials imposed sanctions on Project management. Specifically, a June 2000 agreement signed by leaders in the Federal Highway Administration, the Massachusetts Executive Office of Transportation and Construction, MassPike, and MassHighway contained the following language:

[A]ll state and private entities associated with the CA/T Project shall provide any and all information and records to external monitoring agencies and shall provide timely access to records and persons employed on the CA/T Project. . . . and a failure to provide timely and full access. . . [may result in] sanctions including but not limited to withdrawal of reimbursement and further availability of federal-aid funding.

Project responsiveness to the Office's requests improved in 2000.

### **Deficient CA/T Project Management Systems and Practices**

In a May 2000 letter, the Office alerted the newly appointed MassPike Chairman to major management control issues and areas of systemic vulnerability to fraud, waste, and abuse that the Office identified during nearly nine years of CA/T Project oversight. The Office urged the Chairman to address the following three recurring themes in order to help restore faith in the CA/T Project and ensure its ultimate success:

- **The Commonwealth's excessively broad project management contract with B/PB has impeded effective cost control and oversight, undermined public accountability on the CA/T Project, and eroded the Commonwealth's contracting leverage.** By contracting with B/PB to perform the full range of project management services and to oversee its own work, the Commonwealth has weakened its capacity to exert effective control over the cost and quality of the services B/PB provides. Moreover, the structure of the contractual arrangement, under which B/PB is paid principally on a cost-plus-fixed fee basis, fails to create the necessary incentives or to hold B/PB accountable for meeting CA/T Project budget and schedule goals. Most of B/PB's compensation is not tied to deliverables or other measurable performance standards; indeed, project delays and construction contract changes serve to increase B/PB's compensation.

**"The Commonwealth's near-total dependence on B/PB has eroded its negotiating leverage to the detriment of the public interest."**

*– IG letter to MassPike Chairman, May 2000*

- **The current management organization of the CA/T Project undermines the essential arm's length relationship between the Commonwealth and B/PB.** Under the MassPike umbrella, Project officials have created a so-called "integrated project organization" combining MassPike employees and B/PB employees. Intertwining the CA/T oversight function with the private management consulting function has created divided loyalties and conflicting interests.
- **Deficient management practices on the CA/T Project have reduced the Commonwealth's capacity to generate accurate cost estimates on individual contracts, control spending, and predict and control future costs.** Management's avowed commitment to cost-consciousness and cost containment has not always been reflected in the actions and decisions the Office has reviewed. For example, the CA/T Project has frequently employed noncompetitive service procurement methods and relied on the excessive use of changes orders and amendments to existing contracts in order to procure work that was not included in the original scopes of services for those contracts.

The Office concluded that the systemic management deficiencies outlined in the letter and documented in an attached 15-page listing of related Office reports and letters contributed to the escalating cost of the CA/T Project.

In his written response of May 31, 2000, the MassPike Chairman cited plans to initiate independent reviews of critical CA/T Project components, including the contractual arrangement with B/PB, and acknowledged the MassPike's obligation to manage the CA/T Project efficiently and openly.

**"Under any scenario, state leaders will face painful decisions and must retain control concerning the CA/T project in order to insure the public's representation in these decisions. The Legislature, over my objections, granted enormous power to MassPike with respect to the CA/T Project. Along with that power are significant reporting and accountability requirements."**

*– IG letter to MassPike Chairman, May 2000*

## **Cost Recovery Program Review**

In December 2000, the Office issued a report entitled *A Review of the Central Artery/Tunnel Project Cost Recovery Program*. In general, "cost recovery" is the process by which owners file claims against design and construction management professionals for the costs claimed to be attributable to errors, omissions, or other unsatisfactory performance. This

report assessed whether the Project had developed an independent and viable program, whether staff adhered to procedures, and whether the Project pursued objectives in a prudent, well-documented, and timely manner. The review yielded the following specific findings:

- **In six years, the Project had only recovered \$30,000 from about \$83.5 million in cost recovery related change orders.**
- **The Project set up the cost recovery program primarily to ensure federal funding, not to recover costs.**
- **B/PB's overly broad role in Project management undermined the Commonwealth's ability to hold B/PB accountable for its design work.** The Project failed to pursue cost recovery against B/PB. Changes to the cost recovery procedure reflected the Project's increased reliance on B/PB, while internal organizational relationships impeded MassPike's ability to hold B/PB accountable for its performance. Moreover, B/PB's conflicting interests in the cost recovery program served as yet another example of the vulnerabilities of the current contractual arrangement.
- **Project management directed B/PB to subcontract for the services of the consultant responsible for assessing B/PB's potential liability for cost overruns.**
- **The cost recovery program showed serious signs of neglect.** On average, Project staff took more than a year (394 days) to close cost recovery cases. Project staff lost or misplaced many cost recovery files. The Project did not, under the cost recovery program, actively pursue alternative methods of cost recovery. Project managers limited the cost recovery program to design-related issues. Many of the cost recovery files were incomplete.
- **The Project did not adequately document cost recovery cases.** The unsigned and undated closing memoranda contained information that was not in the records in the file. The Project's closing memoranda did not accurately document the review process or adequately document the cost recovery committee's rationale for recommending no further action.
- **The cost recovery procedure examined during this review did not mandate the use of stated criteria nor did it provide adequate guidance for identifying and pursuing cost recovery actions.** The cost recovery program failed to provide guidelines or training to staff members, including resident engineers, who were closest to the issues. The cost recovery procedures did not adequately describe the

responsibilities and objectives of the cost recovery committee. The committee could revise the procedures without written justification.

- **In some cases, the Project failed to assess accurately the full cost impact of deficient design work.**
- **Project management eliminated an effective method for catching potential cost recovery actions that B/PB may have missed.**

**“The structure of the program provides no assurance that deficient performance will be detected and no evidence that costs incurred as a result of deficient designer performance would be pursued through the cost recovery program, even if the problem had been detected. In the context of the \$14+ billion CA/T Project, the \$30,000 recovered so far barely registers as a token nod to recovering costs.”**

*– IG report, December 2000*

The Office recommended that the Project take the following corrective actions:

- Revisit the earlier decision not to regard the cost recovery program as an opportunity to cut costs or reduce the net cost to taxpayers. Based on results, designers – including B/PB – have no reason to believe that they will be held accountable through cost recovery action for their mistakes.
- Use the cost recovery program to send a clear message that all design professionals on the CA/T Project will be held accountable for their design work.
- Reassess the basis for determining whether to pursue a cost recovery case.
- Avoid conflicts of interest by ensuring that MassPike or MassHighway, not B/PB, contracts directly for any services aimed at assessing B/PB’s liability for design deficiencies.
- Delink B/PB and MassPike organizations.
- Define clearly and follow through on the purpose and processes of the cost recovery program procedures.
- Provide training and guidelines to increase the likelihood that those closest to the issues in the field, including resident engineers, identify cost increases caused by deficient design.

- Explore and vigorously pursue cost recovery opportunities that go beyond the current program boundaries, including recovery actions for construction management issues and indirect cost overpayments to consultants.

Project management concurred with many of the report findings concerning program neglect and inadequate documentation. Notwithstanding Project management's strenuous objections to many other findings and conclusions, the Office was pleased to note evidence of steps taken to remedy the problems documented in the report.

## **Bid Law Compliance**

In a June 2000 letter, the Office cautioned CA/T Project management against reducing the scope from future Charles River Basin construction contracts after the completion of the bidding process. The Project considered reducing the scope of the contracts after awarding them as a costs savings measure. The Office has consistently taken the position that what goes out to bid should reflect the final scope of work on the project to the extent possible. Moreover, the Massachusetts public bidding laws prohibit omitting portions of the scope of work after the bids are opened, even if it is done to reduce costs.

At the Project's request, the Office addressed the use of M.G.L. c. 149 alternates<sup>2</sup> on M.G.L. c. 30 contracts. The Office wrote that M.G.L. c.30, §39M bidders may use alternates, but must follow the rules that govern the use of alternates by their M.G.L. c.149, §§44A-44J counterparts. To use alternates would require that the Project list the alternates in numerical order in order of priority, and then consider each in the same numerical order. In closing, the Office urged the Project to confer with its own legal staff and the Attorney General's Office, if necessary, to determine how to proceed in the particular situation.

The Project responded that all contracts would comply with bid law requirements, including any use of alternates. The Project informed the Office that it was considering M.G.L. c. 149 alternates on one or more of the Charles River Basin Parks contracts, which would soon be ready to bid under M.G.L. c. 30, §39M.

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<sup>2</sup> Alternates are options that may be included in a bid package for which bidders must submit prices separate from the base bid. Alternates may be used to compare costs of different designs or to help bring a project in under budget. Alternates may increase the scope of work such that bidders will list an added cost ("add alternates"), or they may decrease the scope of work such that bidders list an amount to be subtracted from their based bids ("deduct alternates").

## TECHNICAL ASSISTANCE

### Central Artery/Tunnel Project: Management Issues and Recommendations

In December 2000 the Office issued a report containing correspondence regarding management issues and recommendations in 22 technical assistance reviews conducted by the Office since 1993 at the request of Project officials. These reviews examined complex design and construction management problems, commented on procurement processes, and clarified legal compliance requirements.

**“Regardless of the topic, the purpose of the reviews has been to identify systemic vulnerabilities to waste and abuse, point out opportunities for savings and cost control, and assist Project leaders to better oversee and manage their own operations.”**

*– IG report, December 2000*

Throughout the 22 reviews undertaken at the Project’s request, the Office has consistently offered advice and urged the actions summarized in the list below:

- Develop the internal organizational capacity to monitor and control costs on management consultant, design, and construction contracts.
- Define performance standards and work products to be delivered under contract; hold vendors accountable for performance, including cost and schedule.
- Guard against conflicts of interest and the appearance of impropriety in the hiring of staff and the assignment of functions among employees and private consultant staff.
- Avoid sole source procurements, which may increase project costs and unfairly favor one vendor over others. Justify any sole source procurement in writing and obtain the requisite review and approval.
- Develop clear Project procedures and guidelines. Ensure compliance with all applicable statutory requirements, procedures, guidelines, and management mandates. Failure to comply with key directives can increase the Commonwealth’s vulnerability to cost overruns and future litigation.

The Office noted that, based on the written responses to the reviews documented in this report, the Project's track record for decisive action on technical assistance recommendations had been mixed. Project management had been most responsive to the Office's recommendations concerning ways to improve proposed systems for procuring management consultant and design-related services.

## **Incentive Fee Program for CA/T Project Construction Contracts**

In a February 2000 letter, the Office responded to the CA/T Project's earlier request for technical assistance by reviewing the Incentive Fee Program. At the time, the CA/T Project had incorporated the Program provisions into only one construction contract: the \$164 million C17AA – I-93 Tunnel Finishes contract. CA/T Project managers had set aside \$13.5 million as a financial incentive for the construction contractor to meet or beat contract milestone dates, to mitigate certain delays without filing financial claims, and to work more cooperatively and efficiently with other contractors and CA/T Project staff.

**“This Office does not object to the concept of incentive fee programs. However, we have concluded that the Program provisions as currently written do not offer adequate safeguards against fraud, waste, and abuse.”**

*– Office letter to CA/T Project Director, February 2000*

The Office's letter criticized the lack of contractor oversight, the discretionary and subjective rating system, the unilateral authority of a single manager to change Program rules, and the lack of Program procedures and documentation requirements. The Office also expressed the view that the Program could potentially violate Massachusetts bidding laws.

The Office recommended a series of measures to improve the Program, including the following actions:

- Rather than relying on anecdotal material from other jurisdictions using similar incentive programs, conduct a cost-benefit analysis to determine whether the Program will cost less than the cost of negotiating the contractor claims that the CA/T Project designed the Program to eliminate.
- Subject the incentive fee to no less rigorous a system of checks and balances than that used for the more traditional change order process.



- Develop objective criteria for monitoring and evaluating contractor performance.
- Encourage Federal Highway Administration (FHWA) financial participation in the Program by making FHWA suggested changes.
- Include disincentive provisions, as well, to discourage poor contractor performance, schedule delays, and missed deadlines.

In a May 2000 letter, the CA/T Project responded to the Office's review of the Program. Although CA/T Project management did not agree with all of the Office's conclusions and recommendations, the Project's written response committed to a number of improvements, including developing objective and measurable criteria for payment determinations, increasing oversight and refining documentation requirements, and developing written Program procedures.

### **Prevailing Wage Compliance**

In a July 2000 letter to the Project, the Office responded to the Project's earlier request for technical assistance by reviewing a report prepared by a Project consultant regarding prevailing wage compliance by MassGravel, a Project trucking subcontractor. The Office was asked to review the report and comment on whether the issue appeared to be addressed adequately by the consultant. As a result of allegations against the subcontractor of failure to pay prevailing wages, the Project hired a consultant – an accounting firm under contract to MassHighway – to review the matter. The Office concluded that the consultant had adequately addressed the concern of Project staff, given the scope of the review and the fact that it was a review and not an audit. The Office also recommended that the Project:

- Conduct a follow-up review of those truckers from whom the consultant could not obtain satisfactory answers or contact. Use a larger sample of truckers and conduct periodic reviews of this sort.
- Review internal procedures to ensure that non-compliance can be detected. Evaluate the effectiveness of the compliance unit. Conduct quality assurance/quality control audits of the compliance unit.
- Forward all allegations and violations to the Office of the Attorney General.

**“In light of past prevailing wage violations and the recent investigations into allegations of extortion, excessive overtime, and theft on the C12A3 – I-93 Massachusetts Avenue Interchange construction contract, Project management should consider an internal reassessment of how it handles its obligations under the law.”**

*– Office letter to CA/T Project Acting Director, July 2000*

The Project responded in a November 2000 letter stating that Project staff regularly reviewed records and interviewed workers to ensure compliance. The Project also stated that it would continue to review its procedures to ensure that compliance mechanisms are accurate and that the Project had made at least 25 referrals to the Office of the Attorney General.

### **Request for Qualifications and Proposal (RFQ/P) for Audit Services on CA/T Professional Services Contracts**

In January 2001, Project staff requested the Office’s assistance in developing an RFQ/P for selecting certified public accountant firms to perform federally required audits on millions of dollars in consulting contracts on the CA/T Project. The request emanated, in part, from the Office’s earlier criticism of the flawed process for procuring audit services and the troubling backlog of audit work. The Office had urged Project management to ensure the organizational independence of the audit function and to aggressively pursue recovery of overpayments to consultants.

During February 2001, Project managers provided a rough draft of the RFQ/P to the Office and briefed Office staff on their concerns and objectives in procuring professional audit services. Project staff invited input to help ensure that the RFQ/P appropriately articulated the services required and established a fair and justifiable ranking system. A subsequent draft reflected the Project’s efforts to incorporate the Office’s recommendations. For example, it required respondents to submit all questions in writing, and required that the proposed project manager and key personnel play a major role at the interviews.

In April 2001, the Project provided a newly revised draft of the RFQ/P and requested additional assistance in ensuring that the scope and evaluation criteria are appropriate, fair, complete, and clear. In response, the Office provided more than two dozen suggestions, including more rigorous qualification and experience requirements, provisions for bimonthly status reports, and evidence to demonstrate a history of meeting high performance standards. The Office indicated its willingness to provide additional assistance as needed.

## **JOINT PROJECTS**

### **CA/T Project Oversight Coordination Commission**

In October 1996, pursuant to Section 2B of the July 1996 Transportation Bond Bill, the Inspector General, Attorney General, and State Auditor submitted the Supplemental Plan creating the CA/T Project Oversight Coordination Commission (the 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 a scaled-down version of the earlier plan.

In keeping with the multi-agency teamwork envisioned by the Supplemental Plan, the Inspector General agreed to absorb administrative expenses and staff support for the Commission. Providing office space and equipment to the Commission has consumed a significant portion of the Office's oversight budget and staff each year since 1997.

The Legislature recognized the need for additional oversight by providing an additional \$1 million in the Transportation Bond Bill enacted on July 31, 2000. In an effort to foster information sharing, the bill directed the Commission to submit a report detailing its oversight activities and any resulting savings to the Commonwealth. The report is to be submitted on a quarterly basis to the House and Senate Committees on Ways and Means, the Secretary of Administration and Finance, and the Joint Committee on Transportation.

The Commission's September 2000 Summary Report contained a detailed description of the activities of the Commission and its individual members.

**“The CA/T Project has entered its peak construction period and is now spending about \$4 million each day. The need for focused and proactive oversight efforts continues, especially as the CA/T Project moves toward completion.”**

*– Letter from Attorney General, State Auditor, and Inspector General accompanying third summary report of the CA/T Project Oversight Coordination Commission, September 2000*

The following examples were among the initiatives originally contemplated in the Supplemental Plan. Several of these jointly coordinated undertakings spanned 1997 through 2000, while others were not launched until late 1999 or early 2000 and will continue through the end of the Project.

- In the spirit of cooperation and coordination envisioned by the framers of the Commission, the Inspector General agreed to lend his engineering staff expertise to the State Auditor. Certain complainant allegations required an engineer’s perspective and analysis. The Office notified audit staff of its findings in January 2001. By assisting a fellow Commission member in this manner, the Office was able to supplement the Auditor’s staff efforts and save the State Auditor the time-consuming and potentially costly job of contracting separately for the engineering expertise.
- In 1997, 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 2000, the Office completed its work and provided the results of its review to the staff of the Office of the Attorney General for use in its ongoing examination of opportunities to pursue cases for possible legal action. The Office of the State Auditor, which reported on cost recovery issues surrounding the Fort Point Channel crossing design, provided documents and information that assisted the Office’s efforts to complete the review.
- 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. In 2000, the Office pursued the issues with the appropriate legal staff and kept the Office of the Attorney General apprised of the progress and results of the review effort.

- Senior staff of the three member agencies continued to meet at least monthly throughout 2000 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 2000, 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 continued to pursue 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 remains available to provide information and assistance as appropriate.

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# Operational Reviews

## University of Massachusetts Computer Science Center Review

In March 2001, the Office completed *A Report on the Design and Construction of the University of Massachusetts Computer Science Center*, a detailed review of a design-build project procured by the Division of Capital Asset Management (DCAM) on behalf of the University of Massachusetts (UMass). The Computer Science Research and Development Center (Computer Science Center), which was completed in July 1999, is a flat-roofed, steel-framed, three-story building encompassing approximately 80,000 gross square feet on the UMass Amherst campus. DCAM, the state's centralized construction management agency, was responsible for planning, procurement, and contract administration for this project. In response to the study designer's recommendation of a design-build approach to shorten the project schedule, DCAM used the state's modular building procurement law to award a contract to Suffolk Building Corporation (Suffolk) for the design and construction of the UMass Computer Science Center.

The study designer projected that the UMass Computer Science Center could be completed in 18 months using a design-build approach. However, the project took 37 months to complete. DCAM's contract with Suffolk contained a completion deadline of September 9, 1998 and a total design and construction cost of \$9,231,000. Suffolk completed the project in July 1999, 10 months late. In the course of the project, DCAM approved change orders that increased the contract cost by \$475,985.

In October 1999, three months after project completion, Suffolk submitted a claim to DCAM seeking an additional \$2,733,674. In total, the change orders sought by Suffolk would increase the cost of the project by more than one third. Moreover, the completed project fell short of UMass's standards for construction quality in at least two significant respects.

In its claim, Suffolk alleged that DCAM and UMass caused project delays by failing to approve design submissions in a timely fashion, by delaying design decisions, and by requesting design changes. DCAM contracted with a consultant to analyze Suffolk's claim and, based on the consultant's recommendation, initially agreed to pay Suffolk \$1.4 million to settle the dispute.

However, the Office's review found that the delays and cost overruns were largely caused by factors under Suffolk's control. In addition, the Office found that the Suffolk claim was inflated by charges for damages not

permitted under Suffolk's contract, by overstated indirect costs, and by more than \$300,000 in charges for undocumented design services that cannot be verified. After the Office raised concerns about the claim, DCAM decided not to execute the \$1.4 million settlement agreement. DCAM retained a law firm to assess the consultant's report and recommendations, and the law firm reportedly recommended conducting a new analysis of Suffolk's claim.

**“By not scrutinizing change orders and claims and by not enforcing the requirements of its own contracts, the Commonwealth undermines fair competition for its future construction contracts.”**

*– IG report, March 2001*

The major findings presented in the Office's March 2001 report are summarized below:

- **Although DCAM used the modular building procurement statute to contract for this project, the UMass Computer Science Center is not a modular building.** The term “modular building,” as defined in M.G.L. c. 149, §44E, refers to buildings that are either factory-assembled into three-dimensional modules or portable structures. The UMass Computer Science Center was not constructed as a modular building. Instead, it is a conventionally constructed building that used steel components provided by a pre-engineered metal building systems manufacturer for the third-floor and roof structure.
- **Most delays and cost overruns on the UMass Computer Science Center were caused by factors under Suffolk's control.** The findings in this report show that, contrary to Suffolk's claim, the problems contributing to delays and cost overruns were not caused by major design changes initiated by DCAM or by UMass after the project began. Rather, most major problems were attributable to Suffolk's failure to ensure that design work was complete, accurate, and timely; Suffolk's continual efforts to reduce construction costs through design revisions; and Suffolk's failure to take timely steps to replace non-performing subcontractors.
- **The design-build approach was not appropriate for the UMass Computer Science Center project.** The major disadvantage of the design-build project delivery method is that the owner must give up control over final design, increasing the risk that the completed building will not meet its needs or standards for quality. UMass's efforts to ensure that the building met its standards for quality and functionality were met with resistance by Suffolk and resulted in disputes, despite



clear contract terms that required Suffolk to submit final design work to DCAM for approval. The Office also found that Suffolk and its design subcontractor were engaged in a dispute over design fees throughout most of the project, showing that the design-build approach, which is intended to foster collaboration between the designer and the contractor, does not guarantee a harmonious relationship between them.

- **Top DCAM management did not support efforts of DCAM project personnel to enforce contract requirements and maintain control over the project.** Project records showed that DCAM project personnel attempted to enforce design review and other contract requirements, including requirements for Suffolk to obtain approval for its proposed schedule. Nevertheless, Suffolk failed to meet its own proposed schedule for submissions or to submit complete, revised design documents for approval as required by the contract. In many instances, top DCAM management waived these contract requirements.
- **Top DCAM management failed to conduct a rigorous assessment of the merits of Suffolk's \$2.7 million claim.** Many costs rejected by DCAM project personnel in change orders proposed by Suffolk were later incorporated into Suffolk's \$2.7 million claim. Top DCAM management hired a claims consultant under an agreement that contained no written instructions or scope of work to analyze the claim. The work product produced by DCAM's claims consultant and DCAM's subsequent negotiations with Suffolk reflect a lack of any substantial assessment of the legal merits or the costs included in Suffolk's claim.

A draft of the report was provided to the newly appointed DCAM Commissioner – who had had no responsibility for the Computer Science Center project. In his written response to the draft report, the DCAM Commissioner acknowledged that the report contained a number of valid concerns. He assured the Office that the report findings would receive careful consideration as DCAM proceeded with the disposition of the claim and with future DCAM construction projects.

**“The report was extremely thorough, and the process of reviewing the draft was very constructive for me and my staff. Your report contains a number of valid concerns, and I can assure you that the findings will be considered very carefully as we proceed with the disposition of this particular matter, and as we proceed on future projects.”**

*– DCAM Commissioner response to draft IG report, February 2001*

## **Status Report on Contractor Certification System**

In November 2000, the Office issued *The Commonwealth's Certification System: A Status Report*, a report that evaluated changes to the contractor certification system implemented since the publication of the Office's August 1998 report on the contractor certification system, *Qualifying Contractors for Public Building Projects: A Case Study and System Review*. The Division of Capital Asset Management (DCAM) administers the contractor certification system, which is intended to qualify contractors for public building projects and to screen out unqualified contractors.

The November 2000 *Status Report* found that DCAM had recently strengthened safeguards in some areas of the contractor certification system. However, the report also found that DCAM's financial eligibility standards continued to be inadequate to protect Massachusetts awarding authorities from contractors that are financially unstable, undercapitalized, or overextended. Moreover, significant progress had not been made since 1998 in reducing DCAM's contractor certification backlog. More broadly, DCAM continued to lack sufficient resources to ensure that the contractor certification system served its intended purpose.

**"Contractors that are financially unstable, undercapitalized, or overextended pose substantial risks to Massachusetts awarding authorities in the form of project delays, corrective construction work, and legal fees."**

*– IG report, November 2000*

The specific report findings were as follows:

- **Recent procedural improvements in the contractor certification system have strengthened safeguards against unqualified contractors.**
- **The contractor certification system continues to lack stringent standards for evaluating applicants' financial condition and capacity to undertake public work.**
- **The Commonwealth's investment of resources has been inadequate to ensure an effective contractor certification system.**

**“Competition among qualified contractors is the key to best value construction. To date, the Administration has not devoted the necessary resources to institute meaningful reform of the contractor certification system. . . . Such an investment is long overdue.”**

*– IG report, November 2000*

The report offered the following recommendations for systemic improvements to the contractor certification system:

- DCAM should develop clear, reliable standards for assessing each contractor’s financial capability.
- DCAM should develop more restrictive methods for calculating contractor certification limits.
- DCAM should revise the contractor evaluation form to solicit information on contractor failure to pay subcontractors and to identify biased references.
- DCAM should revise the written contractor certification procedures to include specific protocols governing all significant decisions affecting the evaluation process.
- The Administration should invest sufficient resources to ensure an effective contractor certification system.

In an October 2000 response to a draft version of the report, the DCAM Commissioner acknowledged the importance of reforming the contractor certification system and indicated that DCAM was taking steps to implement improvements recommended by the Office.

## **SABIS International Charter School Review**

In November 2000, the Office issued a report entitled *SABIS International Charter School: Management Issues and Recommendations*. The report summarized the findings stemming from the Office’s year-long review of certain aspects of the SABIS International Charter School’s business operations previously identified by the Office as sources of risk. The Office’s previous report entitled *A Management Review of Commonwealth Charter Schools*, issued in November 1999, had identified weaknesses in the School’s contracting practices, procurement procedures, and financial management. The Office’s 2000 review disclosed deficiencies in the Board’s governance of the School and oversight of its contract with its

private management contractor, the Minnesota-based firm of SABIS Educational Systems, Inc. (SABIS Inc.).

The Office's report found that the Board of Trustees did not employ sound business and contract oversight practices in administering the School's financial relationship with SABIS Inc. during the first five years of School operations. Specifically:

- **Although SABIS Inc. charged the School more than \$950,000 in management fees between 1995 and 1999, the School paid the salaries of the on-site staff who administered the School's business operations on a daily basis during this period.**
- **The Board of Trustees authorized more than \$300,000 in reimbursements to SABIS Inc. for "corporate support" expenses that were neither specified in the 1995 contract nor substantiated with invoices.**
- **The Board of Trustees inappropriately ceded responsibility to SABIS Inc. for selecting and engaging the services of the School's independent auditor.**

"Entering into a substantial service contract without instituting appropriate contract monitoring and enforcement mechanisms is an invitation to waste as well as fraud and abuse."

– IG report, November 2000

In March 2000, the Board of Trustees signed a new contract, which contained an effective date of July 1, 2000, with a new corporation created by SABIS Inc.: "Springfield Education Management LLC, A Delaware Limited Liability Corporation (hereinafter, "SABIS, Inc.")". Under M.G.L. c. 71, §89(j)(5), charter school contracts for substantially all educational services require the approval of the Board of Education. The Office's report found that the new contract with SABIS Inc. executed by the Board in March 2000 would significantly increase the School's exposure to fraud, waste, and abuse. Specifically,

- **The new contract would significantly increase SABIS Inc.'s financial control over the School while reducing Board oversight.**
- **The new contract would significantly increase SABIS Inc.'s potential compensation while eliminating the School's ability to invest in School programs and operations.**

- **The indefinite term of the new contract would insulate SABIS Inc. from competition in the future, thereby reducing its incentives to provide efficient, high-quality services to the School.**
- **The new contract would allow SABIS Inc., but not the School, to terminate the contract after five years.**
- **The dispute resolution and termination provisions of the new contract would undermine the Board’s ability to terminate the contract if SABIS Inc. failed to perform.**

“It is essential that the Board be willing and able to devote the care, time, and expertise necessary to fulfill its statutory and fiduciary responsibility to supervise and control the School.”

– IG report, November 2000

Finally, the Office’s report found that the Board of Trustees did not accurately document its official actions and policies, Specifically:

- **The Board’s meeting minutes contained no documentation of any discussion or recorded votes on the annual School budget, the School’s payments to SABIS Inc., or the School’s loans from SABIS Inc.<sup>3</sup>**
- **The Board’s longstanding, unwritten policy of enrolling the children of Board members before other applicants on the waiting list conflicted with the enrollment procedures mandated by the charter school law.**

The report offered a series of recommendations designed to strengthen the Board’s capacity to oversee and control the School’s business operations, including its contract with SABIS Inc. The Board also recommended that the Board of Education disapprove any contract between the School and SABIS Inc. containing the risky and unfavorable provisions discussed in the report.

In response to a draft of the report, the Board of Trustees acknowledged that the report made a number of points which will assist the Board in making further improvements to the business administration side of the School. However, the Board’s response disputed the report’s overall conclusion of deficient Board oversight and governance.

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<sup>3</sup> The state’s open meeting law, M.G.L. c. 30A, §11a½, requires governmental bodies to maintain accurate, detailed documentation of their official actions.

**“Sound business systems and contracting practices are fundamental to the capacity of any organization, whether public or private, to sustain growth and achieve its long-term objectives.”**

*– IG report, November 2000*

## **SABIS International Charter School Management Contract**

The Office’s November 2000 report on the SABIS International Charter School (discussed above) found that the School’s new contract with Springfield Education Management, LLC, a limited liability corporation created by SABIS Educational Systems, Inc. (SABIS Inc.), contained provisions that would pose significant and unwarranted risks to the School, while substantially increasing SABIS Inc.’s compensation. On December 7, 2000, the DOE forwarded a revised copy of the School’s contract to the Office, accompanied by a letter from the DOE Commissioner thanking the Office for its assistance and advising the Office that the revised contract addressed the concerns raised in the Office’s November 2000 report. The DOE Commissioner’s letter indicated that the DOE intended to recommend that the Board of Education approve the revised contract.

However, the Office’s review of the revised contract disclosed that it did not address the major concerns of the Office and that, in some areas, it increased the risks to the School. In a letter to the DOE Commissioner dated December 18, 2000, the Office identified the following major flaws of the revised contract:

- The revised contract failed to specify the services to be delivered or the management staff to be paid by the contractor in exchange for the management fee.
- The revised contract authorized the contractor to be reimbursed for expenses without specifying the allowable reimbursements or requiring the contractor to submit invoices substantiating the reimbursement requests.
- The budget approval provisions of the revised contract appeared to violate the charter school law and would undermine the capacity of the Board of Trustees to supervise and control the School’s finances.
- The revised contract gave the contractor excessive control over the School’s operating account.
- The revised contract contained unfavorable provisions regarding the surplus School revenues to be paid to the contractor.

- The revised contract allowed the School and the contractor to renegotiate the contract without competition and could have allowed a third party to decide the terms and conditions of future contracts.

The Office's letter noted the absence of provisions in the revised contract relating to internal controls, written accounting procedures, competitive procurement procedures, or record-keeping. The Office's letter also noted that the provision of the revised contract requiring the School to use a trademark symbol in its name – i.e., "The SABIS® International Charter School" – was inappropriate for a public school governed by a public governing board and serving public school students. In a letter dated December 27, 2000, the DOE Commissioner expressed appreciation for the Office's comments and stated that the issues raised in the Office's letter would be carefully reviewed.

*In March 2001, the Board of Education approved the contract between the School and Springfield Education Management, LLC. The final contract had been amended in several respects: for example, the final contract explicitly stated that the management fee covered the cost of the contractor's off-site employees and required the contractor to document reimbursed expenses. However, the final contract – like the earlier version criticized by the Office – required the Board of Trustees to negotiate the School's budget with the contractor, gave the contractor excessive control over the School's operating account, provided that the contractor would retain all surplus School funds, allowed the School and the contractor to renegotiate the contract without competition, contained no provisions governing internal controls, and provided that the name of the School would be The SABIS® International Charter School.*

**"The interests of a public school may differ from those of a private, for-profit company providing services under contract to the School. The Board – and only the Board – should have the final authority to determine the School's budget. No other party should be permitted to overrule the deeply held convictions of the public body charged by law with the responsibility to govern the School."**

*– IG letter to DOE Commissioner, December 2000*

## **Somerville Charter School Review**

In January 2001, the Office issued a report entitled *Somerville Charter School: Management Issues and Recommendations*. The report summarized the findings stemming from the Office's review of certain aspects of the Somerville Charter School's business operations previously identified by the Office as sources of risk. The Office's previous report entitled *A Management Review of Commonwealth Charter Schools*, issued in November 1999, had identified weaknesses in the School's contracting practices, procurement procedures, and financial management. The Office's 2001 review disclosed that the Board of Trustees' had provided inadequate governance of the School and oversight of its contract with its private management contractor, the Minnesota-based firm of SABIS Educational Systems, Inc. (SABIS Inc.)

**“[S]trong, effective Board governance is essential to the School's long-term capacity to achieve its educational mission and to protect the interests of its students, their parents, and the taxpayers whose dollars fund the School.”**

*– IG report, January 2001*

The Office's report found that the Board's contractual arrangement with SABIS Inc. had not enabled the Board to control, safeguard, or obtain full information regarding the School's finances. Specifically:

- **The Board of Trustees had given SABIS Inc. excessive control over the School's operating funds.**
  - The Board had allowed SABIS Inc. to deposit School funds in an operating account under SABIS Inc.'s exclusive control.
  - The Board had given SABIS Inc. excessive control over the School budget.
- **The School's management organization had impeded Board oversight of the SABIS Inc. contract and full Board access to essential School documents and information.**
- **The Board of Trustees had inappropriately ceded responsibility to SABIS Inc. for selecting and engaging the services of the School's auditor.**
- **The surplus provision contained in the School's 1996 contract with SABIS Inc. was disadvantageous to the School.**



- **The Board’s Finance Committee Chair and the Director of the School appear to have held conflicting views of loan agreements between the School and SABIS Inc.**
- **Although the Board maintained detailed minutes of its regular meetings, it did not maintain records of its executive sessions.**

**“The Board’s delegation of excessive financial control to SABIS Inc. has precluded meaningful Board control and oversight of the public funds that have been appropriated and designated for School operations.”**

*– IG report, January 2001*

The report offered a series of recommendations designed to strengthen the Board’s capacity to oversee and control the School’s business operations, including its contract with SABIS Inc.

In a January 2001 response to a draft version of the report, the Board of Trustees noted that the State Department of Education had endorsed its charter and contract with SABIS Inc. The Board also expressed appreciation for the Office’s review and recommendations and indicated that it planned to use the Office’s report as a resource.

**“We plan to continue our work providing quality educational services to students and believe that your report provides us with information that will assist us in our efforts.”**

*– Board of Trustee response to draft IG report, January 2001*

## **Lawrence Family Development Charter School Review**

During 2000, the Office reviewed several financial and administrative issues pertaining to the Lawrence Family Development Charter School. These issues had been identified by the Office as potential sources of risk in its 1999 report entitled *A Management Review of Commonwealth Charter Schools*. In an August 2000 letter to the School’s Board of Trustees, the Office commended the School for the high quality of its written documentation reflecting the business conducted by the Board. However, the Office raised the following concerns:

- Renovations to the School’s facilities may have been undertaken in violation of the construction bid laws (M.G.L. c. 149 and M.G.L. c. 30, §39M) and the state’s designer selection law (M.G.L. c. 7, §§38A-O). The Office recommended that the School seek an opinion from the

Attorney General regarding the applicability of both the designer selection law and the construction bid laws to capital improvements financed through the School's lease with the Lawrence Family Development and Education Fund, Inc. (Fund).

- The memberships of some School Board members who also serve on the Fund Board created conflicting fiduciary obligations and could have violated M.G.L. c. 268A, the conflict of interest law. While the Office did not question the integrity and commitment of Board members with dual memberships, the Office pointed out that the overlap between the two organizations' boards was problematic in view of the fact that the School contracts with the Fund for management services and leased facilities. The Office recommended that the School Board consider revising the current Board membership composition to reduce the overlap between the two organizations and seek written guidance from the State Ethics Commission regarding the applicability of the conflict of interest law to School Board members who also serve on the Fund Board.

**“Although the School was created by and is managed by the Fund, the School is a public school under the charter school law and, thus, has an obligation to administer its contract with the Fund in an arm's-length manner that comports with sound business practices.”**

*– IG letter to Lawrence Family Development Charter School Board of Trustees*

- The School lacked adequate controls over its management contract with the Fund. For example, the contract did not contain a detailed scope of services, nor did the School receive monthly invoices from the Fund or other documentation of the services provided by the Fund. The Office recommended that the School amend the contract to incorporate a detailed scope of services and ensure that the contracted services were appropriately administered, monitored, and documented.

## **Atlantis Charter School Review**

During 2000, the Office reviewed several financial and administrative issues pertaining to the Atlantis Charter School. These issues had been identified by the Office as potential sources of risk in its 1999 report entitled *A Management Review of Commonwealth Charter Schools*. In a December 2000 letter to the School's Board of Trustees, the Office raised the following concerns:

- The Office's review of payments by the School for leasehold improvements between January 1994 and November 1999 revealed that the School may have undertaken building renovations and repairs in violation of the state's construction bid laws. The Office recommended that the School seek legal guidance regarding the requirements of the construction bid laws and designer selection law before undertaking any future construction-related work.
- The Board minutes reviewed by the Office contained references to nine meetings for which no minutes were provided to the Office. Under M.G.L. c. 30A, §11A½, the open meeting law, boards of trustees are required to maintain minutes of each meeting, including executive sessions. Six of these references stated that the Board had approved minutes, thereby indicating that minutes for these meetings were recorded. The Office recommended that the Board evaluate the reliability of its record-keeping system to ensure compliance with the open meeting law.
- The School leased space from the John E. Boyd Center, the Director of which also served as a member of the School's Board of Trustees. Under M.G.L. c. 268A, the conflict of interest law, the Board member was prohibited from participating in any matter that would affect the financial interest of the John E. Boyd Center. The Office was unable to conduct a full review of the Board's decisions and votes on its transactions with the John E. Boyd Center because the Board meeting minutes provided to the Office appeared to be incomplete. However, the record indicated that the Director did recuse herself from a vote regarding the lease on one occasion.

## **Review of Draft Fiscal Policies and Procedures Guide for Charter Schools**

At the request of the Department of Education (DOE), the Office conducted a brief review of a draft of a "Recommended Fiscal Policies and Procedures Guide" prepared to assist charter schools in establishing sound financial controls and procedures.

In a March 2001 letter to the DOE's charter school office, the Office provided comments and suggestions for improvement of the draft Guide, including sections relating to internal control policies; policies related to assets, liabilities, and fund equity; procurement policies; consultant and contractor services; and property and equipment acquisitions.

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# Effective and Ethical Contracting

## Review of Metropolitan District Commission Swimming Pool Maintenance and Repair Contracts

In December 2000, the Office issued a report on the administration by the Metropolitan District Commission (MDC) of two swimming pool maintenance and repair contracts. After an internal review disclosed problems with the performance and oversight of these contracts, the MDC reported the results of its internal review to the Office for further investigation. The Office's report, entitled *A Review of the Metropolitan District Commission's Swimming Pool Maintenance and Repair Contracts*, summarized the findings stemming from the Office's investigation.

The Office's review disclosed that the MDC's practice of seeking bids during the spring months for maintenance and repair work required to open the swimming pools in June may have contributed to the absence of competition for the 1995-1997 and the 1997-1999 contracts for this work. The MDC's previous internal report had noted that nearly all swimming pool maintenance and repair contracts had been awarded to a single contractor – Allied Weatherproofing Company Inc. (Allied) – over a 10-year period.

The Office's review also found that the MDC assigned a single individual to perform construction inspection and contract payment approval functions, in violation of its own operating procedures manual. The MDC required this single employee to inspect and oversee construction work at 22 different swimming pool locations as well as to perform other supervisory duties. The MDC's failure to devote adequate resources to effectively oversee these contracts increased the MDC's vulnerability to fraud, waste, and abuse.

Moreover, the Office's investigation disclosed that the MDC resident engineer responsible for administering the 1995-1997 contract and the first three months of the 1997-1999 contract failed to maintain a project diary, as required by the MDC's operating procedures manual. In addition, the MDC made payments to Allied despite Allied's failure to submit daily work logs or timely certified payrolls reports, as required by the contracts. By disregarding these documentation requirements, the MDC undermined its ability to verify the validity of Allied's claims for payment.

A comparison of the labor hours reported by the MDC resident engineer with the certified payroll reports filed by Allied many months later revealed unexplained discrepancies that raised doubts as to the actual number of

labor hours performed. These discrepancies, together with Allied's failure to provide payroll or subcontractor payment records to substantiate the payments it received for hourly labor, suggested that the MDC may have overpaid Allied.

Compounding these contract oversight problems, the MDC also failed to adhere to its operating procedures manual and contract requirements governing approval for overtime work. A major portion of Allied's work was performed on an overtime basis, resulting in substantially higher costs to taxpayers. Finally, the MDC's apparent inability to provide complete records in a timely fashion in response to the Office's requests was indicative of poor record-keeping practices.

**“Had the MDC followed the contract provisions, exercised reasonable control over overtime work, and required Allied to provide an adequate workforce to complete routine work during regular working hours, its contracts with Allied would likely have carried a substantially lower cost to the state’s taxpayers.”**

*– IG report, December 2000*

The Office's report offered a series of recommendations to the MDC to address the problems identified by the Office, including the following:

- The MDC should solicit bids and award a contract for swimming pool repair and maintenance work in the fall to allow more work to be performed during the fall and winter months.
- The MDC should assign adequate personnel to effectively oversee and manage all contracts.
- The MDC should require MDC personnel to comply with the requirements contained in its own operating procedures manual regarding documentation of work performed.
- The MDC should enforce contractual and state law requirements for weekly submission of certified payroll reports.
- The MDC should adhere to its operating procedures manual and contract terms requiring prior written approval for overtime work.
- The MDC should examine its record-keeping practices to identify and remedy the causes of missing or misplaced records.

In response to a review draft of the report, the MDC Commissioner reported that the MDC had modified its swimming pool contract

management practices to improve contractor accountability and reduce contract costs.

**“I commend the MDC for its proactive stance in undertaking an internal review and in reporting issues warranting further investigation by my Office.”**

*– IG report, December 2000*

## **Privatization of Municipal Wastewater Facilities by the Lynn Water and Sewer Commission**

Since 1996, the Office has provided advice and technical assistance to Massachusetts communities considering complex, long-term design-build-operate contracts for municipal water and wastewater facilities. The Lynn Water and Sewer Commission (LWSC) obtained legislative authorization in 1997 to use alternative procurement methods to award a contract to design and build capital improvements and to operate its wastewater treatment plant for 20 years. In February 1999, the LWSC issued a request for proposals for the contract. The LWSC received two proposals in May 1999, and initiated a proposal evaluation and contract negotiation process that continued for more than 16 months.

In September 2000, the Office learned that the ostensibly competing proposals had been submitted by two companies controlled by the same corporation, Vivendi. In a September 2000 letter to the LWSC, the Office expressed concern that the LWSC had not secured the benefit of genuine competition for a contract estimated to cost ratepayers more than \$100 million. The Office recommended that the LWSC reject both proposals. Over the ensuing two months, the LWSC attempted to assuage the Office’s concerns by arguing that the complex, 20-year contract would result in cost savings to ratepayers.

**“This Office was alarmed to learn that two allegedly competing proposals received by the Commission were submitted by companies controlled by the same corporation, Vivendi. Under these circumstances, the ratepayers cannot be assured that the Commission has secured the benefit of any genuine competition for the contract.”**

*– IG letter to Lynn Water and Sewer Commission, September 2000*

The Office reviewed documents and interviewed LWSC staff and consultants to assess the merit of this cost-savings claim. In a December 2000 letter to the LWSC, the Office criticized the cost-savings analysis

developed by the LWSC's engineering consultant, Malcolm Pirnie, Inc. and reiterated its recommendation to scrap the proposed 20-year contract. The Office advised the LWSC that a new procurement process that generated genuine competition for a fixed-price, five-year operation and maintenance contract, coupled with responsible capital planning and management, would likely produce significantly lower costs than the proposed 20-year contract.

The Office pointed out that the proposed 20-year contract was a complicated scheme that contained numerous provisions allowing the contractor to pass through costs to ratepayers and to increase its compensation in response to changing circumstances. For the most part, these cost adjustment factors would operate in only one direction: the contractor would be able to increase its fees when costs increase, but the ratepayers would not realize any benefit from the contractor's reduced costs.

**“The LWSC is poised to enter into a complicated, long-term privatization contract without meaningful competition. The LWSC lacks an objective, reliable analysis of the contract risks and benefits. These factors pose unwarranted risks to ratepayer interests.”**

*– IG letter to Lynn Water and Sewer Commission, December 2000*

The Office also criticized the LWSC for its failure to hold its current wastewater treatment plant operator – which would continue to operate the facility under the proposed 20-year contract – responsible for paying for or mitigating excessive sludge disposal costs. In addition to its wasteful plant operating practices, the LWSC failed to exercise fiscal control over its two privatization consultants. These two consultants – Malcolm Pirnie and the law firm of Hawkins, Delafield & Wood – had billed the LWSC's ratepayers more than \$2.8 million under vague, open-ended contracts that contained no budget, no schedule, no maximum price, and that did not tie payments to deliverables. These consultant contracts cost the ratepayers more than \$96,000 for meal and travel expenses.

In February 2001, the Office responded to the LWSC's request for a detailed explanation of the Office's analysis of the likely cost of the proposed 20-year contract. In a letter to the LWSC, the Office applied the mathematical model used by Malcolm Pirnie to compare projected costs under the proposed 20-year contract with costs under the LWSC's current operating contract. This analysis revealed that Malcolm Pirnie's cost savings projections were produced by using inflated costs to calculate the cost of the current operations and maintenance contract. Correcting these inflated and inaccurate costs reduced the projected savings associated



with the proposed 20-year contract from \$28.6 million to \$7.7 million. Moreover, Malcolm Pirnie's analysis failed to consider contract cost adjustment factors that would likely make the 20-year contract far more costly than the existing five-year contract.

Using data provided by the LWSC, the Office prepared an analysis of the likely impact of certain cost adjustment factors in the proposed 20-year contract. This analysis showed that both loadings and flows at the wastewater plant regularly exceed the baseline parameters in the proposed 20-year contract under then-current conditions, and therefore would almost certainly trigger higher costs in the years to come.

In addition, the Office noted that the firm operating the plant contract had indicated that it planned to reduce current staffing levels at the wastewater treatment plant by 20 percent under the proposed 20-year contract. Given that personnel costs comprised approximately one-half of the contract operations costs, reduced staffing levels could have produced a significant cost reduction. Yet the contract operations costs the LWSC would pay under the proposed 20-year contract were not lower than its then-current costs. The Office's objective analysis of the proposed 20-year deals showed that any cost savings resulting from more efficient plant operations would result in increased profit for the operating firm rather than cost savings for the ratepayers.

**"The LWSC further eroded its negotiating posture by incurring high consultant costs in anticipation of receiving a lump-sum payment under the proposed 20-year contract to cover those costs. This financing plan has created pressure for the LWSC to approve the 20-year contract, regardless of whether it represents a good deal in the long run."**

*– IG letter to Lynn Water and Sewer Commission, February 2001*

In March 2001, the LWSC voted to approve the proposed 20-year contract.

## **Massport Terminal A Project**

Chapter 313 of the Acts of 1998 authorized the Massachusetts Port Authority (Massport) to develop alternative methods for procuring design and construction services for the Terminal A project in consultation with the Office and with the Division of Capital Asset Management. In January 2000, the Office met with Massport officials and representatives of Delta Airlines, Inc. to discuss Massport's proposed alternative procurement methods. At that time, Massport had already selected Delta as the anchor tenant for the new terminal and had approved a concept plan for the

project proposed by Delta. According to Massport officials, Massport and Delta were finalizing a complex project development agreement and financing arrangements for the new terminal. Although the selection of Delta as a primary project participant was a major component of the alternative project delivery approach undertaken by Massport, the Office had no opportunity to review – and, therefore, was unable to comment on – the procedures used to select Delta.

Following the meeting, Massport submitted the final draft *Proposed Terminal A Project Delivery Process* to the Office for review. The process, to be undertaken jointly by Massport and Delta to select a designer and construction manager for the project, called for both the designer and construction manager to be selected on the basis of qualifications and experience, without regard to price. In a February 2000 letter to Massport, the Office noted that this process would not provide adequate accountability for a typical public construction project, but that Massport officials had advised the Office that the financing structure of the project would place the majority of the financial risk for design and construction costs with Delta. The Office advised Massport that to the extent that Delta – and not Massport – was responsible for the design and construction costs, the Office had no objections to Massport’s use of this alternative process.

However, the Office’s letter raised concerns about how Massport would ensure accountability for the cost of work in connection with common airport facilities for which Massport had agreed to reimburse Delta. To address these concerns, the Office recommended that the *Proposed Terminal A Project Delivery Process* be amended to incorporate provisions relating to the solicitation of bids for and audit of reimbursable costs.

In a February 2000 response, Massport indicated that it would use independent cost estimators to determine the cost for such work and will participate with Delta in the negotiation of the costs with the construction manager for that portion of the work in order to ensure the cost competitiveness of such work. Massport will also have the ability to audit the actual costs of such work as it progresses.

### **Town of Douglas Recreation Park Review**

In response to a complaint, the Office conducted a review pertaining to the development of a recreation park in the Town of Douglas. The Office’s review indicated that the Town may have violated several statutory requirements in procuring and contracting for construction work on the recreation park project totaling more than \$116,000. The Office’s review also identified several instances in which the Town’s financial and management controls over the project appeared inadequate to promote

efficient, cost-effective management and to protect the financial integrity of the Town's contracts. These inadequate controls included the Town's authorization of extra work without a written agreement and issuance of a \$43,400 check to a private contractor without the approval of the Town Accountant and a majority of the Board of Selectman.

**“Decisive action to strengthen the Town’s management and oversight of its capital projects appears warranted to ensure that these projects are undertaken in a manner that is not only legal, but also cost-effective and accountable.”**

*– IG letter to Town of Douglas Board of Selectmen, March 2000*

In a March 2000 letter to the Town, the Office summarized the apparent statutory violations as well as the financial and management control issues identified in the Office's review. The Office recommended that the Town review, and if necessary, strengthen its procurement and contract administration procedures. The Office also requested that the Town provide the Office with a written response regarding the Town's plans for addressing the problems cited in the Office's letter. To assist the Town, the Office provided a copy of *Designing and Constructing Public Facilities*, the Office's manual detailing the legal requirements governing public construction projects.

In May 2000, the Town provided a detailed response to the Office describing specific initiatives implemented by the Town to assure that the issues identified in the Office's review would not be repeated in the future. For example, the Town's letter stated that the Town had consulted with Town Counsel to obtain a standard construction bid package and contract to ensure compliance with statutory requirements, that the Town had changed its procurement procedures to ensure adequate reviews by the Town's procurement officer, and that the Town had taken other steps to strengthen its financial controls.

**“[W]e appreciate the thoroughness of your staff review and your constructive recommendations to improve the Town’s procurement practices...[W]e are taking several initiatives to assure that the issues described in your letter do not repeat themselves.”**

*– Response of Town of Douglas Board of Selectmen to IG letter, May 2000*

## **Route 3 North Design-Build-Operate-Finance Contract**

Chapter 53 of the Acts of 1999 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 September 1999, after it had received responses to its request for qualifications, the Executive Office of Transportation and Construction (EOTC) requested the Office's assistance in observing and advising on the contracting process. During 1999 the Office advised EOTC on how best to implement value engineering in the project, reviewed the draft request for proposals (RFP), and recommended revisions to the draft RFP's evaluation criteria in a November 1999 letter. In December 1999, EOTC issued to three shortlisted competitors the final RFP that addressed most of the issues raised by the Office.

In March 2000, the Office reviewed the draft contract and commented to EOTC on provisions that would unnecessarily expose the Commonwealth to high costs. Specifically, the Office recommended that EOTC make the following changes in the draft contract:

- delete a definition of "latent physical conditions" in the developer agreement that would undermine EOTC's stated intention to have the developer assume most risks associated with unknown conditions;
- require the developer to bid all bonds issued to finance the project; and
- establish controls over future operations and maintenance services costs by prohibiting subcontractor bids from affiliates of the contractor, authorizing the state to require rebidding if bids are too high, and specifying an index to be used for periodic price adjustments.

The EOTC received proposals in March 2000. On June 1, 2000, the Secretary of EOTC selected Modern Continental Construction Co., Inc. as the developer. The development contract was executed on August 2, 2000 and included a design-build price of approximately \$385 million. EOTC issued a Notice to Proceed on August 17, 2000. The contract is under the Massachusetts Highway Department (MassHighway).

The Office advised MassHighway on implementation of the value engineering requirement contained in Chapter 53 of the Acts of 1999. In May 2000, MassHighway contracted with Parsons Brinckerhoff, Quade, & Douglas to perform value engineering on Modern Continental's proposal. The report resulted in recommendations, some of which were rejected by EOTC, some of which Modern Continental argued were within the purview

of the contractor's "means and methods" and thus not value engineering savings, and others that remained pending as of 2001. In February 2001, MassHighway and Modern Continental negotiated an understanding of how to identify and approve value engineering recommendations for the remainder of the project.

## **Boston Convention and Exhibit Center Construction Project**

The Massachusetts Convention Center Authority (MCCA) was authorized in 1997 to develop and construct the Boston Convention and Exhibition Center Project (Project) using either the procurement procedures set forth in Chapter 152 of the Acts of 1997 or alternative methods developed by the MCCA upon consultation with the Office and the Commissioner of the Division of Capital Asset Management.

The Office provided the MCCA with extensive comments and recommendations in 1999 on the MCCA's proposed procedures for awarding trade contracts for the Project. The MCCA subsequently adopted some of the Office's recommendations as amendments to its procurement procedures.

In April 2000, the MCCA submitted to the Office another proposed modification to its procurement procedures for the Project. This proposed modification would affect the right of an aggrieved contractor to challenge a determination by the MCCA's prequalification committee that the contractor is not qualified and therefore not eligible to bid on the Project.

The MCCA's procedures require a disqualified contractor to submit a request for reconsideration to the MCCA prior to challenging the prequalification committee's determination in court. In April 2000, the MCCA proposed to amend this procedure by deleting a requirement that the MCCA act on a request for reconsideration within seven days. The Office advised the MCCA of its concern that the MCCA's failure to act on a request for reconsideration in a timely fashion would effectively foreclose a contractor's ability to challenge its disqualification in court prior to the award of a contract.

The MCCA responded to the Office's concern by adopting a 60-day deadline for acting on a contractor's request for reconsideration of an unfavorable determination by the prequalification committee. The MCCA also modified its procedures to ensure that an invitation for bids or request for proposals would not be distributed until contractors interested in submitting bids or proposals had an opportunity to appeal an adverse determination by the prequalification committee.

## **MBTA Design-Build Process for Greenbush Line Corridor Project**

Chapter 125 of the Acts of 2000 authorized the Massachusetts Bay Transportation Authority (MBTA) to undertake a pilot construction project using an alternative procurement process and required the MBTA to determine the procurement process in consultation with the Inspector General. Chapter 125 also required the Inspector General to comment in writing on the procurement process.

In April 2001, the MBTA solicited the Office's comments on a pre-procurement document entitled "Transportation Improvements in the Greenbush Line Corridor - Procurement Process for Pilot Program," summarizing the procurement process proposed for the Greenbush Line Corridor Project. In an April 2001 letter, the Office provided the MBTA General Manager with detailed comments on and recommendations for improvement of the MBTA's proposed procurement procedures. For example, the Office recommended that a detailed description of the evaluation process be incorporated into the project request for qualifications; that the MBTA ensure sufficient documentation at each stage of the evaluation process; and that the MBTA limit the scope of the contract negotiations conducted with the selected team.

## **Saltonstall State Office Building Redevelopment**

Chapter 237 of the Acts of 2000 authorized the Massachusetts Development Finance Agency (MassDevelopment) to redevelop the Leverett Saltonstall State Office Building using alternative methods of procuring design and construction services. Chapter 237 also required the Office to review and submit written comments to the Legislature on MassDevelopment's proposed procedures for selecting any additional construction, design, or other project professionals. The Saltonstall Building, a 22-story state office building completed in 1966, requires major rehabilitation to correct certain environmental conditions, meet current code requirements, and provide quality office space. Under the lease-leaseback arrangement authorized by Chapter 237, the state will lease the building to MassDevelopment for 50 years with options to extend for another 30 years. The state will lease back approximately 50 percent of the rehabilitated space, initially at below-market rental rates. MassDevelopment will lease the rest of the building to private entities at market rates and will also construct some housing and retail elements.

In September 2000, MassDevelopment submitted to the Office a draft request for proposals (RFP) for owner's representative development management services associated with MassDevelopment's redevelopment of the Saltonstall Building. In an October 2000 letter, the Office raised a number of concerns regarding the draft RFP. The draft scope of services was unnecessarily broad: it included disparate

functions, such as marketing, that were not clearly related to the duties of an owner's representative. In addition, the draft RFP invited alternative price proposals that would be difficult to compare. The draft RFP did not contain standard forms for submission of required proposer information, nor did it specify requirements for professional licensure or certification. Finally, the draft RFP did not specify how proposals would be evaluated other than stating minimum requirements for proposers. The Office provided these comments to MassDevelopment and to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration.

**"We believe that it may be impossible for proposers to reasonably estimate their prices for performing the services, given the current scope of services. The draft RFP also invites proposers to submit alternative price proposals that align the interests of the proposers with the interests of MassDevelopment. It is unclear how such an array of prices can be compared."**

*– IG letter to Joint Committee on State Administration, October 2000*

In a letter of response, MassDevelopment defended the draft RFP on the grounds that its approach would promote innovative and creative responses. However, MassDevelopment stated that it would add a requirement for the necessary licensure and certification.

## **DEM Leases for Telecommunications Towers in Groton and Sudbury**

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 Office to review the leases. During 2000, the Office reviewed proposed telecommunication leases at the Groton Fire Observation Tower and the Sudbury Fire Observation Tower. In May and June 2000 letters, the Office 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.

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## **Local Government Procurement Assistance and Enforcement**

The Office of the Inspector General provides extensive technical assistance to local government officials regarding 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. The Office also formulates policy on M.G.L. c. 30B, the local procurement law that applies to supplies, services, equipment, and real property. For example, in 2000 the Office adopted a new policy governing late and overlooked bids.

### **Training and Professional Development**

The Office created and 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 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 Association of School Business Officials; the Massachusetts Association of Public Procurement Officials; the Association of Government Accountants; the Norfolk, Bristol, and Middlesex Counties Highway Association; and the Massachusetts Firefighting Academy. Presentation topics included “An Overview of the Public Bidding Laws,” “An Introduction to M.G.L. c. 30B and the Compensating Balance Law,” “The Changes to the Public Bidding Laws Enacted in July 2000,” and “An Overview of M.G.L. c. 30B” at the Annual New Fire Chiefs Orientation.

### **Publications**

The Office publishes a wide 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](http://www.state.ma.us/ig).



In 2000, the Office published four issues of the *Procurement Bulletin*, a newsletter distributed to approximately 5,600 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 2000, for example, the *Procurement Bulletin* included articles on the Office's new policy regarding late bids, changes to the public procurement laws, generating income from antenna space leases, and handling exempt supplies and services procurements. In prior years, the *Procurement Bulletin* has featured articles pertaining to information technology procurements, drafting performance specifications, bid protest avoidance tips, and consumer protection resources. 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, which was updated in 2000, provides a comprehensive overview of M.G.L. c. 30B 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, which was updated in 2000 to incorporate legislative changes enacted in July 2000, 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, which was updated in 2000, 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 2000, the Office responded to 2,619 inquiries about M.G.L. c. 30B and other public bidding laws, resulting in over 4,900 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 2000.

**Town of Hingham – Bid Protest.** The Office received a bid protest regarding a bid for athletic transportation for the Hingham Public Schools. In this matter, the Town solicited bids for athletic transportation and opened the bids on June 13, 2000. The IFB included three pricing sheets, one for each season, consisting of a list of towns with a blank space next to each town for the bidders to fill in a bid price. Neither the IFB nor the pricing sheets included any estimates on the number of trips that would be made to any listed town. After the bids were opened, the lowest bidder was determined by referencing the prior year's trip schedule. None of the information from the previous year that was used to select the low bidder was contained in the IFB originally provided to all the bidders. The Office advised the Town that the IFB had to include this type of information in order to create a level playing field for the competition. The Office recommended that the Town rebid the bus contract and include in the new IFB an estimated number of trips to each town as well as a clear rule for award.

**Town of Swampscott – Request for Guidance.** The Office issued a written opinion in response to a request from the Town of Swampscott regarding the applicability of M.G.L. c. 30B to construction contracts estimated to cost less than \$10,000. The public construction bid laws, M.G.L. c. 30, §39M and c. 149, §§44A-M apply only to construction contracts estimated to cost more than \$10,000 and \$25,000, respectively. M.G.L. c. 30B requires competition for supplies and services contracts in the amount of \$5,000 or more. It is not clear that the Legislature intended to modify the construction bid law thresholds when it enacted c. 30B in 1990. The Office advised the Town that the Office routinely recommends that awarding authorities solicit at least three price quotations in accordance with M.G.L. c. 30B, §4 for construction contracts estimated to cost between \$5,000 and \$10,000. It should be noted that contracts for less than \$5,000 are not an issue since c. 30B does not require competitive bidding for contracts in this range. The Office would not consider such a contract to be invalid if M.G.L. c. 30B, §4 procedures were not followed.

**Duke’s County – Request for Guidance.** In response to a request from the County Legal Counsel, the Office reviewed an RFP for the lease of County property. One of the five proposals received by the County did not include a fixed price, but instead offered to pay one quarter of one cent more per square foot than the highest proposal price submitted by any of the other four proposers. The issue raised in this matter was whether a proposal submitted in this fashion violates principles of fair and open competition for public contracts. The Office has consistently taken the position that bidders must submit fixed price bids that can be meaningfully compared. If all bidders submitted bids of this nature, the awarding authority would be left with no ascertainable bid prices. A bidding system without firm fixed prices is unworkable, leaves awarding authorities vulnerable to bid protests, and does not preserve the dual objectives of open and fair competition. For these reasons, the Office determined that proposals of this nature were not permissible and advised the County to reject the proposal in question.

**“If a single bidder submits an amount to be added to the highest bidder’s price, it does not stand on equal footing with the other bidders. That bidder does not bear the same risk of rejection; in fact, it is virtually assured of winning the bid.”**

*– Office letter to Dukes County Legal Counsel, February 2000*

**Lower Pioneer Valley Educational Collaborative – Request for Guidance.** The Office received a request from the Lower Pioneer Valley Educational Collaborative for an opinion regarding the applicability of M.G.L. c. 30B to school bus transportation contracts between the Collaborative and its member schools. The Office informed the Collaborative that c. 30B applies to contracts for the procurement of services by a governmental body, defined in M.G.L. c. 30B, §2 to include instrumentalities of cities, towns, districts, counties, and regional school districts. The Office has consistently taken the position that educational collaboratives are instrumentalities of the municipalities that they serve and are therefore governed by c. 30B. However, M.G.L. c. 30B, §1(b)(9) specifically exempts contracts to purchase supplies and services from any agency or instrumentality of the commonwealth or any of its political subdivisions. Accordingly, the Office advised the Collaborative that a school bus transportation contract between the Collaborative and any of its member schools is exempt from the competitive bidding requirements of M.G.L. c. 30B.

**Town of Somerset – Request for Guidance.** The Office received a request for guidance from the Town with respect to the Town’s procurement of products connected with its food service operation for the

public schools. Specifically, the Town inquired whether purchasing the products on a monthly rather than an annual basis constituted bid splitting. Bid splitting, the intentional division of a procurement into two or more smaller purchases for the purpose of evading the public bidding laws, is prohibited by M.G.L. c. 30B. The appearance of bid splitting is eliminated only when a sound business reason exists to justify the practice. The Office was informed that the Town purchased food products on a monthly basis for several reasons, including insufficient storage space and fluctuating food prices.

The Office advised the Town that many jurisdictions purchase food and food service products on an annual or multi-year basis from vendors that offer a large variety of items. Bidders are provided with estimates based on what has been used in past years. By following this procedure, jurisdictions avoid the appearance of bid splitting, obtain economies of scale, obtain a wide variety of items, and still accommodate changing food trends among students. The Office recommended that the Town reexamine whether sound business reasons existed to justify its procurement practices.

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## The MCPPO Program

The Office of the Inspector General has continued and expanded the Massachusetts Certified Public Purchasing Official (MCPPO) program, now in its fourth year. The MCPPO 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 MCPPO 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.

**“Very professional and informative - not boring! All presenters seemed to enjoy teaching, making this seminar an excellent experience.”**

*– 2000 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.

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.

The program’s seminars, presented in more than 13 different locations around the state, attracted over 1,100 attendees in 2000. 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 in-depth instruction in the procurement laws governing public construction in Massachusetts and in effective design and construction contract administration.



**“Every instructor took whatever time was necessary for their subject but still kept the program on schedule. Every instructor was available for questions after each segment, and was very down to earth in their approach to the subjects addressed. I would recommend this program to anyone who is involved in any form of purchasing or contracting.”**

*– 2000 Public Contracting Overview seminar participant*

In 2000, the Office developed the Massachusetts Certified State Purchasing Official (MCSPO) designation for state employees and introduced the four-day **State Contracting Overview** seminar. This core seminar, a prerequisite for the advanced seminars, provides instruction in procurement for agencies subject to the jurisdiction of the Operational Services Division.

**“Excellent program. Everyone who does public procurement should take this seminar.”**

*– 2000 State 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 use the opportunities to network with other procurement professionals, and benefit from the exchange of knowledge and ideas among the seminar participants as well as the expertise of the Office’s procurement specialists.

Each participant who successfully completes a seminar receives a certificate of completion. Public purchasing officials who complete requisite seminars and meet the educational and experience requirements become eligible to apply for various MCPPO designations. In 2000, 88 participants earned one of seven possible MCPPO designation types, bringing the total number of certifications received to 359 since 1998.

**“These training sessions were as good as any I’ve participated in the private sector or at universities. Everyone involved should be very proud.”**

*– 2000 Design and Construction Contracting seminar participant*

The following table illustrates the designations awarded by the Office in 2000.

Designation	Number
MCPPO	61
Associate MCPPO	4
MCPPO for Supplies and Services Contracting	8
Associate MCPPO for Supplies and Services Contracting	4
MCPPO for Design and Construction Contracting	4
Associate MCPPO for Design and Construction Contracting	1
MCSPO for Design and Construction Contracting	6
	<b>88</b>

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

**“I have been very impressed with the three seminar sessions. The content and the knowledge level of the instructors was excellent. The instructors demonstrated an understanding of the real issues that we encounter almost daily. These sessions were time well spent. I would be very much interested in future follow-ups, even those beyond recertification requirements. Great job!”**

*– 2000 Supplies and Services Contracting seminar participant*

## **MCPPO Continuing Education**

In addition to the core curriculum seminars which comprise the certification program, the MCPPO program also includes various non-core curriculum seminars. In 2000, the Office continued to offer **Bidding Basics and Contract Administration**, a half-day seminar first offered in 1999. Twelve seminars were conducted in various locations throughout the state in 2000, including Nauset, Danvers, Lowell, Easton, Halifax, Melrose, Harwich, Braintree, Medford, Gardner, Gloucester, and Boston, with over 400 attendees.

**“Great seminar for beginners and for those of us who need a refresher course.”**

*– 2000 Bidding Basics and Contract Administration seminar participant*

Since the beginning of 2000, the Office has introduced three new non-core curriculum seminars. The Office developed **Bidding for Better Results** in response to requests from local jurisdictions for more advanced procurement training. Participants practice writing and critiquing specifications to maximize best value procurements of supplies and services; they also learn how to handle late bids and how to avoid the appearance of bid splitting. This one-day seminar qualifies for continuing education credits toward the MCPPO recertification requirement.

**“The MCPPO Program and recertification seminars continue to be a valuable source in clarifying Chapter 30B. It helps me a great deal in my day to day job in avoiding the many pitfalls by attending these seminars.”**

*– 2000 Bidding for Better Results seminar participant*

**Local Government Real Property Transactions Under M.G.L. c. 30B**, a one-day seminar, was developed to provide advanced training in the request for proposal process for the acquisition and disposition of real property conducted by local public officials. Five seminars were attended by a total of 100 participants; sites ranged from Amherst to Boston. The seminar qualifies for continuing education credits toward the MCPPO recertification requirement.

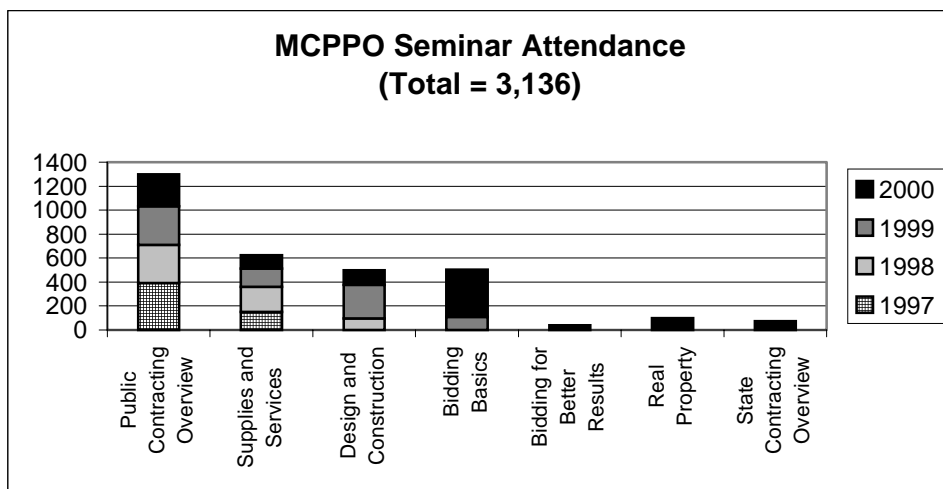
**“Presentation was well organized; instructors were extremely well-versed in material covered. Other participant’s experiences in their jobs with cities and towns were extremely interesting to hear about.”**

*– 2000 Real Property seminar participant*

In the spring of 2001, the Office introduced a new MCPPO continuing education course, **Spotlight on Schools: Procurement Issues, Challenges, and Trends**, focusing on the specialized issues confronting school business officials and staff members. During this six hour seminar, participants apply the principles of public procurement to traditional and emerging areas of school buying.

The Office also introduced **Drafting a Model Invitation For Bids**, a continuing education course offered in an individualized computer-based training model. In this course, participants are provided with a template Invitation for Bids (IFB) on computer disk, then follow instructions to draft a complete IFB for course credit. Participants work with an assigned attorney to revise their IFBs.

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 Bidding for Better Results and Local Government Real Property Transactions Under M.G.L. c. 30B were both first offered in 2000.



The following table lists the number of seminars delivered and total attendance at each seminar throughout 2000.

Seminar	Number	Attendance
Public Contracting Overview	8	264
Supplies and Services Contracting	4	114
Design and Construction Contracting	4	121
Bidding Basics and Contract Administration	12	396
Bidding for Better Results	1	38
Local Government Real Property Transactions Under M.G.L. c. 30B	5	100
State Contracting Overview	4	73
<b>TOTAL</b>	<b>38</b>	<b>1,106</b>

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## 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 Office review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties, and municipalities. The Office provides a report on each appraisal to the Commissioner of the Division of Capital Asset Management (DCAM) for submission to the Legislative Committees on Ways and Means and State Administration. The Office also reviews and comments on the release deeds and agreements effecting the conveyances. In 2000, the Legislature passed 27 mandates requiring the approval of the Office.

### Northampton State Hospital Redevelopment Project

Pursuant to Section 11 of Chapter 86 of the Acts of 1994, the Office reviewed the three separate appraisals and the supplemental documents relating to the Northampton State Hospital Redevelopment Project. Section 11 required that three independent appraisals be conducted to determine the fair market value estimates for the individual phases of the anticipated conveyance and development of the 116.7 +/- acre parcel and required the Inspector General to approve the methodology used to make this determination. The final market value was to be the average of the three appraisals. In a November 2000 letter, the Office advised the DCAM Commissioner that the Office was not able to approve the methodologies utilized in these appraisals that resulted in artificial market values.

**“The developer is acquiring an option to buy in the future at today’s dollar. Applying a standard discount on this option financially harms the Commonwealth and disproportionately favors the developer.”**

*– IG letter to DCAM Commissioner, November 2000*

The appraisers had not considered the provision in the business plan mandating that all enhancement value accrue to the developer while authorizing the developer to “flip” the parcels – i.e., sell immediately. In this scenario, the developer could realize an immediate, substantial profit. In the Office’s opinion, the appraisers should have commented on this immediate resale option in light of the enhancement value issue. DCAM had directed the appraisers to comply with hypothetical constraints that, in

the Office's opinion, made the appraisals less than independent appraisals of market value.

The Office also advised the DCAM Commissioner of its concerns about elements that were not considered in these complex appraisals conducted to determine market value of the former Northampton State Hospital site. In meetings with DCAM staff and the selected appraisers and later in one of the appraisals, it was noted that these three independent appraisals would not be conducted according to the Uniform Standards of Professional Appraisal Practices and that DCAM's instructions would result in jurisdictional exceptions to these standard procedures and could have an impact on the overall valuation conclusions. The Commonwealth thus stood to receive a sum that did not replicate any appreciation from earlier phases of the completed project. Additionally, these estimated values were not adjusted to reflect the value of money over time. The narrative stated that a lot's current estimated value was \$65,000. By paying the current market value in future years, the lot would cost the developer \$35,000 even though this same lot could have appreciated to \$95,000 in 10 years' time.

The Commonwealth was scheduled to expend approximately \$11.59 million for demolition and site clean-up. The average of the three appraisals' market value resulted in a \$1.58 million payment to the Commonwealth for the Northampton parcel; thus, the Commonwealth would net minus \$10.01 million when it sold the parcel.

The Office contacted one appraiser because he had made 10 separate miscalculations and errors relating to the formulas in the cells of the spreadsheet. The appraiser agreed with the Office's findings and agreed to correct the miscalculations. The appraiser sent his revisions to the Office and DCAM and, without explanation, also changed many of his original assumptions. Ultimately, these manipulations resulted in a small change in the subsequent valuation outcomes, rather than revealing the substantial worth of the original miscalculations and omissions. The Office did not find this subsequent determination of market value to be plausible and rejected the amendments submitted to the Office.

As depicted, the appraisals were conducted as if each phase were available for development, independent of each other and assuming all infrastructure requirements had been completed. In effect, notwithstanding the considerable thought and work that went into these three appraisals, the methodologies, reconciliation, and final value estimates shed little light on the subject property's market value. The Office asked the three appraisers to independently respond to the issues raised in the Office's response and to determine a bulk value of the Northampton parcel.

## **Northampton Easements**

The Office also reviewed three appraisals commissioned by DCAM for easements on land at the former Northampton State Hospital to be granted to Smith College in Northampton. The Office did not approve of the methodology employed in one of the appraisals. The Office agreed that a sales comparison approach to determine the value of the easements was an appropriate choice; however, the five comparable sales that the appraiser had selected for comparison did not share similarities to the Northampton property. The five comparable sales were compared to each other, but were not judged against the subject property, as they should have been in a sales comparison approach to value. In September 2000, the Office reviewed the revised appraisal and approved the methodologies and the consideration of \$4,336.67 to be paid by Smith College for the easements.

## **State Conservation Land Conveyance to the Forest Hills Cemetery Association**

Chapter 74 of the Acts of 1998 authorized DCAM to sell a 10-acre parcel of state conservation land located in the Roslindale section of Boston to the Forest Hills Cemetery Association (FHCA) for cemetery uses. The FHCA was required to pay full market value as determined by an independent appraisal and the Inspector General was required to review and approve the appraisal as well as the methodology utilized for the appraisal. The Office reviewed the appraisal of this parcel and agreed with the appraiser that although the subject property was located in a Community Facilities Subdistrict, which does not allow any funerary uses, the City of Boston would exercise its jurisdiction over this use and allow the FHCA to develop the parcel for cemetery purposes. The appraiser determined that the subject property's highest and best use, as though vacant and available for development, would be for cemetery purposes or other open space uses. Typically, open space is land designated for passive recreation or other non-building uses. Although a cemetery has few buildings and can be used for passive recreation, this parcel was being conveyed to the FHCA for development and subdivision use as cemetery plots. In a March 2000 letter, the Office advised the Acting DCAM Commissioner that the methodology, opinions, and analysis included in the appraisal were not appropriately supported, and the final value conclusion was not supported by the data presented. Thus, the Office rejected the appraisal on the grounds that the parcel should have been appraised by utilizing a subdivision development approach to estimate its market value.

## **State Land Conveyance to the Town of Agawam**

Chapter 195 of the Acts of 1998 required the Office to review and approve the appraisals and methodology used to determine the full and fair market value of two parcels of state land to be conveyed to the Town of Agawam for recreational use. In a May 2000 letter, the Office advised the Acting DCAM Commissioner of its findings. The first appraisal was for a parcel of 50.62 acres of vacant land for which the appraiser determined that the Highest and Best Use for the property, given the legal restrictions for its use, was for agricultural, horticultural, or recreational use. The Office approved this methodology and the estimated market value of \$120,000 for this parcel.

The 145.34 acres of Commonwealth land located in the Town of Agawam was legally restricted to industrial park purposes but was located in an area of residential or agricultural zoning that did not permit such utilization. Since special legislation had authorized this conveyance to the Town of Agawam, it was reasonable to assume that the area would be rezoned to accommodate the use restriction contained in the Act; however, the appraiser did not make this assumption. Although the appraiser suggested that some portion of the 145-acre parcel could be developed as an industrial park, no portion was valued against other parcels that sold as industrial development sites. The comparable sales used in the sales comparison approach to value are suitable for farming, conservation, or modest residential development. Although the Office would have preferred that the appraiser consider a portion of the parcel's valuation based upon sales of industrial sites to reflect the purpose of the enabling statute that authorizes this sale to a named party, the Office agreed that the extension of sewer lines could be very expensive and perhaps diminish the final calculation of the value. Thus, the Office approved the methodology and final determination of the market value of the second parcel at \$190,000 notwithstanding some reservations.

## **State Land Conveyance to the City of Medford**

Chapter 17 of the Acts of 1999 authorized the transfer of a 43-acre parcel of state property for one dollar to the City of Medford for recreation, open space, and education purposes. As a condition of the conveyance, the City was required to complete the restoration of two sections of foot trails and refurbish existing playing fields on this parcel which is located in the vicinity of the Mystic River. The Office also reviewed the cost estimate's of these site renovations. The cost estimate for the river front trail improvements was \$830,081, renovation of the soccer field and little league field was estimated to cost \$298,387, and the cost to renovate a softball field was \$142,053. The Office was required to review and



approve the appraisal and methodology used to determine the market value of the parcel. The appraisal indicated the fair market value of the parcel to be \$131,000. Since the cost estimate of any or all of the required improvements to the parcel exceeded the indicated market value in the appraisal, the Office notified the Acting DCAM Commissioner in a February 2000 letter that the conveyance for one dollar was appropriate.

## **State Land Conveyance to the Taunton Development Corporation**

Chapter 123 of the Acts of 1997 required the Office to review an appraisal and methodology used to determine the market value of three parcels of state land containing approximately 154 acres located in the city of Taunton. This property was being conveyed to the Taunton Development Corporation (TDC) for municipal industrial development purposes. In conducting this review, the Office reviewed a report prepared pursuant to a field investigation that estimated the potential remediation costs to achieve closure under the Massachusetts Contingency Plan. The market value estimate of this property was determined based upon a highest and best use for industrial purposes. The initial market value was \$1,766,000 less the environmental cleanup estimation of \$1,105,000 contained in the report. In a June 2000 letter to the DCAM Commissioner, the Office approved the methodology and final market value conclusion of \$660,000 based on this analysis. Based on the Office's review of the release deed for the conveyance of the three parcels to the TDC, the Office agreed with the stipulation that liability for any hazardous conditions present in any of the parcels, regardless of its extent or magnitude, would become the responsibility of TDC.

## **Appraisal of the Former Registry of Motor Vehicles Building**

Section 96 of Chapter 235 of the Acts of 2000 required the Office to review and approve the appraisal and examine the methodology utilized in the appraisal of the former Registry of Motor Vehicles building located at 100 Nashua Street in Boston and the adjacent property formerly owned by Trigen-Boston Energy Corporation. The former Registry building had been demolished, and the property contained 53,360± square feet. The Office reviewed an appraisal dated June 1, 1999 that did not represent a current full and fair market value of the subject property. The appraisal was completed prior to the passage of Chapter 235 of the Acts of 2000. In a November 2000 letter to the DCAM Commissioner, the Office noted that the appraisal was outdated and informed the Commissioner that the Office did not consider half of the comparable sales utilized in the appraisal to be similar to 100 Nashua Street property. Half of the samples were considerably smaller than the subject. In a telephone conversation with the Office, the appraiser had noted that the comparable sales presented in

the 1999 appraisal were the only ones available when the 1999 appraisal was prepared. The appraiser also stated that recent sales of larger parcels had occurred and he planned to use these recent comparables. However, according to the appraiser, the subsequent value estimates contained in his letters dated October 2000 did not represent updated value estimates as of October 2000. Therefore, the Office did not approve the 1999 appraisal report or the subsequent analysis and conclusions presented in the appraiser's October 2000 letters, because the information was not current and did not reflect an up-to-date full and fair market value estimate.

In March 2001, the Office reviewed a February 2001 revised appraisal of the former Registry of Motor Vehicles property. The sales comparison approach to value was utilized in this appraisal reflecting the most probable price which a property should bring in a competitive and open market. Recent sales of similar development sites were utilized in the appraisal, which concluded that the property was negatively impacted by approximately 16,680 square feet of easements and estimated a market value of the Nashua Street site in Boston at \$21,350,000. In a March 2001 letter to the DCAM Commissioner, the Office approved the methodology and final appraisal determination of the parcel.

### **Former Belchertown State School Appraisal of Parcels D and E**

Pursuant to Chapter 353 of the Acts of 1996, the Office reviewed the independent appraisal of Parcels D and E situated on the former Belchertown State School land. In a January 2001 letter to the DCAM Commissioner, the Office approved the methodology used to determine the market values for Parcel D (\$280,000) and Parcel E (\$290,000) and therefore concluded that the full and fair market value of the parcels to be conveyed by the Commonwealth was \$570,000.

### **Emerson College Easements**

Chapter 121 of the Acts of 1999 required the Office to review and approve an appraisal of proposed temporary and permanent easements to be granted to Emerson College comprising a portion of Allen's Alley on state land adjacent to the State Transportation Building in Boston. This appraisal involved a unique situation with respect to the site's location and its assemblage value to Emerson College, since development sites for Emerson to expand its Majestic Theatre were limited by the school's special needs and location. In a March 2001 letter to the DCAM Commissioner, the Office approved the appraisal's determination of \$1,980,000 as the market value of the easements.

## **Piano Row Access Easement**

Pursuant to Chapter 131 of the Acts of 1999, the Office reviewed an appraisal for an access easement to benefit Piano Row LLC, which proposed to construct a 100-unit luxury residential condominium complex on a 14,889 square foot parcel abutting the Service Court owned by the State Transportation Building. The proposed easement area would provide access to off-street loading facilities and a 110-space underground garage providing valet services for the occupants at the Piano Row residences. This access easement would also allow Piano Row LLC full income-generating commercial use of the Boylston Street frontage of the Piano Row development, rather than forfeiting approximately 30 feet of frontage to accommodate access to an underground parking garage directly from Boylston Street.

Retail and restaurant space in this area of Boston are leased at premium prices. Condominiums above the tree line adjacent to the Boston Common have sold in excess of \$1,300 per square foot. Individually owned parking spaces are assessed for \$40,000+. The Office determined that this appraisal which determined the value of the easement to be \$160,000, warranted a departure from standard appraisal guidelines, given this unique easement. In the Office's view, the appraiser should have considered the economic impact of the loss of commercial lease space on Boylston Street and the potential physical nuisance an entrance to a 110-space parking garage would create by physically limiting the State Transportation Building's Service Court area. In a May 2001 letter to the DCAM Commissioner, the Office rejected the methodology utilized in the appraisal.

### ***Update: Private Office Space Leasing by State Agencies***

In January 1997, the Office issued a report entitled *Private Office Space Leasing by State Agencies* evaluating the process by which the Commonwealth leased private space for use by state agencies. The report profiled the leasing process, identified significant leasing issues, and offered a series of recommendations to the Legislature. These recommendations included increasing the maximum allowable lease term from five years to 10 years and allowing lease renewals to be exercised within 12 months, rather than six months, prior to the lease expiration date. Chapter 237 of the Acts of 2000 amended M.G.L. c. 7, §40G to increase the maximum allowable lease term to 10 years and to delete the provision prohibiting lease renewals earlier than six months prior to the lease expiration date.

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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 Office comments in written and oral testimony to the Legislature and the Governor on proposed legislation; often, the Office recommends specific amendments to bills. In the 2000 session, the Office commented on hundreds of pieces of legislation. This section highlights some of the major legislative work of the Office during 2000.

### **Athletic Facility Development by the Assabet Valley Regional Vocational Technical School District**

In July 2000, the Office wrote to the Committee on Education, Arts, and Humanities in opposition of Senate Bill 2239, a bill to authorize the Assabet Valley Regional Vocational Technical School District to enter into a long-term lease agreement with a non-profit organization for the purposes of financing, constructing, operating, and maintaining an athletic facility. As written, the bill would have authorized the District to enter into a 35-year lease term, with a 35-year renewal option. The Office had warned many public and school officials of the potential risks and unforeseen costs of long-term real property leases. Based upon a meeting with school officials, the Office determined that the non-profit corporation could manage with a 25-year lease term and no renewal option. Therefore, the Office recommended an amendment to the bill providing the District with an opportunity to re-evaluate the agreement at the end of the initial lease term. The District could then issue another request for proposals to lease the property if it decided not to take over operation and maintenance of the facility itself. The Office also recommended that the lease terms specify the lessee's responsibilities for maintenance of the facility and that the lease agreement between the District and the non-profit corporation contain a use provision terminating the lease in the event that the non-profit corporation ceased to use the property as an athletic facility.

The district also informed the Office that it intended to require the lessee to comply with the provisions of the state's designer selection law, construction bid laws, and prevailing wage law. The legislation did not address these requirements explicitly, therefore an additional amendment was recommended. The Office also agreed to assist the District in drafting a request for proposals in accordance with M.G.L. c. 30B for the lease of District land.

*Senate Bill 2239 did not pass in the last legislative session and has been refiled for the 2001/2002 legislative session with the amendments recommended by the Office.*

## **Upper Cape Regional Water Supply Cooperative**

In October 1999, the Office commented on House Bill 4596, An Act Establishing the Upper Cape regional Water Supply Cooperative. This legislation would have authorized the Bourne Water District, the Town of Falmouth, the Mashpee Water District, and the Sandwich Water District to create a supplementary water supply cooperative for the purposes of sustaining and protecting their water resources.

Although not opposed to the intent of the legislation, the Office wrote to the House Committee on Ways and Means to recommend amendments to the bill. The Office recommended a provision requiring the Cooperative to comply with M.G.L. c. 30B for all supply and services contracts as well as all real property acquisitions and dispositions. The competitive process is a tool designed to obtain quality supplies and services at a reasonable cost. The Office stressed that without the safeguards of M.G.L. c. 30B, there would be little to ensure taxpayers of cost-effective, accountable contracts.

*In February 2000, the House Committee on Ways and Means amended House Bill 4596 to incorporate the Office's recommendations. The bill was signed by the Governor and became Chapter 352 of the Acts of 2000.*

## **Town of Acton Wastewater Privatization**

In March 2000, this Office wrote to the Joint Committee on Local Affairs to oppose legislation authorizing the Town of Acton to enter into a 30-year contract to privatize the Town's municipal wastewater system. Senate Bill 2138 would have waived public construction bidding requirements and other procurement safeguards that would apply to such a privatization contract. This legislation posed an unacceptably high financial risk to the Town's taxpayers and ratepayers.

**"The transfer of control over this public utility from the Town to a private company will potentially have a major, long-term impact on the community. Long-term privatization of a public wastewater system is a complex and risky undertaking even when the contracting arrangements are carefully planned and structured to control the public's financial exposure."**

*– IG letter to Joint Committee on Local Affairs, March 2000*

During numerous discussions with Town officials and the Legislature, the Office recommended that Senate Bill 2138 be amended to require Town Meeting approval of the privatization contract and to require procurement procedures that ensured meaningful competition of the contract.

*The Joint Committee on Local Affairs ordered Senate Bill 2138 to a study.*

### **Town of Andover Land Exchange**

In March 2000, the Office commented to the Joint Committee on Local Affairs on legislation authorizing the Town of Andover to enter into a land exchange agreement with the Greater Lawrence Regional Vocational High School District and an easement agreement with the trustees of Phillips Academy. The legislation, Senate Bill 2097, would exempt these transactions from the competitive requirements of M.G.L. c. 30B. The Town of Andover informed the Office that the legislation was necessary to complete an access road to the Merrimack River from River Road in Andover.

The Office conducted a thorough review of the agreements to be entered into by the Town of Andover, the Greater Lawrence Regional Vocational High School, and the Trustees of Phillips Academy and determined that the land exchange and the easement agreements entailed small parcels that were characteristically unbuildable. The Office advised the Committee that it had no objection to the intent of the legislation; however, the Office recommended several clarifications.

Senate Bill 2097 was redrafted to incorporate the Office's recommendations and signed by the Governor to become Chapter 213 of the Acts of 2000.

### **Plymouth County Land Records Facility**

In May of 2000 the Office wrote to the Chairs of the House and Senate Committees on Ways and Means to express opposition to particular outside sections of House Bill 5101 and Senate Bill 2210. The sections in question authorized Plymouth County to undertake construction of the Plymouth County Land Records Facility without any oversight from the Division of Capital Asset Management (DCAM). These sections were similar to legislation that the Office had previously opposed in 1999. The Office was advised that the County intended to construct this facility in accordance with the public construction laws that apply to municipalities. However, this provision was not detailed in the legislation.

The Office recommended that DCAM, having served as the Commonwealth's construction agent for nearly 20 years, oversee the project and recommended House Bill 5101 and Senate Bill 2210 be amended accordingly.

**“[T]his Office continues to believe that the County’s risk of inadequate design and escalating construction cost are substantial.”**

*– IG letter to House Committee on Ways and Means, May 2000*

*The House and Senate Committees on Ways and Means incorporated the safeguards recommended by the Office; however, these safeguards were vetoed by the Governor in signing Chapter 202 of the Acts of 2000.*



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## Legislative Recommendations: 2000 Session

Under M.G.L. c. 12A, the Office 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 Office 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 2000 as well as the Office's recommendations for corrective action. This section discusses the Office's legislative proposals enacted during the 2000 legislative session, as well as those proposed in 2000 for consideration in the 2001-2002 legislative session.

### Procurement Reform

**Enacted in 2000:** The Senate incorporated into its budget, and the Governor signed into law, amendments to M.G.L. c. 30B. These amendments reflected recommendations made by the Office in House Bill 83 of 1999-2000. The amendments raised the dollar thresholds in M.G.L. c. 30B, which were enacted in 1990. The dollar threshold for contracts requiring advertised competition using sealed bids or proposals was increased from \$10,000 to \$25,000. The dollar threshold for purchases requiring informal competitive price quotations was increased from \$1,000 to \$5,000. The \$10,000 limit on sole-source procurements was raised to \$25,000, and the 10 percent limit on contract increases was raised to 25 percent. In addition to these threshold changes, a number of procedural changes were made to M.G.L. c. 30B that were designed to clarify and simplify local procurements. These threshold increases and procedural changes will assist local procurement officials in conducting efficient, best value procurements in compliance with the law.

*Chapter 159 of the Acts of 2000, Sections 65-78*

**Recommendations for 2001 legislative session:** The Office's legislation would give local governments the discretion to utilize a request for proposals process for contracts of less than \$25,000. The legislation would also clarify that real property transactions between local governments and the Commonwealth are exempt under M.G.L. c. 30B.

*House Bill 107, Clarifying the Uniform Procurement Law, Chapter 30B*

## **Construction Reform**

**Enacted in 2000:** The Senate incorporated into its budget, and the Governor signed into law, amendments to the designer selection and public construction bid laws. These amendments reflected numerous recommendations made by the Office in House Bill 84.

The designer selection law, M.G.L. c. 7, §§38A½-O, now provides qualified immunity to protect individuals responsible for completing designer evaluation forms on behalf of awarding authorities from lawsuits. The law requires awarding authorities to provide legal representation and indemnification for those individuals in lawsuits stemming from designer evaluations. Completion of designer evaluation forms is now a prerequisite for the disbursement of state funding for construction projects. In addition, the law now permits state entities to contract with the same designer for study and subsequent design services on building projects.

The public building construction law, M.G.L. c. 149, §§44A-M, now requires contractors to disclose financial or familial relationships with any of the construction project owners listed on their certification applications and provides that any material false statement in a contractor's certification application or update statement shall subject the contractor to the penalties of perjury as set forth in M.G.L. c. 268, §1. The law now provides qualified immunity to protect individuals responsible for completing contractor evaluation forms on behalf of awarding authorities from lawsuits. The law also requires awarding authorities to provide legal representation and indemnification for those individuals in lawsuits stemming from contractor evaluations. Completion of contractor evaluation forms is now a prerequisite for the disbursement of state funding for construction projects.

The public works construction law, M.G.L. c. 30, §39M, was amended to clarify the determination of product equivalence and the means for procurement of construction materials.

**Recommendations for 2001 legislative session:** The Office has filed the following bills for consideration by the General Court:

Legislation that would reform public construction by introducing the concept of owner's representative. An owner's representative is the official or firm designated by the public agency to serve as the focal point of responsibility and accountability on a public construction project from the study and design phases through the completion of the project.

An employee of the public agency could serve as the owner's representative. Training and certification would be required for owner's representatives who oversee construction projects that involve more than \$500,000 in state funds.

*House Bill 104, Providing for Reform in Public Construction*

Legislation requiring a value engineering review on larger public construction projects. Requiring value engineering will help ensure that taxpayers receive the best value for every dollar spent. Value engineering factors in life-cycle costs, including maintenance and energy consumption, to help public agencies make cost-effective design decisions on building projects.

*House Bill 105, Defining Value Engineering*

Legislation that would reform public construction by raising dollar thresholds for bidding requirements. This legislation would raise bidding thresholds for public works and building construction projects. The bidding thresholds need to be updated to reflect the rising cost of public construction projects.

*House Bill 106, Amending Public Construction Bidding Thresholds*

Legislation clarifying a definition in a section of the designer selection law, M.G.L. c. 7, §38G. Chapter 237 of the Acts of 2000 amended this section of M.G.L. c. 7; however, the terms used are not consistent with those used in other sections of the law. This proposal corrects that inconsistency in order to clarify its meaning.

*House Bill 108, Clarifying the Designer Selection Law, Chapter 7*

## **Motor Vehicle Registration**

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

*House Bill 109, Improving tax compliance associated with the registration of motor vehicles*

### **Service of Summonses**

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

*House Bill 110, Technical change regarding the Office of the Inspector General*

### **Real Estate Transactions**

The Office 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 Bill 111, Requiring the open and accountable acquisition and disposition of real property by state authorities*

### **Repeal of Exemptions from Competitive Requirements**

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

*House Bill 112, Repealing certain exemptions*

### **Interstate Commission on Cooperation**

The Office 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 Bill 113, Establishing an interstate commission on cooperation*

### **Trust Funds and Off-Budget Accounts**

The Office 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 legislation would require legislative approval of the creation of such funds as well as reports to the Legislature on revenues and expenditures associated with trust funds and off-budget accounts.

*House Bill 114, Regulating the establishment and administration of certain funds by state agencies*

### **Competitive Procurement of Financial Services**

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

*House Bill 115, Improve procedures for the issuance of public debt*

### **Related-Party Transactions**

The Office filed legislation to restrict and regulate related-party transactions in contracting for goods and services by the Commonwealth.

Under this legislation, a principal, officer, employee, board of directors member associated with any contractor receiving \$100,000 or more of gross revenues through contracts with the Commonwealth would no longer be able to participate in any procurement when the person or any member of his or her immediate family has a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the contractor's duties and responsibilities to the Commonwealth.

*House Bill 116, Regulating related-party transactions in state contracts*