



Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2002 Annual Report

August 2003



The Commonwealth of Massachusetts
Office of the Inspector General

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August 2003

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chair of the Senate Ways and Means Committee

The Honorable Chair of the House Ways and Means Committee

The Directors of the Legislative Post Audit and Oversight Bureaus

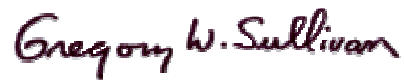
During 2002, the Office continued to investigate cases in which municipal light plant employees accepted gifts of substantial value from private contractors. In addition to issuing three reports documenting such abuses, the Office filed legislation that would promote improved financial oversight of municipal light plant expenditures by local financial officers. The Office also issued detailed reports on a public works project at a town park and golf course, a real property disposition by a city, and the long-term leasing of skating rinks by the Commonwealth.

The Office devoted substantial resources to the important issue of construction reform in 2002. In addition to filing legislation in this area, the Office worked with the Legislature and other stakeholders to develop procedures for a pilot project authorizing six communities to undertake school construction projects without soliciting filed sub-bids. The Office also provided detailed comments and recommendations on design-build procedures developed by the Commonwealth for a project to renovate the Suffolk County Courthouse.

This report summarizes these projects as well as much of the Office's other major work in 2002, including an investigation of vehicle emissions test results under the Massachusetts Motor Vehicle Inspection Program, Central Artery/Tunnel Project analyses, reviews of real property transactions and appraisals, and training and technical assistance provided by the Office in the areas of procurement and contracting. Additional copies of this report may be accessed from the Office's website at www.mass.gov/ig or obtained directly from the Office.

I served as Acting Inspector General for the first seven months of 2002. On August 6, 2002, I had the honor of being sworn in as the Commonwealth's third Inspector General. I am committed to fulfilling 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.

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, and management analysts. Special interdisciplinary teams are formed to meet the unique requirements of the Office’s projects. The Office also has assigned a procurement specialist to assist local governments with best value contracting under M.G.L. c. 30B.

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.

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Investigations

The Office's investigations of criminal and civil violations of law arise from a variety of sources, including complaints received in writing or by telephone, information developed during the course of other Office reviews and activities, and requests for assistance by other investigative agencies such as local and state police. The Criminal Investigations Division includes a computer forensics unit that provides logistical and investigative support. In 2002, the Office received 119 complaints, 69 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 2002 included the U.S. Attorney's Office; the Federal Bureau of Investigation; the U.S. Bureau of Alcohol, Tobacco and Firearms; the U.S. Environmental Protection Agency; the Massachusetts Office of the Attorney General; the Massachusetts State Police; the State Ethics Commission; the Department of Revenue; the Department of Environmental Protection's Environmental Strike Force; and local police departments.

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.

Contractor Gifts to Reading Municipal Light Department Employees, Braintree Electric Light Department Employees, and Taunton Municipal Lighting Plant Employees

In October 2002, the Inspector General issued three reports regarding contractor gifts to public employees. M.G.L. c. 268A, the Massachusetts conflict of interest law, prohibits public employees from accepting anything of "substantial value" from persons with whom they have official dealings. Massachusetts Courts and the State Ethics Commission have held that substantial value is equivalent to \$50 or more. The Office's reports included letters the Inspector General had sent to the Chairmen of the

Boards of the Reading Municipal Light Department, the Braintree Electric Light Department, and the Taunton Municipal Lighting Plant. The letters identified many instances in which vendors had supplied gifts of substantial value to public employees.

"The conduct of RMLD employees in instances where gifts were accepted undermines the integrity of the working relationships between RMLD and its vendors."

– IG letter to the Chairman of the Reading Municipal Light Board, August 2002

The Inspector General recommended that each board provide more effective oversight. Specifically, the Inspector General recommended that each board:

- inquire into the propriety of conduct between the public entity and its vendors,
- strengthen internal rules and policies pertaining to conduct with vendors by prohibiting the receipt of gifts by employees, and
- directly apprise vendors that public employees are prohibited from accepting gifts.

The Inspector General also forwarded to the three boards the Massachusetts State Ethics Commission Fact Sheet No. 10, entitled "Business and Entertainment Expenses for Public Officials," and the Office's *Recommended Code of Conduct for Public Employees*, which was developed as a supplement to the conflict of interest law. The *Code* sets standards of conduct for public employees engaged in official business relationships. The Office recommends that local jurisdictions adopt the *Code* to preserve the integrity of business relationships and to maintain the highest level of public confidence in the impartial operation of government.

On September 23, 2002, the Braintree Electric Light Department (BELD) responded to the Office's review by issuing a written notification advising vendors "to refrain from offering gifts or gratuities to BELD employees and BELD commissioners."

Update: Reading Municipal Light Department

In November 2001, the Inspector General issued a report entitled *Credit Card and Certain Other Spending Practices at the Reading Municipal Light Department* that detailed abuses and irregularities in the spending

practices of the Reading Municipal Light Department (RMLD). Auditors hired by the Town and the Reading Municipal Light Board confirmed the Office's findings. In response to the findings of this Office and the independent auditors, the Town of Reading and the RMLD implemented new policies to control spending practices at the RMLD. In addition, in November 2002, the Inspector General proposed legislation for the 2003-2004 session to further clarify the oversight role and responsibilities of municipal financial officers over municipal light department expenditures and activities of municipal light plants. The legislation is discussed in the "Legislative Recommendations: 2003-2004 Session" section of this report.

Vehicle Emissions Test Results

In late 2002, the Office received information that called into question the accuracy of 2002 vehicle emissions test results produced by the Massachusetts Enhanced Motor Vehicle Inspection and Maintenance Program (I/M Program). This information suggested that when automobiles on which emissions tests had been performed in 2000 were retested in 2002, the 2002 test results showed an unexplained reduction in the measurements of polluting gas levels produced by the vehicles. The information provided to the Office also indicated that when vehicles tested at Massachusetts inspection stations were retested at Rhode Island inspection stations, the Rhode Island test results indicated substantially higher pollution levels than those reported by the Massachusetts tests.¹

The Office conducted a series of independent tests using a number of vehicles to determine the credibility of the information. The vehicles were tested in Massachusetts, Rhode Island, and New York. The vehicles used in the tests had not undergone repairs or relevant preventive maintenance during the interim period.

The Office found that Massachusetts test results varied from those in Rhode Island and New York for the same vehicles. Also, the Office found that 2002 Massachusetts emissions inspections results compared to 2000 results indicated inexplicably lower emission levels for nitrous oxide and carbon monoxide. The Office noted that the troubling discrepancies of the test results raise concerns about the accuracy of the I/M Program.

The Inspector General wrote to Kevin Sullivan, then-Secretary of Administration and Finance, in November 2002 and to Christine Todd Whitman, then-Administrator of the U.S. Environmental Protection

¹ The testing programs administered by Massachusetts and Rhode Island test for the same polluting gases using the same two types of testing machines. Both states have retained the same contractor to administer their testing programs.

Agency, in December 2002, summarizing the preliminary results of the Office's review.

In February 2003, the Inspector General issued a report entitled "Vehicle Emissions Test Results Under the Massachusetts Motor Vehicle Inspection Program." In July 2003, the Inspector General issued a follow-up report entitled "Investigation of DEP's Administration of the Massachusetts Motor Vehicle Inspection Program."

Conflict of Interest Investigation

In 2001, the Office received a complaint alleging that the former Secretary to the Rowley Board of Health had used her official position to benefit an immediate family member. While employed by the Board of Health, she had allegedly signed a septic system certificate of compliance that enabled her brother to construct a septic tank on his property without complying with state and local health and building regulations. Under the state conflict of interest law, M.G.L. c. 268A, municipal employees are prohibited from using their official positions to provide an unwarranted benefit to themselves or their immediate family members. In June 2001, the Office referred the case to the Enforcement Division of the Massachusetts State Ethics Commission.

During 2002, the Office worked with the State Ethics Commission reviewing the allegations, conducting interviews of Town employees, and obtaining corroborative materials. The investigation confirmed that the former municipal employee had, while serving as Secretary to the Rowley Board of Health, signed a septic system certificate of compliance, which certified that the system complied with Title V of the state environmental code, and an occupancy permit for a property owned by her brother. However, the requirements of Title V had not been met: no site inspection had been conducted by the Board of Health, no "as built" plan had been filed, and the installer and designer had not certified that the system complied with applicable state and local requirements. The State Ethics Commission concluded that the former municipal employee had violated the conflict of interest law and recommended a Disposition Agreement to resolve the matter.

On January 7, 2003, the former municipal employee signed a Disposition Agreement with the State Ethics Commission admitting that she violated the conflict of interest law and agreeing to pay a civil penalty of \$4,000.

CORI Checks at the Fall River Housing Authority

At the request of a legislator, the Office conducted a preliminary inquiry into the Fall River Housing Authority's program for criminal histories and Criminal Offender Record Indexes (CORI) checks of the residents in

State-funded units of the Fall River Housing Authority. Based on information obtained by the Office, it appeared that CORI checks were conducted on applicants and adult (18 and over) household members applying for residence. The actual checks were conducted when an application reached the top ten percent of those awaiting review. Acceptance or rejection of an applicant was based on an applicant's criminal record and depended on mitigating circumstances. The Office found one unexplained instance in which an applicant had a criminal record but was not rejected. The Inspector General summarized the Office's findings in an April 2002 letter to the legislator.

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 2002 include the following:

Alleged fraud in public contracting: The Office reported to the Federal Bureau of Investigation an allegation that a private contractor was paid by a city for public construction work that was not performed.

Alleged improper removal and destruction of city records: The Office turned over to the Federal Bureau of Investigation numerous city records, computer tapes, and computer files recovered during an investigation.

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Financial Oversight

Ancillary Facilities North of Gilmore Bridge

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.

In May 2002, the Acting Inspector General, pursuant to the Chapter 235 statutory mandate, wrote a letter to the Project Director regarding the Office's initial review of a pending \$19.2 million contract for construction of ancillary facilities north of the Gilmore Bridge. During the review, the Office had provided verbal assistance to the CA/T Project on certain issues that might have required the CA/T Project's attention. The Office granted conditional approval for the contract to proceed into construction. The letter noted that final approval would be granted upon the successful completion of the bid process contingent upon no other issues developing.

Although conditional approval was granted, the Office's review showed that certain issues stemming from decisions made by the CA/T Project during the design phase merited comment. At the time of the Office's review, those issues related to the design phase could not have been addressed without significant costs and schedule delays. The Acting Inspector General's letter noted that these concerns could be instructive for remaining CA/T Project efforts. The Office's concerns included:

- the Project's failure to include the cost of the contract in the total Project cost estimate until June 2000;
- the approximately \$1 million cost associated with placing the final design on hold for approximately three years;
- the likelihood that extended access restraints could significantly increase the contract cost; and
- the importance of conducting life-cycle cost analyses on a routine basis.

In a follow-up letter dated July 29, 2002, the Inspector General granted final approval for the contract to proceed into construction. The Office found that five out of seven bids submitted for the contract contained errors but that the errors did not impact the result of the competition. To

avoid future errors and to avoid potential bid protests and costly lawsuits, the letter recommended that the Project discuss the bid errors with the respective bidders to determine the cause or causes of the errors and, if appropriate, take immediate corrective action. The Inspector General's letter noted that the Project was looking into the matter and acknowledged the Project's constructive response to issues highlighted in the May 2002 letter.

Central Artery/Tunnel Project Staffing Costs

In June 2002, the Acting Inspector General wrote to the Chairman of the Turnpike Authority regarding the Federal Highway Administration (FHWA) review of \$30 million in staffing costs for the Central Artery/Tunnel (CA/T) Project. He noted that a decision by the FHWA to apply these staffing costs to the Project's federal funding cap would be an arbitrary reversal of FHWA policy that would add to the already great burden placed on Massachusetts taxpayers and tollpayers paying for the Project. The letter noted that documents obtained by the Office showed that as early as 1994, FHWA officials knew about and condoned the exclusion of these staffing costs from the Project's total cost definition. In 2000, when the Turnpike Authority added staff costs to the Finance Plan, FHWA officials did not question the continued exclusion of pre-1996 staff costs. The letter concluded that the FHWA had had ample opportunity over the previous 15 years to question costs that it had approved and continued to pay for year after year.

Central Artery/Tunnel Project Sale of Headquarters Proceeds

In October 2002, the Inspector General wrote to the Secretary of the U.S. Department of Transportation regarding a proposed change in the distribution of proceeds from the sale of the CA/T Project headquarters at 185 Kneeland Street. The FHWA had previously decided that the CA/T Project could use the full proceeds from the sale of the headquarters toward CA/T Project debt. However, U.S. Senator John McCain and the U.S. Department of Transportation Inspector General had requested that a portion of the proceeds be applied against the federal funding cap imposed by Congress upon the CA/T Project. An appraisal had estimated the value of the property at approximately \$101 million.

The letter provided relevant historical information, contained in documents obtained by the Office during an earlier CA/T Project investigation, showing that in at least 32 reports to FHWA and other oversight agencies the CA/T Project costs had reflected a credit for the sale of the Kneeland Street building. The Office noted that overturning FHWA's policy would be unfair to Massachusetts. The Inspector General strongly recommended

against overturning FHWA's policy and noted that doing so would cost Massachusetts taxpayers and tollpayers and additional \$87 million.

"It is this Office's position that the disposition of real property, materials, equipment and any other CA/T Project assets purchased during the CA/T Project's past 17 years should be considered separate and apart from the cap on federal funds."

– IG letter to U.S. Department of Transportation Secretary Norman Y. Mineta, October 2002

In May 2003, U.S. Secretary of Transportation Norman Y. Mineta ruled that Massachusetts could keep the proceeds from the sale of the property and that these funds would not be applied against the federal funding cap on the CA/T Project.

Central Artery/Tunnel Project Cost Recovery Efforts

In November 2002, the Inspector General wrote to the Chairman of the Turnpike Authority to recommend that the Office of the Inspector General and the Turnpike Authority take immediate action to coordinate a cost recovery review of the CA/T Project with the assistance of independent expert consultants in law, engineering, and construction. The letter noted that the Turnpike Authority had implemented a number of important and worthwhile reforms over the previous year, and that the cumulative effects of such reforms had been to correct deficiencies from prior Turnpike Authority management and to better position the Project to prospectively control cost growth resulting from contractor claims. A report issued by the Office in December 2000 revealed that the CA/T Project's cost recovery program had recovered only \$30,000 of \$80+ million in identified cost recovery-related change orders and that no cost recovery claim by the Project against B/PB had ever been successful.

In 2003, the Office has been working with Turnpike Authority staff and outside consultants to increase cost recovery efforts. In addition, the Legislature has actively supported cost recovery efforts by holding hearings and proposing legislation that would create a Cost Recovery Oversight Commission comprised of experts from many fields, including representatives of the Office.

Tax Increment Financing in the Commonwealth's Economic Development Incentive Program

The Office reviewed the Tax Increment Financing (TIF) portion of the Economic Development Incentive Program (EDIP). Under the state's TIF program, municipalities provide designated businesses with property tax exemptions, for a period of between five and 20 years, based on an agreed-upon percentage of the increase in property value from new construction or expansion by each business. The businesses agree to create new jobs during the same period.

The Office's preliminary review supported the findings contained in a Policy Brief issued by the Senate Post Audit and Oversight Committee in December 2002. The Committee found that the EDIP suffered from insufficient reporting, a lack of a comprehensive program evaluation, and a lack of data to support the Program's reported success. In December 2002, the Inspector General released a public statement concurring with the Committee and strongly suggesting that immediate action be taken to ensure Program integrity and to protect the interests of the taxpayers. Specifically, the Inspector General provided the following recommendations to elected officials:

- A mandatory system should be implemented to verify business compliance with incentive agreements. No such system currently exists. On the eve of potential cuts in local aid and dwindling revenues at both the state and local levels, businesses should be held accountable for promises made in return for large tax breaks.
- Standards need to be developed and used to ensure that incentives are given only to projects with a bona fide need.
- A system should be implemented that protects the interests of the municipalities granting the incentives. Currently there is little to protect the interests of local taxpayers.
- A mechanism should be established to prevent incentive use for intra-state or pirated business moves. Currently, businesses reap huge benefits by moving from one municipality to another without providing a net benefit to the Commonwealth.

In 2003, the Office has continued to review aspects of the TIF program. For example, specific TIF agreements have been reviewed for compliance with the requirements of state statutes and regulations as well as conformance with the program intent.

Effective and Ethical Contracting

Long-Term Leasing of DEM Skating Rinks

In November 2002, the Inspector General issued *Long-Term Leasing of DEM Skating Rinks*, a report summarizing the Office's review of the competitive process used to award 25-year leases for 18 state-owned ice skating rinks. The Office initiated the review at the request of Senator Brian Joyce and the Department of Environmental Management (DEM), the agency responsible for the rinks. Chapter 88 of the Acts of 2001, §30 authorized DCAM, on behalf of and in consultation with DEM, to lease and enter into other agreements for one or more rinks, for terms not to exceed 25 years, to provide for the continued use, operation, maintenance, repair and improvement of the 18 rinks named in the legislation. In December 2001, DCAM, in conjunction with DEM, had issued a request for proposals (RFP) for long-term operation and management services and capital improvements to the rinks under 25-year leases.

Between January and April 2002, the Office conducted a limited review of the RFP and lease, the existing permits to manage and operate the rinks, the most recent financial statements for each rink, and questions and answers posted on the state's on-line procurement website (CommPASS) regarding the procurement process for the leases. The Office also met with DCAM and DEM officials on two occasions and provided them with oral and written recommendations regarding the RFP and lease.

The Office's initial review of the RFP and the draft lease issued in December 2001 identified serious flaws and omissions. The Office provided comments on the RFP and lease in a letter dated February 19, 2002. In the letter, the Office recommended corrective actions and amendments to reduce the risks and protect the public interest in the competitive selection and leasing process.

"This Office recognizes that longer-term leases and operating agreements may provide incentives for larger private capital investment. However, this advantage must be balanced against the disadvantages of relinquishing public control and forgoing market-driven competition for longer periods, as well as performance risks. Therefore, the Commonwealth must, at the outset, promote competition . . . and ensure that facilities will be returned to the Commonwealth at the end of the term in good condition."

– Acting IG letter to DEM Deputy Commissioner, February 2002

DCAM subsequently provided the Office with revised versions of the RFP and lease. In April 2002, the Office sent a memorandum to DCAM and DEM presenting the Office's major remaining recommendations for amending the RFP and draft lease document.

The November 2002 report highlighted the Office's recommendations and the outcomes of the consultative process. Specifically, the Office had recommended that:

- DCAM specify a 15-year lease term with a 10-year option to extend, unless DCAM and DEM concluded that a 15-year lease term was not economically feasible;
- DCAM and DEM provide prospective proposers with available information regarding the condition of the rinks and their systems and equipment, thereby assisting proposers in developing realistic cost estimates for capital improvements;
- the RFP solicit resumes of key personnel who would be assigned by the proposers to supervise the construction work to be undertaken under the lease;
- the RFP be clarified and amended to require audited financial statements for the proposer's last fiscal year or a reasonable substitute deemed acceptable to DEM and DCAM and an explanation of why audited financial statements are unavailable;
- the RFP be amended to solicit information that would enable DCAM and DEM to evaluate the proposers' capacity and plans to handle and account for rink revenues;
- the draft lease be revised to require that rink operators obtain performance bonds for rink construction work undertaken under the capital program and that all performance bonds be issued by a surety licensed to do business in Massachusetts
- the draft lease be revised to include contractual assurances that the tenants will complete the capital improvements set forth in their proposals;
- the draft lease be revised to omit exclusions of certain rink revenues in computing the percentage rent; and
- the draft lease be revised to simplify the procedures for computing the "premises revenues" and to specify the audit and verification procedures to be implemented by the Commonwealth.

As a result of the Office's review and cooperative working relationship with DCAM and DEM, the final RFP and leases for 17 skating rinks incorporated important public protections that were lacking in earlier versions of these documents. These protections benefit taxpayers and rink customers by helping to ensure that the private rink operators leasing the rinks for the next 25 years will complete needed improvements to the rinks, operate the rinks in a manner that supports the Commonwealth's objectives, and return the rinks in an improved condition when the leases expire.

Chapter 28 School Construction Program

Chapter 28 of the Acts of 2002, which was signed into law on February 8, 2002, established a pilot program authorizing six municipalities to undertake school construction projects without soliciting filed sub-bids under M.G.L. c. 149, §44F. The six municipalities are Milton, Winchester, Brockton, Everett, Revere, and Waltham. As of January 2003, Milton had undertaken Chapter 28 construction projects for three schools, Waltham had undertaken Chapter 28 construction projects for two schools, and Everett had undertaken one Chapter 28 school construction project.

Under Chapter 28, all bidding documents and contracts prepared for Chapter 28 projects are subject to review and approval by the Inspector General. To assist the communities participating in the pilot program, the Inspector General developed subcontracting procedures that protect awarding authorities and subcontractors from the risks of post-award bid-shopping. The following table contrasts the major subcontracting requirements of the M.G.L. c. 149 filed sub-bid procedures with those of the Chapter 28 subcontracting procedures developed by the Inspector General.

M.G.L. c. 149 Filed Sub-Bid Procedures	Chapter 28 Subcontracting Procedures
Awarding authority conducts multiple sealed bidding processes for up to 17 sub-bid categories of work. Awarding authority conducts a separate sealed bidding process to select the general contractor.	Awarding authority conducts one sealed bidding process to select the general contractor.
General contractors must use eligible filed subcontractors at their filed sub-bid prices submitted to awarding authority.	General contractors are free to select their own subcontractors and to negotiate subcontract prices prior to submitting their bids.
Sub-bidder protests are common.	Without sub-bidding, subcontractor protests are unlikely.
General contractors are not allowed to bid-shop after being awarded contracts.	General contractors are required to list their selected subcontractors at the agreed-upon subcontract prices. The subcontractor bid listing procedures prevent general contractors from bid-shopping after being awarded contracts.

During 2002, one Chapter 28 school construction project generated a protest to the Office of Attorney and subsequent litigation. The protest was brought by G. Greene Construction Co., Inc. ("Greene"), an unsuccessful general bidder on a contract to construct the Northeast Elementary School in Waltham. The subtrade prices listed in Greene's bid were the amounts offered to Greene by the listed subcontractors. Greene alleged that the bid submitted by Jackson Construction Co. ("Jackson"), the low general bidder on the contract, violated the public construction bidding statutes as amended by Chapter 28 by listing subtrade amounts that were lower than the amounts offered to Jackson by the listed subcontractors. Thus, according to Greene, Jackson and other general bidders improperly reduced subtrade prices on their general bid forms and then later sought agreement to the changes from the affected subcontractors. Greene also objected to Jackson's subsequent request for substitution of subcontractors that did not agree to perform the

subtrade work for the subtrade prices Jackson listed on its general bid form.

Jackson acknowledged that subtrade amounts listed in its bid were lower than the amounts offered by the listed subcontractors. However, Jackson's position was that it had received subtrade prices so close to the general bid deadline that it was unable to negotiate the value of any bid scope errors with the subcontractors before submitting its general bid. Jackson noted that Chapter 28 permitted Jackson to use market forces to prepare a realistic bid that avoided unnecessary waste, whereas Greene's bid – according to Jackson – was inflated by expensive errors by the subcontractors. Jackson also noted that only two subcontractors had not agreed to enter into a subcontract with Jackson

In a June 12, 2002 bid protest decision, the Office of the Attorney General found that the approach taken by Jackson and other general contractors that had listed lower subcontract prices than the prices they had received from the listed subcontracts did not comply with the public construction bidding statutes as amended by Chapter 28. Although the Office of the Attorney General's opinion acknowledged that all of the parties were operating under a brand new statute and were acting in good faith, the opinion concluded that Jackson's approach was inconsistent with the purposes of the public bidding laws. The opinion also found that Jackson's efforts to substitute subcontractors that stood by their original prices and refused to provide post-award price concessions to Jackson did not meet the "good cause" standard contained in the bidding documents.

In a June 13, 2002 statement regarding the dispute over the Northeast Elementary School bidding process, the Office of the Inspector General expressed agreement with the Office of the Attorney General's position. The Office's statement explained that the Office had taken steps to thwart bid shopping on Chapter 28 projects by establishing procedures that created a record of each subcontractor's name and subcontract price and that restricted the circumstances under which subcontractors could be substituted after the general bid award. The Office's statement also noted that allowing general contractors to unilaterally alter price quotations received from subcontractors would be likely to delay projects and result in substitution dilemmas – an outcome that would be contrary to the intent of Chapter 28.

On June 18, 2002, the Middlesex Superior Court denied Jackson's and Greene's motions for preliminary injunction in connection with the Northeast Elementary School contract. In a Memorandum of Decision and Order on Plaintiff's and Defendant's Cross Motions for a Preliminary Injunction, the Court denied Jackson's motion, noting:

By awarding Jackson a preliminary injunction, this Court would be condoning a practice that does not benefit the public interest and is perhaps in violation of Chapter 28. Jackson unilaterally lowered prices submitted to it by many of the subcontractors and then after learning that its bid was the lowest sought price concessions from the sub-contractors. This practice is not in the public interest.

The Court also denied Greene's motion, noting:

The City of Waltham has the opinion of two interested government agencies to guide it and it would not be wise for this Court to intervene at this time.

As a consequence of the events giving rise to the dispute over the Northeast Elementary School contract, the Office of the Inspector General revised its Chapter 28 Subcontracting Procedures to require general contractors and their subcontractors to agree in advance on prices for subtrade work listed on the general bid forms. The revised procedures also provided that "good cause" subcontractor substitution determinations would be subject to the review and approval of the Office of the Inspector General.

The City of Waltham executed a contract with Greene for the Northeast Elementary School construction project on July 3, 2002.

Guide on Fraud, False Statements, and Bid Rigging

In February 2002, the Acting Inspector General issued *A Guide For Massachusetts Public Officials: Massachusetts and Federal Laws Regarding Fraud, False Statements, and Bid Rigging in Public Contracting*. The guide contains a detailed analysis of Massachusetts and federal laws pertaining to corruption by state and municipal officials. The *Guide* includes sections on laws that prohibit false statements and false claims relating to the spending of public funds, as well as sections on bribery and extortion. The *Guide* also examines the anti-competitive practice of bid rigging and provides suggestions on how to detect bid rigging.

"By raising the level of knowledge of public officials in Massachusetts, it is my hope that they will be better able to protect themselves from inadvertently becoming involved in improper activity."

– Acting IG Guide, February 2002

DCAM's Request for Qualifications for Design-Build Renovations

Chapter 189 of the Acts of 1998, the Court Facilities Improvement Act, permits the Commissioner of the Division of Capital Asset Management (DCAM) to procure design-build and construction management at risk services for the design and construction of the court facilities improvement projects authorized by Chapter 189.² Section 5(d) of Chapter 189 requires the DCAM Commissioner to develop design-build and construction management at risk procurement procedures in consultation with the Office of the Inspector General and sets forth 15 provisions that must be included in any such procedures. Under Section 5(e) of Chapter 189, the DCAM Commissioner must submit the final procedures to the Inspector General for comment and must forward the Inspector General's comments to the Governor, the Senate President, the Speaker of the House, and the members of the General Court at least 45 days before the execution of a design-build or construction management at risk contract.

On August 13, 2002, the Office met with DCAM officials to discuss DCAM's plans to procure design-build renovation services for the Suffolk County Courthouse and the Edward W. Brooke Courthouse. (DCAM subsequently decided to exclude the Suffolk County Courthouse from the design-build procurement.) Subsequently, on September 6, 2002, the Office met with DCAM officials to discuss the request for qualifications (RFQ) issued by DCAM on August 28, 2002. At that meeting, the Office conveyed two broad concerns regarding DCAM's design-build procurement procedures as reflected in the RFQ. The Office's concerns were summarized in a September 10, 2002 letter to DCAM.

On October 30, 2002, DCAM forwarded a three-page document listing revised design-build procedures that DCAM intended to use for the renovation of the Edward W. Brooke Courthouse and for future design-build projects undertaken pursuant to Chapter 189. In a letter dated November 6, 2002, the Inspector General provided the DCAM Commissioner with detailed comments and recommendations regarding the revised design-build procurement procedures.

² Chapter 189 was amended by Chapter 245 of the Acts of 2002 to add provisions authorizing and pertaining to the use of construction management at risk for the court improvement projects cited in the legislation.

“ . . . [T]he revised design-build procedures would constitute a useful guide for the development of detailed design-build procurement documents. Ultimately, however, the fairness, competitiveness, and effectiveness of each procurement will be reflected in the details of the final RFQ and RFP for each design-build project.”

– IG letter to DCAM Commissioner, November 2002

On January 10, 2003, pursuant to Chapter 189, DCAM forwarded final design-build procurement procedures to the Governor and the Legislature. The final procedures, which were dated November 14, 2002, included revisions that addressed the major comments and recommendations set forth in the Office’s November 6, 2002 letter.

MBTA Procurements of Supplies and Services

At the request of a legislator, the Office drafted legislation to require procurements of supplies and services by the Massachusetts Bay Transportation Authority (MBTA) to be governed by the competitive requirements of M.G.L. c. 30B. The Inspector General provided the draft legislation to the legislator in February 2002, along with copies of the Office’s December 1995 report on a consultant contract administered by the MBTA, the Office’s April 1999 letter summarizing the Office’s follow-up review of the MBTA’s consultant contracting procedures, and a copy of the Office’s August 1999 letter identifying problems with the MBTA’s evaluation of proposals for paratransit services.

Springfield Technical Community College Assistance Corporation Contracts

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

In August 2002, the Office notified the STCCAC that, based solely upon the information submitted to the Office by the STCCAC, the Office concurred with the STCCAC’s decision to award a chiller replacement contract to the lowest responsible and eligible bidder. The Office also recommended that future bid specifications provide more explicit guidance

to prospective bidders regarding the scope of work contained in the base bid price and that contained in the bid price for each alternate.

Update: Lawrence Water Treatment and Supply System Privatization RFP

In August 2001, the Office wrote to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth, requesting an opinion regarding the permissibility under the public records law of a \$7,500 fee charged by the City of Lawrence to prospective proposers for a proposal package issued by the City. The proposal package constituted the City's request for proposals (RFP) for capital improvements, operations, maintenance, and management services for its water treatment and supply system.

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.

"Citizens should not be required to pay a premium for access to public records, since the ability to inspect the records of government is fundamental in our democracy."

– February 2002 letter from Acting Supervisor of Public Records to City of Lawrence

In October 2002, the Inspector General issued *Fees for Bid and Proposal Packages*, which summarized the Office's review of the City's \$7,500 RFP fee, the relevant portion of the public records law, the Office's request to the Supervisor of Public Records, and the advisory opinion issued by the Supervisor of Public Records. The report included a full copy of the advisory opinion.

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Operational Reviews

Melrose Public Works Project

In October 2002, the Inspector General issued a report entitled *Review of the Mount Hood Public Works Project in Melrose*. The project entailed the delivery by a private contractor to the Mount Hood Memorial Park and Golf Course of 690,665 tons of glacial till soils, or “fill,” excavated from the Central Artery/Third Harbor Tunnel (CA/T) Project for the purpose of constructing playing fields and golf course improvements. The CA/T Project had contracted with Modern Continental Construction Company, Inc. for excavation of the fill. The City contracted with Gator Hood, LLC for delivery of the excavated fill and related construction services. The fill was delivered to the site by Modern Continental under a separate contract between Modern Continental and Gator.

The principal focus of the Office’s review was the process by which fill deliveries and related construction services at Mt. Hood were procured, contracted for, and managed at Mount Hood. The Office’s review disclosed both procurement law violations and mismanagement. The major report findings were as follows:

- The City embarked on a project involving major alterations to Mount Hood without adequate planning, reliable cost estimates, or an executed contract protecting the City’s interests.
- The Park Department bypassed legal requirements and internal controls governing City contracts in order to expedite the acceptance of fill.
- Project accountability was undermined by the City’s failure to establish a revolving account for the fill payments owed to the City by Gator.
- The City’s noncompetitive contract with Gator, although legally permissible, was ill advised.
- The City’s contract with Gator contained poorly drafted and unfavorable provisions that undermined the City’s financial interests.
- The City’s contract with Gator did not include detailed plans identifying fill delivery locations and boundaries, nor did it include fill placement instructions or specifications.

- The City's contract with Gator did not specify fill delivery schedules or limit fill delivery hours.
- The City's contract with Gator lacked the prevailing wage rate schedule required by M.G.L. c. 149, §§26 and 27, the prevailing wage law.
- The City did not obtain the contractually required performance and payment bonds securing Gator's satisfactory performance and securing full payment of its obligations to the City.
- Shortly after being ordered to comply with environmental restrictions on the haul road construction work, the Park Department obtained contaminated loam for the golf course from another source.
- Supervision of the fill deliveries at Mount Hood was inadequate.
- The Park Department authorized Gator to use funds owed to the City to pay for apparently illegal Park Department procurements of supplies and services at Mount Hood.
- Lack of planning, supervision, and documentation by the Park Department contributed to the failure of a drainpipe installed on the twelfth fairway.
- Unsound contracting procedures and deficient internal controls undermined the City's capacity to resolve the ongoing problems at Mount Hood in a cost-effective, accountable manner.
- Contracts with two consultants were executed after contracted services had been performed.
- Resolution of Gator's financial obligations to the City was complicated by the City's incomplete project records.
- Throughout the review period, the City lacked consistent contract approval procedures that complied with municipal finance law for Mount Hood-related contracts.

By August of 2001, when fill deliveries ended, the Park Department had completed reconstruction of the thirteenth hole, prepared plans for a new baseball field, and developed the baseball field "pad." However, no funds remained from the fill revenues received from Gator to finish the playing fields or to complete the golf course improvements. Although the value of the delivered fill was \$483,466, the City had already spent more than this amount. The Office's review shows that as of August 31, 2001, the City's project-related costs and contractual obligations exceeded the value of the delivered fill by \$291,620.

The Office's review found no evidence that any City official promoted or executed this project for any purpose other than to benefit the City of Melrose by taking advantage of an opportunity that had been presented. The public officials responsible for this massive public works project acknowledged that they underestimated its scope and complexity. The decision to generate revenue for a public improvement project by accepting fill for that project can be advantageous; jurisdictions often incur substantial costs for fill needed for construction projects. However, the unanticipated costs and problems encountered on this project illustrate some of the drawbacks of moving too quickly to accept an attractive offer. As Melrose's experience makes clear, it is unlikely that the benefits of such a complex revenue-generating arrangement can be realized without prudent project planning, contracting, and management.

"Careful planning, best value contracting, a well-drafted contract that protects the owner's interests, and full-time supervision are important owner protections for any major construction project, whether public or private. "

-- IG report, October 2002.

To assist the City of Melrose in its ongoing and future contracting efforts relating to public improvement projects at Mount Hood and elsewhere, the report offered the following recommendations:

- The City should resolve any outstanding financial disputes with Gator.
- The City should resolve any outstanding financial disputes with other project contractors.
- The Park Commission should ensure that public works contracts at Mount Hood are subject to full-time supervision by trained professionals who are cognizant of the legal requirements governing these contracts.
- The City should take steps to ensure that all City officials with contracting responsibilities, including Park Commissioners and Park Department staff, are fully apprised of the legal requirements governing contract funding, procurement, execution, and administration.
- The City should take steps to strengthen administrative controls over major contracts.

The problems created by the public works project at Mount Hood in Melrose offer some valuable lessons for other jurisdictions that may be contemplating revenue-generating contracts for the purpose of improving

public property. It is important to recognize that this type of contract must be planned, executed, and overseen as carefully as any other major public works project. Melrose's experience underscores the importance of instituting the following measures to protect the public interest on such projects, regardless of the compensation terms or financing arrangements:

- Front-end planning by qualified professional staff or consultants should generate information on existing site conditions, a professional assessment of the potential environmental impacts, a well-defined project scope, and a detailed cost estimate. This information is essential to the development of a realistic project budget that includes the cost of full-time professional oversight as well as a contingency for unforeseen circumstances.
- If the project is deemed logistically and financially feasible, the jurisdiction should establish the major contract terms and conditions and incorporate these provisions into the specifications for a competitive selection process.
- Both the solicitation and the final contract should include detailed plans and should comply with applicable laws, including procurement and prevailing wage laws.
- Before the contractor begins work, the jurisdiction should develop an oversight plan that clearly defines the roles, responsibilities, and reporting relationships of those responsible for project supervision.
- The jurisdiction should assign a project manager to serve as the locus of responsibility and accountability for the project. The project manager should be responsible for coordinating the contract, supervising the clerk of the works or other on-site supervisory personnel, monitoring the contract budget and contractor payments under the contract, and maintaining all project records.
- The jurisdiction should invest in full-time, professional project supervision. Detailed documentation of project activities and decisions in the field should be prepared by the designated clerk of the works or other on-site supervisory personnel and reviewed by the project manager.
- Significant changes to the contract price, scope, and/or schedule should be reflected in contract amendments signed by both parties. Instructions to the contractor issued by the project manager or his/her designee should also be recorded.
- The jurisdiction should ensure that all project participants are fully apprised of and held accountable for compliance with the legal requirements and administrative procedures governing the project.

Town of Falmouth New Silver Beach Wastewater Treatment Plant Review

In March 2002, the Acting Inspector General wrote to the Falmouth Town Administrator requesting that the Town of Falmouth take no further action on the proposed New Silver Beach wastewater collection, treatment, and disposal project pending completion of a review by the Office. The Office had received a complaint alleging that the Town had neglected to provide full and accurate information on documents submitted to the Department of Environmental Protection (DEP). Specifically, the complaint alleged that the Town had failed to disclose the existence of private wells from its application for a wastewater discharge permit and failed to identify vernal pools on its Notice of Intent.

In April 2002, the Acting Inspector General sent a letter to the Falmouth Town Administrator recommending that the Town take steps to clarify certain responses on the Town's permit application submitted to the Executive Office of Environmental Affairs (EOEA), the DEP, and the Massachusetts Water Pollution Abatement Trust. For example, the letter recommended that the Town:

- Notify the Secretary of EOEA and the EOEA's Massachusetts Environmental Policy Act Office of certified vernal pools located near the proposed plant site;
- Notify the Secretary of EOEA and the DEP Commissioner of the location, type, status, and safe yield of all wells within 2,500 feet of the proposed discharge area, as required by the DEP's permit application; and
- Submit a topographic map to the Secretary of EOEA, the DEP, and the Massachusetts Water Pollution Abatement trust indicating vernal pools, wells, and other surface waters near the proposed plant site.

Update: SABIS International Charter School

In November 1999, the Office issued a report that examined 24 Commonwealth charter schools and identified weaknesses in the contracting practices, procurement procedures, and financial management of some schools, including the SABIS International Charter School. In November 2000, the Office issued a report, entitled *SABIS International Charter School: Management Issues and Recommendations*, that highlighted management and governance weaknesses that undermined the capacity of the school's Board of Trustees to oversee and control the school's business operations.

In April 2002, the Office sent a letter to the Board requesting a summary of the Board's actions in response to the Office's November 2000 report and the outcomes of those actions. In response, an attorney representing the Board sent a letter to the Office summarizing actions taken by the Board in response to the Office's 1999 report as well as the Office's 2000 report. The letter reported that the Board had implemented a series of improvements in the school's internal controls and business practices as well as several revisions to the Board's contract with its private management contractor. The letter also reported that the school's financial condition had improved since the Office's 1999 report.

Update: Somerville Charter School

In November 1999, the Office issued a report that examined 24 Commonwealth charter schools and identified weaknesses in the contracting practices, procurement procedures, and financial management of some schools, including the SABIS International Charter School. In January 2001, the Office issued a report, entitled *Somerville Charter School: Management Issues and Recommendations*, that highlighted management and governance weaknesses that jeopardized the capacity of the Board of Trustees to oversee and control the school's business operations.

In April 2002, the Office sent a letter to the Board requesting a summary of the Board's actions in response to the Office's January 2001 report and the outcomes of those actions. In response, a Board Trustee sent a letter detailing the actions taken by the Board since January 2001. The letter stated that, after its private management contractor rejected the Board's new financial policies and proposed contract containing new financial controls, the Board voted to take over complete business and educational management of the school as of December 1, 2001.³ The letter cited a series of other policies and procedures instituted by the Board to strengthen Board governance and school management.

"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."

-- Board Trustee letter to Office, April 2002

³ The letter noted that the contractor, SABIS Educational Systems, Inc., had filed a lawsuit against the Board in federal court and served the Board with eviction notices.

Update: Needham Construction Project Management

In June 1995, the Inspector General issued a report entitled *The Pollard Middle School Construction Project in Needham: A Management Review*. The report, which resulted from an extensive Office review of a school renovation project that had experienced major cost overruns and schedule delays, focused on four key areas: planning, fiscal control, schedule control, and contractor oversight. The report findings highlighted the need for effective project management safeguards on public projects at all stages of design and construction and recommended a series of management strategies for future construction projects in Needham and other local jurisdictions.

The Town of Needham took immediate action to strengthen its capacity to manage construction projects. In 1996, the Town voted to create a Permanent Public Building Committee to serve as the awarding authority for Town projects costing over \$100,000, and in 1998, the Committee hired a full-time professional construction manager. The following is a detailed description, provided to the Office by the Committee's Building Construction and Renovation Manager, of the Town's successful approach to addressing the management problems identified in the Office's 1995 report.

At the Special Town Meeting of February 5 1996, Article 3 was presented (copy attached) which led to a unanimous affirmative vote of the Town to amend the Town's General By-Laws to allow for the incorporation of language pertaining to the formation of a Permanent Public Building Committee, comprised of 7 Town resident volunteers with specific professional qualifications. Specifically, the Committee was to be comprised of (1) a commercial general contractor, (2) an architect, (3) two engineers, (4) a certified public accountant, (5) a lawyer, and (6) a town representative, not necessarily with professional qualifications. This Committee was charged to act as the Awarding Authority for projects costing over \$100,000, and such projects were defined as including feasibility studies, construction designs, and oversight of construction projects, following appropriate procurement of designer and/or engineering services as required by law. Article 3 further required that two user agency representatives sit in the Committee meetings and exercise full voting privileges during the discussions related to a particular project.

By May 1996, the Permanent Public Building Committee (PPBC) had been assembled, and began meeting every other Monday night. They assumed the management of 2 projects almost immediately. In 1997, as their work load began to increase, they saw the need to hire a Committee secretary to take meeting

minutes, and a construction manager to oversee their interests and to report to them on the progress of the various projects underway. In the summer 1997, they hired the services of a commercial construction management company during the renovations to a school and also found a candidate for secretary. Their experiences with this commercial construction management company led to them hiring another such company on a larger scale for a project in early 1998. By May of 1998, they had found a construction manager for their committee and hired him as a full-time Town employee in June 1998. The PPBC's construction manager oversaw the work of the commercial project management company - serving the PPBC more as a clerk in that arrangement, but served as their construction manager on projects where there was no commercial construction manager retained.

The PPBC construction manager charges the hours he spends on the various Town projects to those respective projects he works on. He also carries a cell phone and its charges are allocated to the various projects as well based on the percentage of time he spends on each project.

His work includes working with Town agencies to develop project scopes, and schedules, preparing RFP's for review with PPBC members, advertising for projects, site supervision on the various projects underway, change order review and negotiation, project budget maintenance and serving the Town as one of their managers to keep other managers aware of project progress and issues that may affect other Town departments. . . .

To date, the PPBC has successfully managed 36 projects totaling \$45 million all on time and within budgetary constraints. One of these projects was the first building project in Needham since the Pollard Middle School renovation of 1993. The Committee is currently managing 5 projects totaling \$80 million and one of these projects is three times larger than the largest project managed by them to date.

In summary, the Town learned a very valuable lesson in how to best manage public construction work, and has adopted a successful solution to the many problems outlined in the Inspector Generals report referenced above. We are still working on the way in which the PPBC's efforts coordinate with the functions of other Town Departments and so this aspect of our Town Government is still a "work in progress." We are very proud of what we have been able to accomplish in this regard, and would be happy to share our experiences with other municipal governments looking to establish a competent construction management team.

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 controlling the conveyances.

Office Appraisal Review Policy

In a January 2002 letter, the Acting Inspector General advised the Commissioner of the Division of Capital Asset Management (DCAM) of the Office's policy regarding real property appraisal reviews conducted by the Office at the direction of the Legislature. Under the policy, all appraisal reviews were required to be performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) published by the Appraisal Standards Board for the Appraisal Foundation. Specifically, the USPAP's Standard 3, "Real Property and Personal Property Appraisal Review, Development and Reporting," describes the purpose and level of analysis of appraisal reviews.

The Acting Inspector General's letter further stated that, in accordance with Standard 3, the Office's appraisal reviews will form an opinion as to whether the analysis, opinions, and conclusions in the work under review are appropriate and reasonable. If the Office disagrees with an appraisal, the reasons for any disagreement will be set forth in the Office's response.

Former Belchertown State School: Reappraisal of Parcel B and Planned Disposition of Parcels B, D, and E

In 2001, pursuant to Chapter 353 of the Acts of 1996, the Office reviewed and approved the independent appraisal of Parcels D and E, which were situated on the former Belchertown State School land. In February 2002, the Office reviewed a reappraisal of Parcel B and approved the methodology used to determine the market value of \$1,350,000 for Parcel B. The combined fair market value of all three parcels was \$1,920,000.

The Office also reviewed the proposed draft terms and conditions of the disposition agreements for the three parcels. In a February 2002 letter to the DCAM Commissioner, the Acting Inspector General recommended that certain revisions be made to meet the requirements of Chapter 353 and better protect the Commonwealth's interests in the disposition of the parcels. The Office stated that the purchase price of \$10, which accounted for certain environmental clean-up costs, appeared to satisfy the conditions of Chapter 353. The final Release Deed and Memorandum of Agreement contained some of the Office's recommendations.

Former Belchertown State School Land Lease

Pursuant to Chapter 664 of the Acts of 1986, the Office reviewed a proposed lease agreement between DCAM and the New England Small Farm Institute, Inc. for 400+ acres of land and buildings at the former state school. The legislation authorized a 30-year lease to be set at "not less than fair market value," among other terms and conditions.

In a November 2002 letter, the Inspector General advised the DCAM Commissioner that the Office could not reasonably determine whether the lease was at fair market value because the 1995 appraisal was not timely and not independent; that the maintenance standards in the proposed lease were overly vague; and that several other provisions of the proposed lease should be changed or eliminated. The Inspector General's letter recommended that DCAM take specific steps to obtain an independent appraisal and to ensure that the final lease protected the Commonwealth's interest in ensuring that the property will be adequately maintained over the life of the lease.

" . . . [W]e recommend that an appraisal that considers fair market value for highest and best use and fair market value as restricted to comparable rentals for farmland, farm buildings, and residential buildings, as appropriate, be conducted by DCAM, in accordance with the Uniform Standards of Professional Appraisal Practice, to determine the current fair market value."

IG letter to DCAM Commissioner, November 2002

Lowell Land at the Former Lawrence Mills Site

Pursuant to Chapter 36 of the Acts of 1999, the Office in consultation with an appraisal review expert reviewed an appraisal of state land in Lowell to be sold for redevelopment purposes. The subject property consisted of two parcels totaling approximately 6.5 acres, including several former mill buildings located at the former Lawrence Mills in Lowell, MA.

The appraiser discussed the highest and best use of the parcels as improved in accordance with the prospective development outlined in the redevelopment plan. The appraiser concluded that the highest and best use for Parcel I would be to redevelop several existing structures as a 170-unit apartment project and demolish three other buildings. The highest and best use for Parcel II, as improved, was to use the periphery of the buildings for parking and to eventually demolish the buildings and use the entire site as parking for other development at the Lawrence Mills site.

The appraiser valued Parcel I using the sales comparison approach and an income capitalization approach. The appraiser found sales of industrial mill-type buildings in surrounding communities to compare. However, the appraisal review of the appraiser's report on the discounted cash flow identified an apparent mistake in the calculation of the "Actual Gross Cash Flow," which was the "Potential Gross Income" less a deduction for vacancy. In years 3, 4, and 5, the appraiser miscalculated the actual cash flow by applying a 15 percent vacancy deduction, when the assumptions were vacancy rates of six percent, five percent, and five percent, respectively. This resulted in an underreporting of the cash flow to the property. Additional miscalculations were identified that further affected the valuation analysis.

For Parcel I, the appraiser's final value conclusion was \$707,000; however, the report contained several mathematical errors that affected the valuation conclusion. Parcel II was valued using the sales comparison approach. The appraiser discussed the sales and concluded a value of \$1.55 per square foot. This yielded an indicated value of \$135,036 from which \$81,250 for demolition was deducted. The concluded value was a rounded \$55,000. However, the date of value was unclear in the report: it was cited as October 20, 2001 in both the Letter of Transmittal and the Summary of Salient Facts and Conclusions but as July 3, 2001 in the body of the report.

In an April 2002 letter to the Commissioner of DCAM, the Acting Inspector General recommended that the appraisal report be amended to address the mathematical errors in the discounted cash flow that was the basis for estimating the value of Parcel I and to make clear the effective date of value.

In February 2003, based on the Office's review of amendments to the appraisal report, the Inspector General wrote to the DCAM Commissioner approving the corrected final market value estimates contained in the original report as amended and the methodologies used in appraising the two parcels located in Lowell.

Former J. T. Berry Rehabilitation Center Disposition

Chapter 271 of the Acts of 1998 as amended by Chapter 7 of the Acts of 2001 required the Office to review the disposition agreement related to the former J. T. Berry Rehabilitation Center in North Reading and Wilmington. (In 2001, the Office had reviewed the appraisal.) In April 2002, the Acting Inspector General wrote to the DCAM Commissioner that the proposed Land Disposition Agreement that would convey approximately 87 acres and the buildings on the site to be redeveloped for office uses appeared to be consistent with terms of the authorizing legislation.

In 2003, the Office reviewed the First Amendment to the Land Disposition Agreement that proposed to extend certain time periods specified in the previously executed agreement for the conveyance of the parcel. The Inspector General wrote in a March 2003 letter to the DCAM Commissioner that the proposed amendment appeared consistent with the authorizing legislation.

Former Metropolitan State Hospital Disposition

Pursuant to Chapter 309 of the Acts of 1996, the Office reviewed separate disposition agreements between DCAM and the Metropolitan District Commission (MDC) and DCAM and the City of Waltham. Approximately 250 acres at the former Metropolitan State Hospital were to be transferred to the MDC for use as a reservation. Approximately 50 acres of land and the former administration building were to be transferred to the City of Waltham.

The Acting Inspector General wrote to the DCAM Commissioner in May 2002 regarding the documents related to the dispositions. The letter stated that, based on the Office's review, both proposed agreements were consistent with the terms and conditions specified in the authorizing legislation and appeared to include adequate safeguards to protect the Commonwealth's interests.

Concord Land

Pursuant to Chapter 172 of the Acts of 2000, the Office, in consultation with an appraisal review expert, reviewed the appraisal of a parcel of state land located in the Town of Concord. The subject property consists of a single family home situated on 8,776 square feet of land located at 365 Commonwealth Avenue, Concord MA.

The appraiser concluded that the highest and best use of the subject property limited to public housing uses by the Act was as a single-family residential public housing unit. The appraiser noted that by definition, the

property would be owned by the government and leased as housing. The appraiser used the direct income capitalization approach to conclude a value of \$88,000.

The income capitalization approach was based on the premise that the income-producing real estate is equal to the present worth of the anticipated future benefits of the income derived from the ownership of the property. The income capitalization approach consists of methods, techniques, and mathematical procedures that analyze the property's capacity to generate income and converts this income into an indication of present value.

In a May 2002 letter to the DCAM Commissioner, the Acting Inspector General approved the methodology utilized and the final estimated market value of the appraisal.

Boston Land at Mugar Way and Beaver Place

Pursuant to Chapter 145 of the Acts of 2001, the Office, in consultation with an appraisal review expert, reviewed an appraisal of state land located in Boston. The subject property consisted of 1,460 square feet of land located at the intersection of Mugar Way and Beaver Place.

The highest and best use of the subject property was determined to be for use as residential development. The appraisal report stated that the property was appraised assuming that all of the improvements except the retaining wall would be removed prior to the development of the parcel. The appraiser used the sales comparison approach to conclude a market value of \$440,000.

The appraisal report provided a sales analysis of two vacant lots that sold in Boston. Given that there were a very limited number of developable land sales in the immediate area, the appraiser relied on a land valuation technique that allocated the sale price of improved property in the subject property's area between the land and improvements. Adjustments were made for differences between the subject property and the sales.

In a June 2002 letter to the DCAM Commissioner, the Acting Inspector General approved the methodology utilized and the final estimated market value of the appraisal.

Billerica Land

Pursuant to Chapter 214 of the Acts of 2001, the Office, in consultation with an appraisal review expert, reviewed two appraisals of two parcels of land located in the Town of Billerica. The Act authorized DCAM to convey a parcel of land on River Street Extension in Billerica to the Town of

Billerica, and authorized the Town of Billerica to convey a parcel of land at 240 Treble Cove Road to the Commonwealth for use by the Middlesex Sheriff's Office.

The subject property in one of the appraisals consisted of 5.82 acres of land located at 240 Treble Cove Road. The purpose of this appraisal was to determine the fee simple fair market value of the premises and land restricted to use by the Middlesex Sheriff's Office. According to the appraisal, the highest and best use was use by the Sheriff's Office as restricted. The appraiser valued the subject property using the cost approach, which incorporated elements of the sales comparison approach, in estimating the property's value and came to a conclusion of \$1,960,000.

The second appraisal reviewed a property consisting of approximately 77 acres. The purpose of this appraisal was to determine the fee simple market value subject to the limitations defined by the Act. The appraisal report presented the value of the subject property in values per square foot of various categories of land so that the Town of Billerica and DCAM could determine the effect of placing conservation restrictions on various parts of the parcel. The appraiser valued the subject property using the sales comparison approach, which estimated the subject's four land value components. The values indicated were:

- Uplands without the conservation restriction: \$1.70 per square foot
- Uplands with the conservation restriction: \$.20 per square foot
- Wetlands and Rivers Protection Act (RPA) impacted lands without the conservation restriction: \$.20 per square foot
- Wetlands and RPA impacted lands with the conservation restriction: \$.20 per square foot

In a September 2002 letter to the DCAM Commissioner, the Inspector General approved the methodologies utilized and the final estimated market values of the two appraisals.

Revere Land

Pursuant to Chapter 351 of the Acts of 1996, the Office, in consultation with an appraisal review expert, reviewed an appraisal of vacant land situated along Revere Beach Parkway in the City of Revere. According to the statutory limitations, the property was appraised as restricted to a public safety facility or for recreational use.

The appraiser used the sales comparison valuation methodology to estimate the value of the land. The appraiser found there were sufficient sales of land considered for the comparables to determine the value estimate of \$145,000 for the parcel. In an October 2002 letter to the DCAM Commissioner, the Inspector General approved the appraisal methodology and final value determination.

Land in Acton owned by the Town of Concord and the Palmer Family Trust

Pursuant to Chapter 179 of the Acts of 2000, the Office, in consultation with an appraisal review expert, reviewed two appraisals of parcels of land located in the Town of Acton. In this instance, the land was not owned by the State. The appraiser stated that the scope of the appraisals was to determine the fee simple fair market value of the properties. 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 subject property in one of the appraisals consisted of a 3.75-acre parcel of unimproved land located at 390 Great Road in the Town of Acton owned by the Town of Concord. The property was a portion of a larger parcel that had been granted a permit to construct a private country club with an 18-hole golf course. According to the appraisal report, the highest and best use of the property was as a portion of a private country club granted under the special permit. Thus by using the sales comparison approach, the appraiser concluded a value of \$40,900 for the land locked parcel.

The second appraisal consisted of a 3.75-acre parcel of unimproved land located at 352 Great Road in the Town of Acton owned by the Palmer Family Trust. The property was a portion of a larger parcel of unimproved land that contained 55 acres. According to the Act, the property was to be used in connection with the Town of Concord's ozone treatment facility. Therefore the highest and best use of the property was as open space for the Town of Concord's ozone treatment facility. The appraiser found sufficient sales of land to be considered for the comparables to determine the market value of this restricted parcel as \$32,700.

In an October 2002 letter to the DCAM Commissioner, the Inspector General approved the methodologies utilized and the final estimated market values of the two appraisals.

Revere Real Property Disposition

In October 2002, the Inspector General issued a report entitled *Review of a Real Property Disposition by the City of Revere*. The Mayor of Revere had requested that the Office review the City of Revere's 1997 disposition to a private developer and 2001 reacquisition of a parcel known as the "Surf Site." The report summarized the issues identified by the Office and offered recommendations based on its review.

The report identified the following problems related to the City's management of the real property development process for the Surf Site:

- The evaluation criteria set forth in the request for proposals (RFP) were deficient.
- The City failed to generate competition for the Surf Site.
- The City's vague RFP submission requirements were inadequate to enable a meaningful review of developer qualifications and plans.
- City records provided for review to the Office contained no documentation indicating that the City conducted an evaluation of the sole proposal received.
- Because the development proposal selected by the City did not satisfy the City's submission requirements, the City should either have rejected the proposal as not responsive or subsequently obtained the missing information for evaluation.
- Because the RFP and related agreements did not address either subsequent transfers of or encumbrances on the Surf Site or development rights, they failed to ensure that the City's interests would be protected.

To assist the City in avoiding similar problems in the future, the report offered the following recommendations:

- RFP evaluation criteria should be specific and provide objective standards to allow for meaningful comparisons.
- RFP submission requirements should solicit all information and documentation necessary for the evaluation of the proposals based on the RFP evaluation criteria.
- The City should include a non-collusion form in all RFPs and contracts for the acquisition and disposition of real property interests.

- For each RFP and any related agreements, the City should consider whether to protect its interests by including restrictions on the subsequent use of the property.
- The City's advertising period should be sufficient to generate competition.
- The City should plan strategies for outreach to developers.
- The City should document its evaluation process.

"The City is to be commended for its willingness to learn from the "Surf Site" disposition, which ultimately failed to achieve the City's objectives."

– IG report, October 2002

In addition, the report offered two general recommendations for all governmental bodies valuing property as required M.G.L. c. 30B, §16(b):

- Governmental bodies should incorporate the Uniform Standards for Professional Appraisal Practice in its procurements for appraisal services.
- Governmental bodies should include experience requirements for appraisers in its procurement for appraisal services.

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Local Government Procurement Assistance and Enforcement

The Office of the Inspector General provides extensive technical assistance to local government officials regarding Massachusetts public procurement laws. The Office encourages effective and ethical public purchasing by local governments by providing training and professional development; publishing manuals, 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 2002, 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 City Solicitors and Town Counsel Association, the Massachusetts Library Association, the Massachusetts Department of Education, the Attorney General, the Operational Services Division, Massachusetts Continuing Legal Education, Framingham State College Continuing Education Program (via satellite with Bunker Hill Community College and Springfield), and several municipalities, including the City of Salem and the Town of West Tisbury. Presentation topics included “An Overview of M.G.L. c. 30B,” “Public-Private Partnerships,” “An Overview of Public Construction Laws,” “Real Property Transactions Pursuant to M.G.L. c. 30B,” and “Bad Faith Issues in Government Contracting.”

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 2002, the Office published four issues of the *Procurement Bulletin*, a newsletter distributed to approximately 900 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 2002, for example, the *Procurement Bulletin* included articles on recent court decisions relating to procurement, health care claims administration contracts, non-profits and M.G.L. c. 30B implications, and a guest column by the City of Marlborough's Chief Procurement Officer. In prior years, the

Procurement Bulletin has featured articles pertaining to collective purchasing agreements, using vendor-supplied invitations for bids use of ordered alternates, and prevailing wage updates. 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:

- **Vehicle Trade-Ins Under M.G.L. c. 30B.** This report, issued by the Inspector General in October 2002, provides guidance to awarding authorities on contracts involving vehicle trade-ins. The report discusses valuing contracts and choosing provisions of law to follow, as well as setting forth recommendations for the use of trade-ins under collaborative purchase agreements.
- **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 2003 to include recent judicial opinions, technical revisions, and current contact information, 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 2002, the Office responded to 2,354 inquiries about M.G.L. c. 30B and other public bidding laws, resulting in over 3,524 telephone calls. The Office regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The Office 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 2002.

Furniture and Equipment Specifications – Bid Protests. In 2002, the Office received complaints from vendors concerning invitations for bids (IFBs) for furniture and equipment for public schools issued by local awarding authorities. The Office's review of several IFBs revealed that they appeared to have been drafted by a vendor rather than by an awarding authority. These vendor-supplied specifications were problematic in several respects. First, in addition to soliciting bids on conventional school furniture and equipment, such as tables and chairs, the IFBs solicited bids on many items not customarily included in a furniture and equipment IFB, such as a piano, custodial supplies, a refrigerator, and a microwave. The likely effect of including these unconventional items was to reduce competition and increase prices. Second, the IFBs solicited a single price for a group of items without soliciting unit prices on each item in the lot, thereby preventing the awarding authority from using the "25 percent rule" under M.G.L. c. 30B to increase the number of items purchased under the contract in the future. And third, the IFBs contained an indefinite rule of award that could produce more than one low bidder. In letters to representatives of public schools in Scituate and Weymouth and to an attorney representing a furniture and equipment vendor, the Office identified these problems with vendor-supplied specifications and outlined a series of recommendations for drafting effective, competitive furniture and equipment specifications.

“The school furniture IFBs that this Office reviewed and that were the topic of our meeting contained similar contract terms and conditions, rules for contract award, and bid pricing sheets. It was apparent that these IFBs did not originate from the awarding authorities themselves. This Office encourages awarding authorities to develop their own contract terms and conditions rather than adopting terms which may be disadvantageous to the awarding authority but favorable to a vendor.”

– Office letter to vendor’s attorney, July 2002

City of Springfield Bus Contract – Request for Guidance. In February 2002, the Office responded to a letter from a vendor’s attorney requesting the Office’s response to a series of questions pertaining to the City of Springfield’s school bus contract. The Office’s letter provided detailed advice regarding the applicability of those provisions of M.G.L. c. 30B relating to the exercise of contract options by an awarding authority. For example, the letter advised the vendor’s attorney that the City had the authority and sole discretion to decide whether or not to exercise a one-year option to extend its school bus contract and that the City’s decision required a determination as to whether exercising the option was more advantageous to the City than undertaking a new procurement. To make this determination, the City was obligated under M.G.L. c. 30B to conduct a reasonable investigation of the costs and benefits of exercising the option, and to document its findings in writing.

Southeastern Regional Services Group - Request for Guidance. The Southeastern Regional Services Group requested that the Office provide a written opinion regarding the applicability of M.G.L. c. 30B to the services provided by MunicipalNet, Inc., an online service that coordinates purchasing transactions, including the posting of notices of invitations for bids (IFBs) and requests for proposals (RFPs). In an April 2002 letter to the Southeastern Regional Services Group, the Office outlined several M.G.L. c. 30B issues. For example, the Office’s letter noted that, depending on the dollar amount of the contract, local jurisdictions may be required to competitively procure the service provided by Municipal Net, Inc. The letter also noted that local jurisdictions that advertise IFBs or RFPs on MunicipalNet’s website (or another vendor’s website) must comply with all statutory requirements, including advertising requirements, under M.G.L. c. 30B and may not exclude vendors that are not part of MunicipalNet’s supplier group from receiving copies of the local jurisdiction’s IFBs and RFPs.

“The letter that MunicipalNet recommends sending to vendors implies that vendors doing business with the local jurisdiction must register as a supplier with MunicipalNet in order to continue doing business with the local jurisdiction. Jurisdictions should avoid . . . this implication.”

-- Office letter to Southeastern Regional Services Group, April 2002

City of Pittsfield – Request for Guidance. In May 2002, the Office provided the City of Pittsfield with an opinion letter regarding the applicability of M.G.L. c. 30B to a contract between the City and Blue Cross/Blue Shield of Massachusetts. The contract, entitled “Governmental Unit Administrative Services Account Agreement,” included claims administration services as well as the provision of insurance programs for eligible City employees and retirees. The Office’s letter explained the basis for the Office’s conclusion that the contract was not subject to the requirements of M.G.L. c. 30B. However, the letter urged the City to seek competition when contracting for such services in the future. The Office’s determination that the contract was exempt from M.G.L. c. 30B was specific to the contract reviewed by the Office and was not generally applicable to contracts for insurance administration services.

Town of Barnstable - Bid Protest. The Office received a bid protest regarding the procurement of a contract for transportation and disposal of liquid sludge by the Town of Barnstable Department of Public Works (DPW). The DPW’s IFB instructed bidders to structure their prices on a per-load basis, using an 8,500-gallon tank vehicle. The DPW received four bids. However, one bid included a notation indicating that loads would actually be 9,000 gallons each, rather than 8,500 gallons each, and inserted a per-gallon price in addition to a per-load price as requested. As a result, the bid appeared to include two different prices per load. Since the DPW was unable to determine the intended bid, the DPW decided to reject all bids, adjust its pricing specifications for greater clarity, and rebid the contract. The apparent second lowest bidder instituted a bid protest. In a June 2002 letter, the Office advised the protester’s attorney that it was the Office’s opinion that the DPW had acted within its discretion in rejecting all bids and rebidding the contract.

City of Melrose Golf Course Management Contract – Request for Guidance. The City requested guidance from the Office regarding its procurement of a ten-year golf course management contract. The Office’s initial review of the City’s draft RFP revealed numerous deficiencies, which the Office detailed in an August 2002 letter to the City’s attorney. Specifically, the Office’s review found that the RFP did not contain a scope of services, any contractual terms and conditions, or any quality requirements; moreover, the comparative criteria contained in the RFP

were too vague to permit a meaningful comparison of proposals. The RFP did not reflect the procedural requirements set forth in M.G.L. c. 30B, nor did it advise proposers that they were required under M.G.L. c. 30B to submit a noncollusion form. For these and other reasons, the Office advised the City's attorney that the RFP did not comply with M.G.L. c. 30B and provided recommendations for correcting the deficiencies identified in the RFP.

New Bedford Harbor Development Commission – Request for Guidance. In October 2002, the Office responded to a request to review the new Bedford Harbor Development Commission's enabling legislation and provide a written opinion as to whether the Commission is a governmental body subject to M.G.L. c. 30B. The Office advised the Commission of the Office's opinion, based on a test previously established by the Supreme Judicial Court, that the Commission is subject to M.G.L. c. 30B.

Town of Abington – Bid Protest and Request for Guidance. In November 2002, the Office responded to a request from the Interim Town Administrator of the Town of Abington for an opinion regarding the legality of the Town's proposed award of a contract pursuant to its recent RFP for the lease and operation of the Strawberry Valley Golf Course. The Office had previously received a bid protest regarding the contract. Based on the Office's review, the Office determined that the Town had failed to advertise the RFP in accordance with the requirements of M.G.L. c. 30B. Accordingly, the Office's letter advised the Interim Town Administrator that any contract entered into by the Town as a result of the RFP process would be invalid. The letter recommended that the Town seek further information on the requirements of M.G.L. c. 30B from Office publications available at the Office's website. The letter also offered the Office's assistance in reviewing and commenting on the new RFP prior to its issuance.

Norwell Public Schools – Request for Guidance. In response to a request for a written opinion, the Office wrote to the Director of Administrative Services of the Norwell Public Schools in December 2002 regarding the jurisdiction's recent IFB for beverage vending services. The IFB had solicited bid prices representing the amounts to be paid to the Norwell Public Schools for the right to install 10 vending machines. One vendor responding to the IFB had submitted a high proposal price that purported to represent the dollar value of up-front sponsorship and marketing activities that were not requested by the jurisdiction but that were proposed by the vendor. These activities included "free" cases of soda for sports events, water coolers, a snowboard giveaway, and tickets to professional sporting events. The Office's letter noted that the M.G.L. c. 30B IFB process requires a contract award to the responsive and responsible bidder submitting the best price. The Office's letter concluded

that the vendor in question had not submitted a bid that conformed to the IFB and, thus, that the Norwell Public Schools was obligated to reject the bid as nonresponsive.

Update: Hale Hospital Disposition by the City of Haverhill

In August 2001, the Office had provided advice to the City of Haverhill regarding the disposition under M.G.L. c. 30B, §16 of the municipally owned Hale Hospital and two related parcels of real estate. Based on the Office's advice, the City had issued separate RFPs for the hospital and for the other parcels. Subsequently, in November 2001, following an allegation of collusion between proposers in the RFP process for the two parcels, the Office had advised the City to suspend the RFP process and prepare to solicit new proposals. The Office had also recommended that the City obtain at least two independent appraisals of the properties in question.

In February 2002, the Office responded to a request from the City that the Office review the City's proposed appraisal methodology. In a letter to the City's attorney, the Acting Inspector General outlined a series of recommendations for conducting the appraisals. Subsequently, in March 2002, Acting Inspector General wrote to the Mayor of Haverhill regarding the Office's examination of the circumstances surrounding the RFP process about which allegations of collusion had been made. The Acting Inspector General's letter stated that, based on the Office's interviews and document reviews, the Office had concluded that there was no evidence substantiating the allegation that the two proposers had colluded in proposing prices for the two parcels.

The letter noted that the City was in the process of obtaining revised appraisals for one of the parcels, as recommended by the Office, and that the City would need to incorporate the information contained in the revised appraisals into the RFP. The letter stated that this requirement would justify canceling the original RFP process, as would the appearance of impropriety created by the publicized allegations of collusion.

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The MCPPO Program

The Office of the Inspector General has continued the Massachusetts Certified Public Purchasing Official (MCPPO) program, now in its sixth year. Since 1997, MCPPO seminars have been attended by more than 4,700 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.

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.

The MCPPO program and the individual seminars that constitute the program were developed with the assistance of an advisory group that included 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. Seminars also qualify for professional development points (PDP) required of school business administrators under the state's education reform act.

Core Seminars

During 2002, 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.

"These professionals comprehend the immense responsibilities of the public procurement profession and help educate our communities in effective, efficient & responsible public procurement. A great resource to the Commonwealth."

– 2002 Public Contracting Overview seminar participant

The Office also 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.

"I go to a lot of seminars/continuing ed. and I always look forward to the Inspector General's seminars. They are well presented, the speakers are engaging. The written material is relevant to the exam."

-- 2002 Design and Construction Contracting 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.

"This is my 3rd MCPPO Course and I have really enjoyed each one – I have learned much and will use what I've learned – These courses will make me a better public employee – All the presenters are great!"

-- 2002 Supplies and Services Contracting seminar participant

MCPPO Continuing Education

In addition to the core curriculum seminars in the certification program, the MCPPO program has also included various non-core curriculum seminars. In 2002, the Office continued to offer **Bidding Basics and Contract Administration**, a half-day seminar first offered in 1999. In 2000, the Office developed **Bidding for Better Results** in response to requests from local jurisdictions for more advanced procurement training. **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.

"The information was given in an informative, understandable and funny way. Good job. This material could have been very boring, but it was interesting."

-- 2002 Bidding Basics and Contract Administration seminar participant

Spotlight on Schools: Procurement Issues, Challenges, and Trends, focused on the specialized issues confronting school business officials and staff members.

“Excellent presentation. Heidi and Brian were both great speakers with command of the subject. They engaged the audience with group exercises and the questions/illustrations were very good.”

-- 2002 Spotlight on Schools seminar participant

In 2002, the Office also offered two new seminars, **Advanced Topics in Procurement** and **Writing Specifications for Public Safety Vehicles**, as well as two individualized computer-based trainings: **Drafting a Model Invitation For Bids** and **Information Technology**.

“I enjoyed this course, especially going at my own pace. I also will enjoy having the CD to refer to as I need to refresh my knowledge.”

-- 2002 Information Technology Purchasing training participant

The program’s seminars, presented in several different locations around the state, attracted 688 attendees in 2002. The following table lists the number of seminars delivered and total attendance at each seminar throughout 2002.

Seminar	Number	Attendance
Public Contracting Overview	9	165
Supplies and Services Contracting	5	92
Design and Construction Contracting	6	110
Advanced Topics in Procurement	2	44
Bidding Basics and Contract Administration	4	81
Bidding for Better Results	3	31
Local Government Real Property Transactions	2	23
Spotlight on Schools	5	78
State Contracting Overview	1	8
Writing Specifications for Public Safety Vehicles	4	56
TOTAL	41	688

"All speakers had excellent knowledge of subject and were very helpful when questions were asked. Overall one of the best seminars I have attended."

-- 2002 Advanced Topics in Procurement seminar participant

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 2002, 51 participants earned one of eight possible MCPPO designation types, bringing the total number of certifications received to 427 since 1998.

MCPPOs must maintain their knowledge and skills and document at least 60 hours of continuing professional education to achieve recertification every three years. In 2002, the first public purchasing officials who had been certified renewed their designations. Ten public purchasing officials fulfilled the renewal requirements and were recertified by the Office.

The following table illustrates the designations awarded by the Office in 2002.

Designation	Number Awarded
MCPPO	31
Associate MCPPO	10
MCPPO for Supplies and Services Contracting	3
Associate MCPPO for Supplies and Services Contracting	2
MCPPO for Design and Construction Contracting	3
Associate MCPPO for Design and Construction Contracting	0
MCSPPO	2
MCSPPO for Design and Construction Contracting	0
Recertification (MCPPO designation)	10
TOTAL	61

"Still the best procurement seminars ever!"

-- 2002 Local Government Real Property Transactions seminar participant

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Legislative Recommendations: 2003-2004 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. This section discusses the Office's legislative proposals submitted in 2002 for consideration in the 2003-2004 legislative session.

Municipal Light Plant Reform

The Office filed legislation that would clarify the roles and responsibilities of public officials as they pertain to reviews of expenditures and activities of municipal light plants. The legislation would ensure that municipal financial officers have adequate access to records to enable them to verify the accuracy and reasonableness of expenditures prior to their approval and that M.G.L. c. 164, §§56A-56D and §63 are applicable to both municipal light boards and commissions of cities and towns.

House Bill 50, Clarifying oversight by municipal financial officers of municipal light department expenditures

Construction Reform

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 and to simplify the procedures used for lower-cost projects.

House Bill 51, An act to raise public bidding thresholds

The Office filed legislation that would require public jurisdictions to 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. The owner's representative would be 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.

House Bill 52, Providing for reform in public construction

Improvements to Procurement Laws

The Office filed legislation to clarify a definition in the designer selection law, M.G.L. c. 7, §§38A½ - O, and to amend M.G.L. c 30B. Chapter 237 of the Acts of 2000 amended the designer selection law; however, the terms used in the amendment are not consistent with those used in other sections of the law. The Office's legislation would correct that inconsistency in order to clarify its meaning. Additionally, the legislation would amend M.G.L. c. 30B to give local governments the discretion to use a request for proposal process for contracts of less than \$25,000.

House Bill 53, Making technical changes to Chapter 7 and Chapter 30B

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

House Bill 54, Repealing certain exemptions to Chapter 30B

The Office filed legislation to clarify the requirements of M.G.L. c. 30, §39M governing the use of proprietary specifications.

House Bill 55, Concerning proprietary specifications in public construction

State Penalties for Bid Rigging and Conspiracies in Restraint of Trade

The Office filed legislation that would increase the penalties for bid rigging and conspiracies in restraint of trade to the federal level. Presently, the Commonwealth's penalties under the antitrust statute are significantly lower than federal levels.

House Bill 56, To increase penalties to the federal levels for bid rigging and conspiracies in restraint of trade