

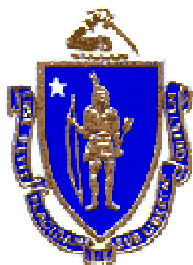


Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2001 Annual Report



The Commonwealth of Massachusetts
Office of the Inspector General

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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 Directors of the Legislative Post Audit and Oversight Bureaus

The Office of the Inspector General was established in 1981 on the recommendation of the Special Commission on State and County Buildings, commonly known as the "Ward Commission" after its Chairman, John William Ward. The Office was established to restore confidence in government after the Ward Commission spent two years probing corruption in the construction of state and county buildings in Massachusetts. The basic concept behind the establishment of the Office was that:

[A]ny 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 first six months of this 2001 Annual Report reflects activities completed by the prior Inspector General, Robert A. Cerasoli, and the second six months reflects activities I completed as Acting Inspector General. During 2001, the Office conducted 38 investigations, 41 training seminars and 2,234 government procurement assistance transactions. The Office also issued six reports. Further information on the Office's activities may be found in a list of 210 information items posted on the Office's website at www.mass.gov/ig under "Public Information Reporting."

On August 6, 2002, I was sworn in as the Inspector General. I have given my commitment to fulfill the original mandate of the Office as envisioned by the Ward Commission and established by the Legislature: to prevent and detect fraud, waste, and abuse in government. Additional copies of the Annual Report may be accessed from the Office's website or obtained from the Office.

Sincerely,

Gregory W. Sullivan
Inspector General

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Introduction

The Massachusetts Office of the Inspector General was established in 1981 on the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts. The commission, led by John William Ward, produced a 12-volume report documenting its findings of massive fraud and waste and detailing its legislative recommendations for reform. The Office was the first statewide office of the inspector general established in the country.

“The basic concept behind the Office of the Inspector General is that any institution . . . must build into itself a mechanism for self-criticism and self-correction. . . . To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste . . . the Commission designed the Office of the Inspector General to be a neutral, impartial and independent office to fulfill that critical function.”

– Ward Commission Final Report, Vol. 1

The Office has a broad mandate under Massachusetts General Laws Chapter 12A to prevent and detect fraud, waste, and abuse in government. M.G.L. c. 12A provides the Office the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and noncriminal violations of the law. The Office employs a staff of experienced specialists, including investigators, lawyers, management analysts, and engineers. Special interdisciplinary teams are formed to meet the unique requirements of the Office’s projects. The Office also has assigned a team of procurement specialists to assist local governments with best value contracting.

Preventing fraud, waste, and abuse before they happen is the principal objective of the Office. 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.

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 2002 was \$1,822,662. Although the Office has 118 authorized staff positions, only 27 staff positions were filled in fiscal year 2002 because of budget constraints.

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. The Criminal Investigations Division includes a computer forensics unit that provides logistical and investigative support. In 2001, the Office received 115 complaints, 74 of which were reported to 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 the Office reported complaints in 2001 include the U.S. Attorney's Office, the Office of the Attorney General, the Office of the State Auditor, the State Ethics Commission, the Department of Revenue, and local police agencies.

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 investigative 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 referenced below constitute only a partial listing of investigations conducted by the Office.

Reading Municipal Light Department Spending Practices

In November 2001, following a lengthy investigation, the Office issued an investigative report, entitled *Credit Card and Certain Other Spending Practices at the Reading Municipal Light Department*, detailing abuses and irregularities in the spending practices of the Reading Municipal Light Department (RMLD), which provides electricity to Lynnfield, North Reading, Reading, and Wilmington. The RMLD has a General Manager who is subject to the direction and control of an elected, five-member Board of Commissioners.

The Office's investigation examined all RMLD documents pertaining to use of RMLD issued credit cards and reimbursable expenses for the period of January 1998 to September 2000. The Office obtained additional documents from a complainant and from local and national restaurants and hotels. The documents revealed unchecked spending

practices by RMLD management and lack of oversight by the Board of Commissioners. The Office's report included the following specific findings:

- **The RMLD's credit card spending cost ratepayers thousands of dollars in excessive, unauthorized and/or inadequately documented expenditures.** Although the RMLD's credit card policy restricted credit card use to documented business-related expenditures, the Office's investigation detailed exorbitant charges – including expenditures for lavish meals and alcohol consumed by RMLD managers and their guests, luxury hotel accommodations, show tickets, and other items – charged to ratepayers by RMLD managers in connection with trips to Las Vegas, Nevada; Scottsdale, Arizona; and San Antonio, Texas. RMLD managers also charged daily lunches, clothing, a bicycle, limousine and car services, and bedding on RMLD credit cards. The Office found that few of the requests for payment of the credit card charges were accompanied by notations, charge slips, or receipts which clearly indicated the business nature of the expense.

“This Office attempted to verify conferences attended in accordance with cardholder entries on monthly credit card statements. In one instance where extraordinary sums were expended, this Office learned from the stated sponsor that no conference was held during the month and at the location noted by RMLD's Assistant General Manager.”

– IG report, November 2001

- **Records viewed by the Office demonstrated that RMLD management was frequently away on business.** The Office found that the General Manager spent a portion of nearly every month of the 33-month investigation period away from RMLD staying in hotels at ratepayer expense. During this period, hotel expenses charged by the General Manager totaled \$21,475, while hotel expenses charged by other RMLD managers totaled \$19,081. Thus, RMLD management charged ratepayers more than \$40,000 in hotel expenses alone during the investigative period.
- **Ratepayers funded expenditures for alcoholic beverages purchased at restaurants, hotels, and conferences by RMLD management.** Although M.G.L. c. 44, §58 states that no city or town shall pay a bill incurred by any other official thereof for wines, liquors, or cigars, municipal light departments are not subject to this prohibition. In the absence of a policy prohibiting the expenditure of public funds for employee consumption of alcoholic beverages, RMLD officials and

guests frequently consumed alcoholic beverages paid for by RMLD's corporate credit card.

The Office's report offered the following recommendations to address the problems identified by the Office's investigations:

- RMLD's Board of Commissioners should exercise more effective oversight to ensure RMLD is in compliance with all internal spending policies.
- RMLD's credit card use policy should be amended to place restrictions on credit card use.
- RMLD's per diem rates should conform to the Town of Reading's reimbursement rates.
- RMLD should adopt a policy prohibiting reimbursement for the consumption of alcohol.
- RMLD should provide supporting documentation for expenditures to the Board of Selectmen and Town Accountant.
- RMLD should establish a reasonable annual budget for conference attendance and conference-related travel.
- RMLD should hold employees financially accountable for apparent past personal use of credit cards.

“[T]he lavishness of RMLD's previously undisclosed spending practices should offend the sensibilities of the ratepayers who entrust their best interests in prudent oversight of their Light Department to the Commissioners whom they elect.”

– IG report, November 2001

Following the release of the Office's report, the Town of Reading and the RMLD each contracted separately with independent accounting firms for forensic audits of RMLD expenditures. The results confirmed the Office's investigative findings. Subsequently, the RMLD Board of Commissioners accepted the resignation of the General Manager and terminated the Assistant General Manager. In addition, the Senior Lineman Supervisor took early retirement. The RMLD has also implemented new policies and taken steps to ensure strict adherence to existing policies. This Office will continue working with the Town of Reading and the RMLD Board of Commissioners to assist in the recovery of misappropriated funds.

Update: Brockton Golf Course Investigation

In 2000, a joint Office investigation with the Massachusetts State Police and the Plymouth County District Attorney's Office disclosed mismanagement and misappropriation of resources at the City-owned D.W. Field Golf Course in Brockton. The City instituted new internal control and accounting changes in response to these disclosures. Based on the Office's recommendations, the City installed a point-of-sale accounting system and video cameras enabling closer monitoring of the daily financial transactions at the golf course. These changes proved instrumental in improving the City's management and control of the golf course and in generating increased revenues for the City. According to news accounts, the D.W. Field Golf Course generated more revenue during the 2001 golf season than it had generated during any other year in its 66-year history; the Mayor of Brockton cited the new point-of-sale system as a one factor contributing to the increased revenues.

Preliminary Investigation Reports to Other Agencies

In those instances in which the Office determines that a matter would be best handled by another agency, the matter is initially investigated by the Office and then reported to another agency. Examples during 2001 include the following:

Alleged conflict of interest: The Office reported to the State Ethics Commission an allegation that the director of a state agency had granted no-bid contracts to family members.

Alleged conflict of interest: The Office reported to the State Ethics Commission an allegation of impropriety in the granting of a building permit and the nonenforcement of town zoning rules and bylaws by a town building inspector.

Alleged conflict of interest. The Office reported to the State Ethics Commission an allegation that a Chief of Police promoted a family member within his department.

Alleged violations of state agency rules. The Office reported to the Inspectional Services Division of the Department of Revenue alleged violations of a state agency's rules and use of property for the personal benefit of a public official.

Alleged pollution of a river in central Massachusetts. The Office reported to the Department of Environmental Protection Strike Force an allegation of river pollution and illegal disposal of sludge by employees of a public wastewater facility.

Financial Oversight

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 identifying undisclosed cost overruns before December 1999 bond sale, December 1999

The Office reviewed more than 100,000 pages of documents related to the period 1994 to 2000, including internal Federal Highway Administration (FHWA) documents related to a detailed budget review conducted in 1995 by FHWA officials. The Office’s review revealed 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 estimate.** B/PB’s \$14 billion estimate in 1994 starkly contradicted the \$8 billion estimate offered publicly by Big Dig officials¹ 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 the 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.
- **Big Dig and local FHWA officials shirked their fiduciary responsibilities by not disclosing all relevant financial facts to the public, the State Legislature, and the bond markets.**
- **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.**

¹ “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.

- **The Office of the State Treasurer ultimately forced Big Dig officials to disclose the cost overrun through its due diligence review of February 2000.**

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 saddled the citizens of Massachusetts 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 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]."

During the remainder of 2001, the Office provided documents and information in connection with investigations undertaken by the Office of the Attorney General, the Securities and Exchange Commission, the U.S. Department of Transportation Office of the Inspector General, and the Federal Bureau of Investigation.

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Effective and Ethical Contracting

University of Massachusetts Computer Science Center Review

In March 2001, the Office issued *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

Lynn Wastewater Privatization

In June 2001, the Office issued a report, entitled *Privatization of Wastewater Facilities in Lynn, Massachusetts*, on the procurement by the Lynn Water and Sewer Commission of two long-term design-build-operate (DBO) contracts: one for a combined sewer overflow (CSO) project and the other for a 20-year wastewater treatment plant.

Lawrence Water Treatment and Supply System Privatization RFP

In July 2001, the City of Lawrence published a notice in the *Central Register* for a Request for Proposals (RFP) for capital improvements, operations, maintenance, and management services for its water treatment and supply system. The RFP was issued pursuant to Chapter 390 of the Acts of 2000, which required the City to conduct the procurement under M.G.L. c. 30B, with excepted sections. The RFP notice listed a fee of \$7,500 to obtain the RFP. In response to an inquiry by the Office, the City advised the Office that the non-refundable fee was intended to allow the City to recoup not only the cost of reproducing the RFP, but also the cost of hiring a consultant engineer to compile and analyze data and to prepare various reports provided to prospective proposers in the RFP package.

In late July 2001, the Office wrote to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth, requesting an opinion as to:

- whether an RFP was a public record for purposes of the public records law, M.G.L. c. 66, and, if so,
- whether the public records law restricted the City to charging prospective proposers, or anyone else interested in obtaining the RFP package, only reasonable reproduction costs.

In an August 2001 letter to the Supervisor of Public Records, the City Attorney explained that the \$7,500 fee charged to all prospective proposers covered the costs incurred by the City in producing documents necessary for prospective proposers to submit competitive proposals, such as background documents, a survey of the water treatment plant site, and an asbestos report of the existing water treatment plant. The City Attorney's letter also noted that the background documents were provided to prospective proposers on CD-ROM.

In September 2001, the Office wrote to the City regarding the RFP, which was similar in many respects to a wastewater privatization RFP issued in February 1999 by the Lynn Water and Sewer Commission and discussed

in the Office's June 2001 report entitled *Privatization of Wastewater Facilities in Lynn, Massachusetts* (discussed earlier in this section). The Office urged the City to take steps to protect its interests as it proceeded with its privatization plans.

On February 19, 2002, the Acting Supervisor of Public Records issued an advisory opinion to the City regarding the \$7,500 fee for copies of public records relating to the RFP. The opinion noted that the enabling legislation for the procurement did not provide for the City to attempt to recoup its costs of preparing the proposal documentation from all parties who requested the information. The opinion also stated that once a record exists, developmental costs cannot be assessed against future requesters of the information, and those individuals may only be assessed the actual reproduction costs of complying with their request. The Acting Supervisor's letter warned the City that failure to restructure the City's fees in conformity with the opinion would result in the issuance of an administrative order to do so.

Melrose Public Works Project

In May 2001, the City of Melrose entered into an arrangement with a private contractor, Gator Development Corporation, Inc. (Gator), under which Modern Continental Construction Corporation (Modern Continental) would deliver almost 700,000 tons of fill excavated from the Central Artery/Third Harbor Tunnel (CA/T) Project to and provide related construction services at the Mount Hood Memorial Park and Golf Course (Mount Hood) in Melrose. The City subsequently entered into a formal contract with Gator Hood, LLC (Gator). The City's original intent was to use the fill, for which Gator agreed to pay the City \$0.70 per ton, to construct playing fields and golf course improvements at Mount Hood. Under the City's contract with Gator, Gator was authorized to pay City vendors for site preparation work at Mount Hood with funds owed to the City under the contract.

The Office's review of the project was still ongoing as of the end of 2001. However, during 2001 the Office wrote three letters to the City of Melrose regarding the fill delivery project. In July 2001, the Office learned that the City was preparing to pay a private contractor, Dami and Sons, approximately \$170,000 for public works construction services reportedly performed at Mount Hood. Dami and Sons had previously been paid more than \$47,000 for similar services. In response to the Office's inquiry, the City advised the Office that the City had not solicited competitive bids for any of the work performed by Dami and Sons. In a letter dated July 23, 2001, the Office advised the City that Massachusetts law prohibits payment by a governmental body for services rendered in violation of a public procurement law and, therefore, that the City should make no

further payments to Dami and Sons. In accordance with the Office's recommendation, the City made no further payments to Dami and Sons.

On October 12, 2001, the Office wrote to the City regarding discrepancies in the City's records of the fill delivery project. The Office's review of records provided to this Office by the City showed that the City's calculations of the amount still owed by Gator were based on incomplete information. Moreover, based on the City's records of fill deliveries and payments made, the Office's analysis indicated that Gator owed the City more than the amount reported to the Office by the City. The Office's letter also highlighted a discrepancy between the City's fill delivery records provided to the Office and the CA/T Project's fill delivery records obtained by the Office. The Office recommended that the City review its fill delivery and payment records and take immediate steps to ensure that the City received full payment for all fill delivered to Mount Hood. Subsequently, at the City's request, the Office met on October 22, 2001 with the Mayor, the City Auditor, and the City Solicitor to provide a detailed explanation of the Office's analysis.

In response to the Office's letter, Gator advised the City that the City's calculations had omitted more than \$40,000 of Gator payments and provided documentation supporting its contention. The Office subsequently confirmed that the records provided to the Office by the City should have included the documentation provided by Gator and that the City's calculations should be adjusted to reflect these documents.

On December 14, 2001, the Office sent a third letter to the City responding to a letter from Gator to the City advising the City of a \$17,500 credit that Gator planned to assess against the City. According to Gator's letter, the CA/T Project had taken a \$17,500 credit from Modern Continental against the quantity of fill excavated from the job site and delivered to Mount Hood; thus, Gator intended to reduce its payment to the City accordingly.

However, the Office's review of the situation revealed that the CA/T Project credit from Modern Continental was unrelated to the delivery of fill to Mount Hood. CA/T Project officials advised the Office that the CA/T Project had erroneously made payments to Modern Continental under an unrelated pay item and that the credit represented an adjustment to correct this error. The adjustment, according to the CA/T Project officials, does not reduce the estimates of material delivered to Melrose and should have no impact on any calculation of payment due the City for receipt of fill. As of the end of 2001, the financial status of the City's contract with Gator remained unresolved.

MBTA Design-Build Construction of the 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.

In May 2001, the MBTA solicited the Office's comments on review drafts of a Request for Qualifications (RFQ) and Volumes I and II of a Request for Proposals (RFP) for design-build services for Transportation Improvements in the Greenbush Line Corridor. In a May 2001 letter to the MBTA, the Office offered the following comments:

- The procurement documents provided inadequate and inconsistent information regarding the scope of the contract, thereby creating the potential for confusion among proposers and for an unfair selection process.
- The vague evaluation criteria contained in the procurement documents provided little assurance that the process would be fair or that the selected team would be highly qualified to undertake this project.
- The omission from the RFP of explicit project performance requirements established by the MBTA was inconsistent with the design-build project delivery approach and exposed the MBTA to significant performance risks.
- The RFP procedures for determining the proposal offering "best value" were inconsistent, irrational, and unfair.

- The MBTA's draft design-build contract contained provisions that could unnecessarily heighten the financial risks of this contract to the MBTA and state taxpayers.
- Variations in terminology among the procurement documents were likely to undermine fair competition by generating confusion and proposal disparities.

“The design-build project delivery method requires the project owner to relinquish design control to the design-builder and hold the design-builder accountable for project performance. The project performance standards established by the owner are thus of paramount importance in assuring the owner (and the public) that the completed facility will meet the owner’s needs and expectations. However, [the] Office’s review of the procurement documents identified few meaningful performance requirements or objectives.”

– IG letter to MBTA, May 2001

The Office recommended against proceeding with the procurement process until the MBTA had reviewed and resolved the issues raised in the Office’s letter.

In response to the Office's comments, the MBTA noted that the document provided to the Office had been a working draft and that the MBTA had incorporated a number of the Office’s suggestions into the final procurement documents. The Office’s review of the final RFP confirmed that the MBTA had made numerous revisions in response to the Office’s comments.

Operational Reviews

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 November 1999 report on 24 charter schools, entitled *A Management Review of Commonwealth Charter Schools*, had identified weaknesses in the Somerville Charter School's contracting practices, procurement procedures, and financial management. The Office's 2001 report 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.)

"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 Office's report also 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 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 appeared to hold 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.**

"[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 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."

– Response of Somerville Charter School Board of Trustees to draft IG report, January 2001

After the Office's report was released, the Somerville Charter School Board of Trustees took steps to separate the business and educational management functions of the School, according to an April 2002 letter to the Office from a Board Trustee. The Board hired an independent certified public accountant to provide financial advice and to perform the annual audit of the School; the Board also adopted written procedures to ensure the Board's compliance with the open meeting law.

During the Board's contract negotiations with SABIS Inc., the Board proposed several changes to its management contract with SABIS Inc., including clear performance requirements for student achievement and clarification of the services included in the six percent management fee. In response, SABIS Inc. expressed disagreement with the proposal to incorporate academic performance requirements into the contract,

declined to specify the services included in the management fee, and pointed to SABIS Inc.'s financial investments in the School as justification for the contract provision allowing SABIS Inc. to retain the year-end surplus.

In September 2001, the Board voted to turn over contract negotiations to the School's attorneys, to secure the School's funds, and to place limitations on SABIS Inc.'s ability to spend School funds pending the Board's review. According to the Board Trustee, SABIS Inc. rejected the Board's new financial controls, refused to abide by the terms of the Board's new financial policies, refused the Board and its representatives access to accounting and financial records of the school, demanded immediate payment of \$1.4 million, and threatened lawsuits against the School.

On November 20, 2001, the Board voted not to pursue contract negotiations with SABIS Inc. and to assume full responsibility for the business and educational management of the School as of December 1, 2001. Subsequently, the Board hired an interim Director of Business and Finance and assumed responsibility for the annual budget as well as financial reporting and control functions.

"[T]he Inspector General's report on the Somerville Charter School clearly identified serious management and financial issues that required immediate attention. The Board of Trustees had the unenviable task of trying to adhere to the recommendations of the Inspector General while negotiating with a recalcitrant vendor who was also its landlord. . . . The Board of Trustees of the Somerville Charter School appreciates the genuine concern shown by your office and appreciates your recommendations. We hope that other schools will be forewarned and forearmed by our experience."

– Letter from Somerville Charter School Trustee to IG, April 2002

Review of DOE 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 *Recommended Fiscal Policies and Procedures Guide* prepared by the DOE 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 strengthening portions 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. The DOE subsequently issued the final version of the *Recommended Fiscal Policies and Procedures Guide*, which incorporated several of the Office's recommendations.

Update: SABIS International Charter School

In November 2000, the Office issued *SABIS International Charter School: Management Issues and Recommendations*, a report detailing deficiencies in the business operations of the SABIS International Charter School in Springfield. Since 1995, the School had contracted with a private company, SABIS Educational Systems, Inc. (SABIS Inc.) to manage the School. The report found that the Board had not employed sound business and contract oversight practices in administering the School's financial relationship with SABIS Inc. during the first five years of School operations and that the new contract with SABIS Inc. negotiated by the Board would significantly increase the School's exposure to fraud, waste, and abuse. The report also found that the Board had not accurately documented its official actions and policies.

Subsequently, in a December 2000 letter to the DOE Commissioner, the Office identified major flaws in a revised version, which DOE planned to approve, of the new contract between the School and SABIS Inc. The final contract approved by the Board of Education in March 2001 had been amended in several respects in response to the Office's recommendations: 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 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.³

In an April 2002 letter to the Office, the Board's attorney advised the Office that the Board had instituted several administrative changes in response to the Office's November 2000 report. For example, it discontinued the practice of authorizing unspecified and undocumented "corporate support" payments to SABIS Inc. It also selected and engaged the services of an independent auditor rather than allowing SABIS Inc. to do so, and it hired an independent company to tape and transcribe meeting minutes. The

³ The Office had expressed the view that incorporating a trademark symbol or other corporate logo into the name of a public school was inappropriate.

Board's attorney also advised the Office that the Board had amended its student enrollment policy and no longer provided preferential treatment to the children of Board members.

In April 2002, the Board's independent auditor wrote to the Board reporting that although the School continued to owe funds to SABIS Inc. on June 30 of every year, due to the reduction in the School's cash flow just prior to receipt of tuition payments from the state, the School's financial condition had steadily improved since 1998. The auditor also reported that several internal control deficiencies in the School's operations identified in the Office's November 2000 report had been corrected.

Update: Contractor Certification

In 1998 and 2000, the Office issued reports identifying deficiencies in and recommending improvements to the Commonwealth's contractor certification system. 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.

In January 2001, the Office sent a letter to DCAM commenting on the draft version of the Standard Contractor Evaluation Form, which DCAM had recently revised and improved. The Form is completed by awarding authorities and their project architects as part of the contractor certification process; the Form is also used by DCAM staff in conducting telephone interviews with awarding authorities and their project architects. Although the draft Form was responsive to the recommendations contained in the Office's 1998 and 2000 reports, the Office's letter offered several further corrections and suggestions for improvement. DCAM issued the final version of the form in June 2001.

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Central Artery/Third Harbor Tunnel Project

Monitoring

Dewey Square Air Intake Structure

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 Central Artery/Third Harbor Tunnel (CA/T) Project may begin prior to the review and approval of the Inspector General. During 1991, 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.

In a May 2001 letter to the CA/T Project, 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 Turnpike Authority staff charged with managing CAVT-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 change 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.

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 design 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 and timely manner. The report found that the CA/T Project's cost recovery program showed systemic vulnerabilities to waste and abuse and that the program had recovered only \$30,000 of the \$80+ million in identified cost recovery

related change orders. No cost recovery claim had ever been successfully pursued against B/PB.

CA/T Project management concurred with many of the report findings concerning program neglect and inadequate documentation. Notwithstanding CA/T Project management's strenuous objections to many other findings and conclusions, the Office was pleased to note some evidence of steps taken to remedy the problems documented in the report. During 2001, the Office continued to monitor the cost recovery program and cost recovery issues. In June 2001, the Massachusetts Turnpike Authority Board, which oversees the CA/T Project, voted to change the procedures for reviewing and processing contractor claims and CA/T Project change orders. The Office has been reviewing the implementation of the proposed changes, which should improve the cost recovery program.

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 CA/T Project consultant contracts. The request emanated, in part, from the Office's earlier criticism of the flawed audit services procurement and a 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.

Bechtel/Parsons Brinkerhoff Accountability

Bechtel/Parsons Brinkerhoff (B/PB) is the state's management consultant responsible for administering the CA/T project. In October 2001, the Office sent a joint letter with the State Auditor to the Board of Directors of the Massachusetts Turnpike Authority. This letter supported the Board's initiative to hold B/PB accountable for its share of responsibility for Big Dig cost overruns. The two offices also offered assistance to the Board for this initiative to recover from B/PB every dollar it owes to the citizens of the Commonwealth.

"We support your initiative to hold B/PB accountable for its share of responsibility for Big Dig cost overruns...B/PB's recent refusal to acknowledge any responsibility for or share in the burden of paying for increasing Project cost overruns is irresponsible and unconscionable."

– Joint letter from Acting Inspector General and State Auditor to the Turnpike Authority Chairman, October 2001

The two offices stated that B/PB was seeking to evade responsibility for the multi-billion dollar cost overruns and to place the entire cost on the tax payers and turnpike users. The two offices stated their mutual intention to obtain previously undisclosed financial information from B/PB to assist in cost recovery actions against B/PB. Since 1990 both offices have reported numerous times that B/PB's contract mismanagement, deficient practices, and poor performance have led to the Project's increased costs. It is unlikely that on the largest and most complex public works project in United States history, B/PB has never made a mistake or failed to meet its contractual obligations. If B/PB has made errors or breached its contract, the Commonwealth should pursue compensation.

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. Beginning in Fiscal Year 2002, the Commission's member agencies have agreed to share the Commission's expenses.

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 2001 Summary Report contained a detailed description of Commission and individual member activities.

"The CA/T Project has entered its peak construction period and is now spending about \$100 million each month. According to the CA/T Project, the estimated cost of the CA/T Project now exceeds \$14.475 billion. Because of the large CA/T Project cost overruns and apparent lack of public confidence in CA/T Project management, a focused and proactive oversight presence is crucial, especially as the CA/T Project moves toward completion."

– Acting Inspector General, State Auditor, and Attorney General letter accompanying third summary report of the CA/T Project Oversight Coordination Commission, September 2001

The following are examples of initiatives that meet the objectives originally cited in the Supplemental Plan.

- **The Office of the Attorney General has been investigating allegations first raised in this Office's report *A History of Central Artery/Tunnel Finances 1994-2001*.** The Office of the Attorney General has been gathering and reviewing subpoenaed documents in connection with this matter. The Office of the Attorney General has

benefited from the assistance of the Inspector General staff during this review.

- **In the spirit of cooperation and coordination envisioned by the framers of the Commission, the Inspector General assigned engineering staff to assist the State Auditor.** Certain complainant allegations required an engineer's perspective and analysis. The Office notified the State Auditor's staff of its findings in January 2001. The Office was able to supplement the State Auditor's staff efforts and save the State Auditor the time-consuming and potentially costly job of contracting separately for the engineering expertise.
- **Senior staff of the three member agencies continued to meet monthly throughout 2001 to discuss the activities of each of their offices and to share case and Project information.** Four times in 2001, the Commission invited members of the Legislature to 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 item 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 allegations made by this Office in the report *A History of Project Finances 1994-2001*. The Office has cooperated with federal officials and provided information as appropriate.

Air Rights Development on the Central Artery Corridor

In June 2001, the Office sent a letter to the Chairmen of the Central Artery Corridor Commission regarding air rights development on the Central Artery Corridor. The Office's letter noted that the law did not require the Massachusetts Turnpike Authority to conduct an open, fair, and competitive process when it selected private developers for the air rights above the Corridor.

"The public deserves a fair deal - and a good deal - when MassPike leases these valuable assets to private developers."

— IG letter to the Central Artery Corridor Commission, June 2001

While the Office did not dispute the Authority's rights in air space over land that it owned, the purpose of the Office's letter was to ensure that the public interest was adequately safeguarded in any disposition process

where potential revenues were likely to be significant. The Office urged the Corridor Commission to require a fair, open, and competitive process for the disposition of air rights in the Central Artery Corridor as well as the Central Artery North Area and the Ted Williams Tunnel.

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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 House and Senate Committees on Ways and Means and the Joint Committee on State Administration. The Office also reviews and comments on the release deeds and agreements effecting the conveyances.

Review of the Greylock Center Project

In December 2000, the Office received complaints regarding the proposed disposition of state property in Greylock Glen to Greylock Management Associates, L.P. (GMA) pursuant to a draft Land Disposition Agreement (LDA) and a Master Lease. The Office undertook a limited review of certain aspects of the Greylock Center project dating back to the 1996 developer selection process conducted by the Department of Environmental Management (DEM).

In June 2001, the Office issued a report on the Greylock Center Project. The Office's findings supported the Acting Governor's decision, announced two weeks earlier, to cancel the project.

The Office's major findings were as follows:

- **The partners in GMA were not the same as those proposed by GMA and accepted by the Commonwealth in 1996, and they lacked the qualifications of the selected team members.** Four of the five general development partners named in GMA's 1996 proposal and selected by DEM to develop the project had never executed the GMA partnership agreement, had had no substantial involvement in the project in recent years, and reportedly had no plans to become partners of GMA. Moreover, the current GMA partnership bore little resemblance to and lacked the qualifications of the original partnership proposed by GMA and selected by DEM.
- **The terms of the development plan for the Greylock Center differed substantially from the terms proposed by GMA and accepted by the Commonwealth in 1996.** The financing plan for Greylock Center substantially increased the Commonwealth's financial

commitment from the funding and terms proposed by GMA and accepted by the Commonwealth in 1996. At the same time, the draft LDA and Master Lease did not assure the Commonwealth that the major components of the project would ever be completed.

- **DEM selected GMA as the Greylock Center developer despite incomplete and inadequate information regarding GMA's financial capacity.** The Office found that GMA did not provide the required financial information, that DEM did not obtain required disclosures of legal and administrative actions pertaining to GMA team members, that DEM did not obtain information concerning the level of commitment to the project of each general development partner proposed by GMA, and that DEM's due diligence efforts produced no meaningful information regarding GMA's financial capacity.

The project records reviewed by the Office showed that DEM officials and others invested substantial time in planning and supporting the progress of the Greylock Center project between 1996 and 2001. These records reflected DEM's commitment to developing a project that promotes local and regional economic development in a manner that was environmentally responsible and sustainable. In hindsight, however, it was clear that many of the problems that arose during the five-year period since GMA was selected could have been avoided had DEM exercised greater care at key points during the developer selection process.

"Over the years, [the] Office has repeatedly witnessed how difficult it is for public officials to walk away from well-intentioned public-private undertakings that turn out to be bad deals for the public. It is particularly difficult to do so when, as is the case of the Greylock Center project, a community's long-held hopes and expectations are bound up in the project's vision."

– IG letter to DEM Commissioner, June 2001

In June 2001, the DEM Commissioner wrote a letter advising GMA that, based on the Office's findings, it was no longer feasible for DEM to continue to work with GMA on implementation of the Greylock Center project.

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.

Chicopee Land

Pursuant to Chapter 210 of the Acts of 2000, the Office reviewed the appraisal of two parcels of land containing approximately 20.58 acres owned by the City of Chicopee. The Commonwealth anticipated purchasing these parcels from the City to construct a regional women's correctional facility to be operated by the Hamden County Sheriff's Office.

The appraiser used the sales comparison approach to determine the market value of 18 acres of land and 2.2 acres of land. The appraiser estimated the land area value for the larger parcel at 25 cents per square foot resulting in a total value of \$200,000 for 799,979.40 square feet of land. The appraiser also determined the land area value for the smaller parcel at \$1.25 per square foot, resulting in a total value of \$120,600 for 96,485.40 square feet of land.

The smaller parcel was improved with a regional dog control facility. The appraiser used the cost approach procedure to estimate the replacement value of the improvement. The construction costs per square foot less accrued depreciation was calculated. The final depreciated market value of the facility was projected at \$1,019,406.

The Office determined that the appraisal of the total market value of the subject property was \$320,000 for the two parcels of land and \$1,019,400 for the improvement, resulting in a total value of \$1,340,000. In a June 2001 letter, the Office approved the methodology and final value determination of this appraisal of the subject property.

Ipswich Land

Pursuant to Chapter 410 of the Acts of 2000, the Department of Environmental Management (DEM) awarded two appraisal contracts to determine the market value of a 40-acre parcel of unimproved land located in the Town of Ipswich. DEM was authorized to purchase the subject property for assemblage purposes to expand the Willowdale State Forest. Section 4 of the Chapter required the Office to review and approve an appraisal and examine the appraiser's methodology and submit its report to DCAM. According to the two appraisals, the parcel was assessed for \$335,800 for fiscal year 2000. The local assessor confirmed that the owners had applied for a tax abatement and reduced assessment after a valuation of \$417,400 was assessed in fiscal year 1998. According to the purchase and sale agreement between the owners and the Commonwealth, the agreed upon sales price was \$2,500,000.

Due to the rural nature of the subject property neighborhood and its lack of negative influence, the first appraisal suggested that the highest and best use of the property would be a unique, high-end residential development

(\$600,000 - \$750,000 homes). The appraisal noted that the 40-acre parcel is under agreement for an undisclosed amount. The estimated market value was based upon review of the "conditionally approved" Definitive Plan of the site to support 28 lots. The appraiser used the Development Approach to estimate the market value of the subject property. After estimating gross sales, development costs, and a discounting process, the appraiser indicated a market value of \$2,350,000.

The second appraisal report also determined that the highest and best use of the subject property would be a 28-lot subdivision serving an upscale sector of the local real estate market. This appraisal included a sales comparison approach to value and an income capitalization methodology (development or subdivision technique) to estimate the market value of the 40-acre parcel. The appraisal considered the income capitalization approach to be the primary valuation method. The sales comparison approach produced a value range of \$2,380,000 - \$2,650,000 and the income capitalization approach estimate was \$2,380,000. The final estimate was rounded to \$2,400,000.

In a June 2001 letter to the DCAM Commissioner, the Office approved the methodologies utilized and the final estimated market values of the two appraisals.

Former Danvers State Hospital Land

Pursuant to Chapter 180 of the Acts of 1997, the Office reviewed three independent appraisals of approximately 75 acres on the former Danvers State Hospital site. The road network divides the subject property into Lot 2A (the Highlands) and Lots 7 and 9 (the Lowlands). DCAM instructed the appraisers to use a hypothetical assumption and value the Danvers site as vacant - no improvements exist - and to estimate the market value in conformity with the as-of-right uses. The Highlands and Lowlands sites were available for redevelopment and the zoning as-of-right uses for the site were restrictive, essentially limiting development to either health care, elder care, educational, or agricultural uses.

One appraisal report used the sales comparison approach to determine a market value of \$8,750,000 for the larger Highlands land for the multi-family development that it could support. A market value of \$1,280,000 was reached for proposed low-rise office development on the Lowlands land. The Office approved the methodology and final estimate of market value of \$10,030,000 for the 75-acre site.

The second appraisal also utilized the sales comparison approach to value the Danvers site. This appraisal, in accordance with DCAM's instructions, only considered the uses allowed as-of-right for the zoning district. In the appraisal, adjustments were made for land encumbered by wetlands or

non-usable due to site topography features or legal issues. The appraiser estimated the market value of the Highlands parcel at \$8,930,000 and the two smaller Lowlands parcels at \$1,980,000 and \$1,970,000. The Office also approved this appraisal methodology and final estimate of market value of \$12,900,000 for the site.

The third appraisal also utilized the sales comparison approach to value the site and pointed out that consideration was given to only those zoning uses allowed by right and the hypothetical assumption that the subject property was vacant. The appraiser determined a \$6,900,000 market value estimate without separately considering market values for the distinct Highlands and Lowlands areas. The Office also approved this appraisal methodology and final estimate of market value for the site.

In an August 2001 letter to the Commissioner of DCAM, the Office approved all three appraisal methodologies and determined the average of these three independent appraisals was \$9,943,333.

Former J.T. Berry Center

Pursuant to Chapter 271 of the Acts of 1998, as amended by Chapter 7, §4 of the Acts of 2001, the Office reviewed the independent appraisal of approximately 87 acres at the former J.T. Berry Center site. The appraisal report described the subject property as a large parcel located in the Town of North Reading with a small portion of the parcel located in the Town of Wilmington. The site had numerous development issues including secondary roadway access, lack of municipal sewer service, wetlands, probable site contamination, and necessary demolition of abandoned structures. According to the report, the Commonwealth had alerted potential developers of these issues through its RFP process.

The report depicts the former J.T. Berry Center site as zoned for industrial/office use. The appraiser believed that development potential for the site was financially feasible and could support 875,000 square feet of multi-story office/research/development buildings without structured parking while still allowing for adequate parking and open space. The appraiser utilized a sales comparison approach to estimate a market value of \$12,500,000 for the property.

In an August 2001 letter to the DCAM Commissioner, the Office approved the appraisal methodology and final value determination for the site.

Silver Lake Regional School District Property

Pursuant to Chapter 6 of the Acts of 2000, the Silver Lake Regional School District (District) notified the Department of Education (DOE) of its approval of the withdrawal of the Town of Pembroke from the District. The

Act authorized the District to sell two District-owned schools to the Town of Pembroke for a price not to exceed the appraised value of the two parcels. Chapter 6 required the Office to review and approve the two appraisals of the real properties located in Pembroke that are identified as the current and former Silver Lake Regional District Junior High School (SLRJHS) parcels.

The 46.14 acre Learning Lane parcel included the current SLRJHS building and various athletic fields and tennis courts. The sales comparison approach was used to determine the \$900,000 value of the land as vacant. The cost approach was used to determine the overall value of this special use property. The appraiser estimated the total value of the land and improvements to have a rounded value of \$23,300,000.

The 38.96 acre School Street parcel included the former SLRJHS building and various athletic fields and asphalt pavement. The sales comparison approach was used to determine the \$546,000 value of the land as vacant. The cost approach was used to determine the overall value for this special use property. The appraiser estimated the total value of the land and improvements to have a rounded value of \$10,780,000.

In correspondence to the Office, counsels representing the Town of Pembroke and the Silver Lake Regional School District stated that the Town and the District agreed that the Town would pay the District the aggregate price of \$11,900,000 for the purchase and conveyance of the two SLRJHS parcels. The letter noted that this purchase price paid would not exceed the appraised value of the two properties.

In an August 2001 letter to the DOE Commissioner, the Office approved the methodologies used in the two appraisals of the SLRJHS parcels.

Billerica Land

Pursuant to Chapter 181 of the Acts of 2000, the Office reviewed appraisals of two parcels of land located in the Town of Billerica. The appraiser stated that the scope of the appraisals was to determine the fee simple, fair market value of the properties according to their statutorily restricted uses. The sales comparison valuation methodology was utilized in each appraisal to estimate the value of the land as the primary component of each parcel's worth. The appraiser found a sufficient number of prior conveyances of land between governmental entities to be used as comparables. The comparables are used to determine value estimates in accordance with the Act's limited future uses of the subject parcels.

The subject property in one appraisal included approximately 5.82 acres of land located at 240 Treble Cove Road. According to the Act, the Town

was authorized to transfer this site to the Commonwealth for use by Middlesex County's Sheriff's Department. This appraisal report determined that the market value of this parcel as restricted for use by the Sheriff's Department, was \$1,600,000.

The second appraisal was Commonwealth-owned land located off the River Street Extension in Billerica. This site contains approximately 66 acres of land and was improved with an obsolete sewer treatment plant for the Massachusetts Correctional Facility at Billerica and a local animal shelter. According to the Act, the Commonwealth is authorized to transfer this site to the Town for a water treatment facility. This appraisal report determined that the market value of this parcel, as restricted for use by the Town for a water treatment facility, is \$2,800,000.

Chapter 181 contained language stating that if the market value of the Town-owned parcel was less than the value of the Commonwealth's land, the Town was required to pay the difference. The Office determined that the State land was worth \$1,200,000 more than the Town's property. The Act addressed this potential and authorized the Commissioner to determine that the consideration paid may be less than fair market value provided there was a written disclosure in the Central Register detailing the reasons for such a decision. In a September 2001 letter to the DCAM Commissioner, the Office approved the methodologies and final market value estimates contained in the two appraisal reports.

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, a quarterly *Procurement Bulletin*, 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.

Training and Professional Development

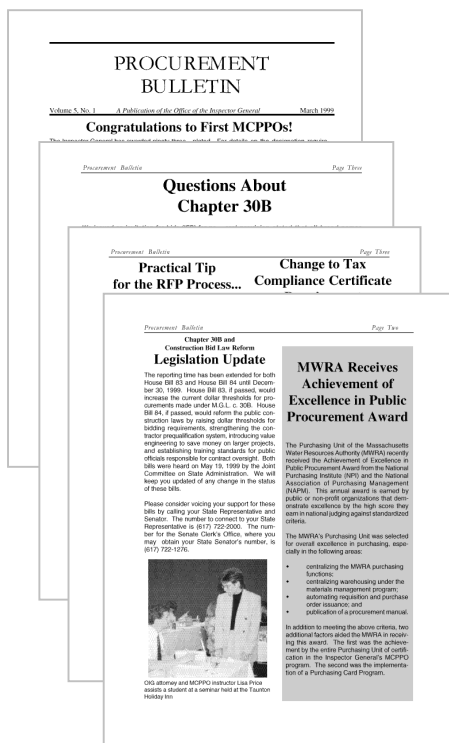
The Office created and administers the Massachusetts Certified Public Purchasing Official (MCPPO) program, established in 1997 and discussed in the next section of this report. The Office designed the MCPPO program to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement.

During 2001, in addition to the seminars provided as part of the MCPPO program, the Office provided 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; the Massachusetts Chapter of the National Association of Housing and Redevelopment Authorities; 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.mass.gov/ig.

In 2001, the Office published four issues of the *Procurement Bulletin*, a newsletter distributed to approximately 5,400 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 2001, for example, the *Procurement Bulletin* included articles on collective purchasing agreements, using vendor-supplied invitations for bids (IFBs), use of ordered alternates, and prevailing wage updates. In prior years, the *Procurement Bulletin* has featured articles pertaining to the policy regarding late bids, changes in the public procurement laws, handling exempt supplies and services procurements, 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 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 2001, the Office responded to 2,234 inquiries about M.G.L. c. 30B and other public bidding laws, resulting in over 3,371 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, aggrieved bidders, and concerned citizens 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 2001.

City of Boston - Request for Guidance. The Office issued a written opinion in response to a request from the Boston Finance Committee to suggest changes in the Boston School Department's procurement procedures for student transportation services. The Office observed that the City's customary garaging requirements might give an incumbent an unfair advantage because it already had facilities deemed acceptable by the City. The Office suggested that one way to improve competition would be for the City to provide the garaging facilities and make the property available to any successful bidder. The issue of restrictive garaging requirements arises in many communities' procurement of school bus services. The Office also recommended that the City consider whether a longer-term contract (it was proposed as a two-year contract) would allow more vendors to amortize expenses over a long enough period to make it economically feasible to bid.

“One way to generate competition and create a true level playing field is for the City to provide the garaging facilities and make the property available to the successful bidder. By doing this, the City removes a major obstacle in generating competition.”

– IG letter to Boston Finance Committee, December 2001

City of Gloucester - Request for Guidance. The City of Gloucester inquired as to whether it could lease City-owned real property to a non-profit museum group for a 99-year term. The City also asked whether such a lessee would be subject to M.G.L. c. 30B after entering into a real property lease with the City. The City was informed that the leasing of property to a non-profit entity is subject to the requirements of Section 16 of M.G.L. c. 30B. These include a declaration of the availability of the property, establishment of reuse restrictions, and a determination of the value of the interest in real property that will be subject to disposition. If the value of the lease is expected to be in excess of \$25,000, a competitive RFP process must be conducted. The Office advised the City that M.G.L. c. 30B, §16 is silent relative to lease term length, but other state and local rules (e.g., M.G.L. c. 40, §3) contain specific restrictions. A

lessee of municipal property would be subject to M.G.L. c. 30B only if it met the statutory definition of a "governmental body".

Town of Milford - Request for Guidance. The Town asked for guidance in determining whether the Milford Geriatric Authority (MGA) was an entity subject to M.G.L. c. 30B. The Office determined that the MGA is a governmental body subject to the requirements of M.G.L. c. 30B. The Office referenced the five-factor test articulated by the Supreme Judicial Court in *Globe Newspaper Company v. Massachusetts Bay Transportation Authority Retirement Board*, 416 Mass. 1007 (1993) in determining that MGA was a public rather than a private entity for purposes of determining the applicability of M.G.L. c. 30B. Based on that test the Office examines the means by which an entity is created, the extent to which it performs an essentially governmental function, the involvement of public funds, the involvement of private interests, and the extent of control and supervision exercised by governmental officials or agencies over the agency.

Town of Bernardston - Bid Protest. The Office received a bid protest regarding the procurement of sand by the Bernardston Highway Department. The Town of Bernardston had been part of a regional collaborative bid for sand but chose to obtain its own price quotations, apart from the collaborative bids. A jurisdiction may choose to do its own competitive process rather than take advantage of a collaborative bid provided that the arrangement between the jurisdiction and collaborative and the IFB permit separate procurements. The Office determined that in exercising its right to do an independent quotation solicitation, the Town did not award the contract to the responsive and responsible vendor that had submitted the lowest price quotation. The Town official responsible for the procurement process reported that he had awarded the contract to a higher-priced vendor with which the Town had previously done business and whose product they found satisfactory. There had been no finding that the lower-priced vendor was not responsive or not responsible. Accordingly, the Town's procurement was found to be invalid and, pursuant to M.G.L. c. 30B, § 17(b), it was determined that no further payments could be made to the vendor to which the contract had been awarded.

City of Haverhill—Request for Guidance. The City requested guidance on issues related to the disposition of the municipally owned Hale Hospital and related parcels of real estate. The City had conducted an initial RFP process for the disposition of the hospital that had mentioned but not expressly incorporated two nearby parcels of property. When a respondent to that RFP indicated that its proposal needed to encompass the related parcels, the City raised the issue of whether those parcels could be incorporated into the parcels to be awarded. The Office found that adding a parcel of property subsequent to the original solicitation

process would violate the bidding procedures established in Section 16 of M.G.L. c. 30B. The Office advised the City that it would need to conduct a separate proposal process for the parcels in question. Subsequently the City conducted a separate disposition, which generated price proposals that exceeded the price the City would have received for the parcels under the original process and significantly exceeded the minimum price established in its new solicitation.

“Adding a parcel of property subsequent to the original solicitation is clearly an abrogation of M.G.L. c. 30B bidding procedures. Since all components of the present disposition were never offered publicly, it remains open to speculation whether the City could have entered into a more favorable deal.”

– IG letter to City of Haverhill, August 2001

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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 fifth year. Since 1997, MCPPO seminars have been attended by more than 4,100 participants from local and state government.

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 the information technology market.
- The public has a negative perception of public procurement because of the defense procurement scandals of the 1980s, widely reported failures of procurement systems, and periodic ethical lapses by government officials.

“Excellent trainings - well worth the time and effort. All questions get answered - presenters are very knowledgeable and keep classes moving.”

– 2001 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 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 1998, the College Credit Recommendation Program of the American Council on Education recommended the MCPPO courses for undergraduate and graduate credit. 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 several different locations around the state, attracted almost 1,000 attendees in 2001. The following table lists the number of seminars delivered and total attendance at each seminar throughout 2001.

Seminar	Number	Attendance
Public Contracting Overview	8	179
Supplies and Services Contracting	4	111
Design and Construction Contracting	5	127
Bidding Basics and Contract Administration	9	290
Bidding for Better Results	6	112
Local Government Real Property Transactions Under M.G.L. c. 30B	3	51
Spotlight on Schools	4	86
State Contracting Overview	2	41
TOTAL	41	997

Core Seminars

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.

“I gained a wealth of information and feel that everything I learned was relevant and useful in my work (more than I expected). I greatly appreciated the review because the size of the text was daunting. Terrific instructors. They are all articulate and very bright. I will definitely attend future trainings.”

– 2001 Public Contracting Overview seminar participant

In 2001, the Office continued to offer the Massachusetts Certified State Purchasing Official (MCSPO) designation for state employees through the four-day **State Contracting Overview** seminar, initially developed in 2000. This core seminar, a prerequisite for the advanced seminars, provides instruction in procurement for agencies subject to the jurisdiction of the Operational Services Division.

“Very well presented - the best yet - [the instructor] broke it down into more understandable segments and quizzes were very helpful.”

– 2001 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.

Designations

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 2001, 85 participants earned one of seven possible MCPPO designation types, bringing the total number of certifications received to 444 since 1998.

“Seminar was very informative. A lot of information in a short time. Gives us the knowledge of where to go to find answers about the various bidding laws. Presenters were exceptional - knew material front and back and presented well.”

– 2001 Design and Construction Contracting seminar participant

The following table illustrates the designations awarded by the Office in 2001.

Designation	Number Awarded
MCPPO	53
Associate MCPPO	12
MCPPO for Supplies and Services Contracting	10
Associate MCPPO for Supplies and Services Contracting	2
MCPPO for Design and Construction Contracting	5
Associate MCPPO for Design and Construction Contracting	0
MCSPO for Design and Construction Contracting	3
	85

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

“The IG’s office gives some of the best training I’ve ever attended. The knowledge and enthusiasm of the instructors (not to mention innovative review techniques) make it a delightful learning experience. And it’s a relief to know they’re only a phone call away if I forget anything they worked so hard to teach me.”

– 2001 Supplies and Services Contracting seminar participant

MCPPO Continuing Education

In addition to the core curriculum seminars that comprise the certification program, the MCPPO program also includes various non-core curriculum seminars. In 2001, the Office continued to offer **Bidding Basics and Contract Administration**, a half-day seminar first offered in 1999. Nine seminars were conducted in various locations throughout the state in 2001, with 290 attendees.

“Made an uninteresting subject extremely interesting...pleasantly surprised! Presentation was the key.”

– 2001 Bidding Basics and Contract Administration seminar participant

Since the beginning of 2000, the Office has introduced four 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. Six seminars were conducted in 2001 and over 100 people participated.

“Again, members of the 30B team have made relatively “dry” material interesting. I think I know 30B pretty well, but again, I learned plenty.”

– 2001 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. Three seminars were attended by over 50 participants. The seminar qualifies for continuing education credits toward the MCPPO recertification requirement.

“[The Office of the General Inspector] always puts on an excellent, easy to follow, and informative presentation. The IG’s staff is one of my most valuable tools and other town managers I deal with echo this. Good job.”

– 2001 Local Government Real Property Transactions 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. Four seminars were conducted in 2001 and over 85 people attended.

“Presenters were extremely knowledgeable, enthusiastic, up-beat, helpful, respectful. Outstanding program. Thank you!”

– 2001 Spotlight on Schools seminar participant

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.

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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 2001-2002 session, the Office commented on hundreds of pieces of legislation. This section highlights some of the legislative reviews conducted by the Office during 2001.

Design-Build Construction of a Public Safety Complex

In December 2001, the Office wrote to the Committee on Local Affairs regarding House Bill 4775, a Home Rule petition to authorize the Town of Sunderland to use design-build methods to construct a public safety complex. As written, the bill would have waived the public construction laws that normally apply to public building projects in Massachusetts and would have substituted alternative procedures for competitive selection of the design-builder. Under the procedures set forth in House Bill 4775, the design-builder would design and build the public safety complex on the basis of quality and performance criteria set forth in the request for design-build proposals issued by the Town. The bill would have also required the Town to contract with a "design-build expert" to prepare the competitive solicitations, pre-qualify design-builders, and evaluate design-build proposals received in response to an advertised request for proposals.

The Office's letter warned that the design-build methods are not appropriate for, and pose significant risks when applied to, facilities for which public officials and the public are likely to be interested and involved in the design details. The Office pointed out that this was the case with public safety facilities because of their security requirements and the public safety implications of the building design.

"It is unlikely that public safety officials and the public will be willing - nor should they be willing - to turn over authority and responsibility for these and other detailed design decisions to a design-build contractor."

– IG letter to Local Affairs Committee Chairman, December 2001

The Office also noted that, although House Bill 4775 required the design-build RFP to include quality and performance criteria for the public safety complex, the criteria specified in the bill related to the procurement of a

wastewater treatment plant rather than a public safety complex. For example, the bill referred to “daily volume capacity” and “required effluent characteristics.” Finally, the Office expressed concern about the absence of provisions in the bill governing professional oversight of the contractor's work while constructing the facility.

The Office recommended that House Bill 4775 be amended to require professional oversight on behalf of the Town until the project reached final completion and to require the design-builder to furnish the Town with a performance bond in the amount of 100 percent of the contract price.

“Contracting for construction without a completed design significantly increases the risks of design flaws and substandard construction on any project. Under these circumstances, professional oversight is an essential public protection.”

– IG letter to Local Affairs Committee Chairman, December 2001

The Joint Committee on Local Affairs ordered House Bill 4775 to a study.

Waiver of Competition for Municipal Leases

In March 2001, the Office wrote to the Committee on State Administration to express opposition to legislation authorizing the Town of Plymouth to lease and extend existing leases of municipal property on Plymouth Beach without competition to named private parties who already leased or occupied the property. Such leases would be for initial periods not to exceed 20 years, with extensions for consecutive 10-year terms notwithstanding M.G.L. c. 30B. The Office recommended that the Committee issue an adverse report on House Bill 2424.

Subsequently the bill was amended to prohibit the assignment of the leases, require that any further dispositions of the parcels be subject to competition following M.G.L. c. 30B, and require annual rent equal to the taxes that would be due if the parcels were privately owned.

The redrafted bill was signed by the Governor to become Chapter 94 of 2001.

Town of Barnstable Land Conveyance

In October 2001, the Office commented to the Joint Committee on Local Affairs on House Bill 4622, which would authorize the Town of Barnstable to convey land to a named party in exchange for a parcel of land.

The Office recommended that House Bill 4622 be amended to require that the value of the parcels be determined and either that the parcel to be conveyed to the Town be of equal or greater value than the parcel that the Town would convey, or that the private party pay to the Town an amount equal to the difference in values.

After meeting with Town officials, the Office reached an agreement with the Town that House Bill 4622 would be amended to require that the named party be responsible for all costs associated with any appraisal, survey, or other expenses associated with these conveyances and that the chief assessor's valuation on both parcels would suffice for determining the market values.

House Bill 4622 was redrafted to incorporate the Office's recommendations and the Office's agreement with the Town and signed by the Governor to become Chapter 207 of the Acts of 2001.

Privatization of Municipal Sewer Works System

In July 2001, the Office wrote to the Committee on State Administration in opposition to legislation authorizing the City of Holyoke to enter into a 20-year contract for the lease, operation and maintenance, repair or replacement, financing, design, construction, and installation of new facilities or systems as well as modifications to the existing sewer works system. The Office cautioned that House Bill 4271 would put in place a complicated procurement process and that a contract awarded pursuant to this proposed legislation would have a major financial impact on ratepayers for many years to come. To ensure full public consideration of the project, the Office recommended that House Bill 4271 be amended to require any contract award to be approved by the City Council in addition to the Mayor as proposed in the bill.

As of December 2001, House Bill 4271 remained in the Joint Committee on State Administration. In February 2002, the Office staff met with City representatives and agreed to amendments to protect the public interest, including the deletion of a reference to a potential sale of the project and the addition of language to ensure that performance guarantees would not be diminished during negotiations. The Office wrote to the Committee noting that if the amendments were made, the Office would have no further objection to the bill.

Division of Capital Asset Management Land Conveyance

In March 2001, the Office wrote to the Committee on State Administration regarding legislation that would authorize the Division of Capital Asset Management (DCAM) to convey a certain parcel of land located on the

site of Tewksbury State Hospital to a named party for the purposes of constructing and operating residential housing. A portion of the housing would be set aside for low and moderate income housing. In return, DCAM would receive a parcel of land from the named party.

The Office recommended that House Bill 736 be amended to define the criteria for low and moderate income housing. The Office also recommended that the bill be amended to require that the values of the parcels be determined through an independent appraisal and that the Commonwealth receive a payment equal to the amount, if any, by which the value of the property it transferred exceeded the value of the property it received.

The property that the named party proposed to swap abutted the Tewksbury State Hospital property. Although the parcels being conveyed were presumed to be of equal value, this was not stated in the legislation. The Office recommended that House Bill 736 be amended to require that consideration for the property transferred to the named party be at the full market value as determined by an independent appraisal. Alternatively, that in consideration for the property to be conveyed by the Commonwealth, the named party should convey to the Commonwealth a parcel of equal or greater value, as determined by an independent appraisal. The Office stressed that these proposed safeguards would help preserve affordable housing while at the same time protect the Commonwealth's assets.

House Bill 736 was redrafted to incorporate the recommendations of the Office. As of December 2001, the bill remained in Senate Ways and Means.

Legislative Recommendations: 2001-2002 Session

Under M.G.L. c. 12A, the Office of the Inspector General has the authority to recommend policies that will assist in the prevention or detection of fraud, waste, and abuse. M.G.L. c. 12A requires the 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 2001 as well as the Office's recommendations for corrective action. This section discusses the Office's legislative proposals considered in the 2001-2002 legislative session.

Procurement Reform

The Office filed legislation to give local governments the discretion to utilize a request for proposal 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

The Office filed legislation that would require a contract with an owner's representative for any contract for construction, reconstruction, alteration, remodeling or repair of public work estimated to cost more than \$500,000. 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

The Office filed legislation to require value engineering reviews of larger public construction projects to help ensure that taxpayers receive the best value for every dollar spent. Value engineering is a design review technique that 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

The Office filed legislation to reform public construction by raising dollar thresholds for bidding requirements on public works and public building construction projects to reflect the rising cost of public construction projects.

House Bill 106, Amending public construction bidding thresholds

The Office filed legislation to clarify 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