



Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2003 Annual Report

June 2004



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

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

The Office of the Inspector General is dedicated to preventing and detecting waste, fraud and abuse in the expenditure of public funds. To that end we responded to scores of complaints, initiated dozens of investigations and trained hundreds of government employees last year.

While much of our work is confidential, this report details completed projects that we can make public.

Among the highlights for 2003:

- our efforts to get Big Dig contractors to reimburse the state for cost overruns;
- our investigation of the state's automobile emissions testing program;
- our efforts to convince the federal government to amend census data that could cost the state \$500 million; and
- our work on construction reform legislation.

Additional copies are available on our website www.mass.gov/ig or from our Office.

Sincerely,

Gregory W. Sullivan

Gregory W. Sullivan
Inspector General

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Massachusetts Office of the Inspector General

Address:

Room 1311
John McCormack State Office Building
One Ashburton Place
Boston, MA 02108

Phone:

(617) 727-9140
(617) 523-1205 (MCPPO Program)
(800) 322-1323 (confidential 24-hour
hotline)

Internet and Fax:

www.mass.gov/ig
(617) 723-2334 (fax)

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Introduction

The Massachusetts Office of the Inspector General (Office) 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 massive fraud and waste and detailing 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 (M.G.L.) Chapter 12A to prevent and detect fraud, waste and abuse in government. M.G.L. c. 12A gives the Office the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and non-criminal violations of law.

The Office employs a staff of experienced specialists, including investigators, lawyers, computer experts and analysts to investigate waste, fraud and abuse in government. In addition, the Office also has an attorney specializing in procurement to assist local governments with best value contracting under the Uniform Procurement Act, M.G.L. c. 30B. The Office also certifies public procurement officials through the highly acclaimed Massachusetts Certified Public Purchasing Officials training program.

Inspector General Gregory W. Sullivan meets quarterly with the eight-member Inspector General Council to consult with them about the duties and responsibilities of the Office. The current members of the council are: Auditor Joseph DeNucci, Attorney General Thomas Reilly, Comptroller Martin Benison, Secretary of Public Safety Edward Flynn, James Morris, Alan MacDonald, John Callahan and Thomas Moriarty.

The Office receives many complaints alleging fraud, waste, or abuse in government. We evaluate each complaint to determine whether it falls within our jurisdiction and merits action. Some complaints lead to

extensive investigations. We close others almost immediately – after a preliminary inquiry fails to substantiate the allegations.

When the Office completes a project, we usually issue a letter or report detailing our findings and recommending reforms to prevent future problems. We report information concerning criminal or civil violations of law to the appropriate authorities, including the Attorney General and the United States Attorney.

Investigations

The Office's investigations of criminal and civil violations of law arise from a variety of sources, including complaints, information developed during the course of other Office reviews and activities, and requests for review and assistance by other investigative agencies such as local and state police and the Attorney General.

The Office forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside our jurisdiction or would more appropriately be handled by another agency.

In 2003, we reported complaints to a host of agencies, including: Federal Bureau of Investigation; the U.S. Bureau of Alcohol, Tobacco and Firearms; the Massachusetts Office of the Attorney General; the Massachusetts State Police; the State Ethics Commission; the Department of Environmental Protection; the Department of Mental Health; the Department of Mental Retardation; the Department of Public Safety; the Department of Corrections; the Boston Police Department; the United States Secret Service and local police departments.

M.G.L. c. 12A restricts disclosure of ongoing investigations, cases in which no official disposition has been made and on-going joint investigations that are governed by nondisclosure agreements. Therefore, this report details only a portion of the investigations we pursued last year.

Massachusetts Motor Vehicle Inspection Program

The Office examined the state's motor vehicle inspection program and found that the inspection results were unreliable and failed to meet federal emissions-testing requirements.

The Office also found that Department of Environmental Protection (DEP) officials covered-up the results of a federally-mandated independent test of the system that showed frequent false readings.

DEP's Enhanced Vehicle Inspection and Maintenance Program (I/M Program) requires every car in Massachusetts get an emissions test every two years.

The testing company said the Massachusetts system improperly failed 55 percent of the cars they examined. In other words, more than half of Massachusetts' car-owners spent money fixing emissions problems that did not exist.

The Inspector General wrote two letters to Governor Mitt Romney outlining the results of the investigation. The letters recommended that a side-by-side comparison test be conducted as soon as possible of the Massachusetts I/M testing system and the federal benchmark system.

The Inspector General also recommended that the Governor suspend certain DEP officials from any further role in the planning, management, and oversight of a quality-control audit of the I/M Program and that action be taken to protect all documents, data and materials related to that audit process.

Boat Moorings and Favoritism in the Town of Harwich

The Office of the Inspector General investigated the assignment of boat moorings in the town of Harwich after boat owners complained that Harwich Port Boat Works, a local boat yard, controlled many town-owned moorings and leased them to favored customers.

The Office found that Harwich Port Boat Works controlled – and privately rented - 92 boat moorings in Wychmere Harbor that legally belonged to the town.

We also found that boat owners had repeatedly complained to the Harwich Board of Selectmen about Harwich Port Boat Works punishing boat owners who did not spend enough money at the yard by hiking mooring prices or banishing them to distant moorings. The board dealt with each complaint individually but did nothing to correct the situation.

We recommended that Harwich reclaim control of all its boat moorings and develop a new policy for issuing mooring permits. The town followed our advice and put all municipal moorings under the control of its Harbormaster.

Ethics Commission Fines Greenfield Police Chief

Following up on a 2001 investigation by this Office, the State Ethics Commission last year fined Greenfield Police Chief David F. McCarthy \$4,000 for violating the state's conflict of interest law.

We found, and the Ethics Commission agreed, that McCarthy had helped orchestrate the promotion of his son, S. Daniel McCarthy, to the rank of sergeant.

Missing Files in Quincy

This Office investigated the disappearance of records, including computer files, from the Office of the Mayor of Quincy, at the request of Mayor William Phelan.

We found that before Phelan took office in January 2002, the outgoing mayor, James Sheets, violated the state's public records laws when he removed hundreds of official city documents, including a "chronicle" documenting his meetings, comments and conversations about city matters.

Employees in the Information Technology Department told us Mayor Sheets asked them to erase the computer hard drives in his office.

We were able to recover eight boxes of files and records; four computer backup tapes that the former Mayor's Assistant said contained information from former Mayor Sheets' "chronicle," and, using computer forensic techniques, 5,000 computer files that had been erased from the hard drives of Mayor Sheets and his staff.

We turned over all the recovered files to the Federal Bureau of Investigation for use in its investigation of alleged corruption in Quincy.

Contractor Gifts to Municipal Electric Light Employees

This Office found that Power Line Models, Inc., (PLM) an electric power engineering firm with an office in Hopkinton, MA, gave numerous gifts to the Chicopee Electric Light Department (CEL) general manager and other CEL employees.

The gifts included golf outings, fine dining, golf tournaments, multi-day golf invitationals and other entertainment totaling almost \$35,000 over a three-year period.

During the same three years, 1998 to 2000, CEL paid PLM more than \$500,000 in consulting fees.

The Office also found that PLM employed two of the general manager's children, a possible violation of the state's conflict of interest law given PLM's consulting contract with CEL.

This Office wrote a letter to Richard J. Kos, then Mayor of the city of Chicopee with our findings. We recommended that the Mayor conduct an inquiry into the gifts and ask the Board to prohibit CEL employees from taking any gifts from vendors.

The current Mayor of Chicopee, Richard R. Goyette, asked the State Ethics Commission to review the matter and make a final recommendation concerning potential violations of M.G.L. c. 268A, the conflict of interest law, by Chicopee Electric Light Department employees.

Misappropriation of Public Property at Medfield State Hospital

The Office investigated several Department of Mental Health (DMH) employees who work at the Medfield State Hospital power plant and found they were stealing public property, gambling at Foxwoods Gaming Resort on state time and failing to fill out crucial safety logs.

Specifically, the Assistant Chief Engineer, with the approval of the Chief Engineer, took almost 1,300 pounds of state-owned copper, brass, and copper wire from the Hospital power plant and sold them at a nearby scrap yard.

In addition, the Chief Engineer took a state-owned power washer home for use on personal projects. He returned the power washer only after his supervisor confronted him.

The Chief Engineer also submitted false official time sheets to the DMH on at least five occasions showing that he was working at the plant when – according to records provided by Foxwoods Gaming Resort – he was at the casino.

Finally, the investigation found that poor supervision at the plant allowed personnel, including the Chief Engineer, to neglect critical public safety logbooks required by state law and Hospital regulations.

Aid to New York City Inspector General

The Office worked with the Massachusetts State Police, Manhattan District Attorney's Office and Ware, MA, Police Department on the arrest and extradition of Angel Naraez, a fugitive from New York City.

Naraez faces charges of embezzling more than \$100,000 from the Coalition for the Homeless, a New York non-profit organization.

This Office aided the effort at the request of the Inspector General for the New York City Department of Investigation.

Financial Oversight

Big Dig Cost Recovery

The Office spent substantial time and resources examining the Central Artery/Tunnel Project and looking for mistakes by the project's manager Bechtel/Parsons Brinckerhoff (B/PB) and other contractors that drove up the cost of the Big Dig.

Such errors are the driving force behind "cost recovery," which allows the Commonwealth to file claims against Big Dig contractors to get some of that extra money back.

We provided information and documents to the Massachusetts Turnpike Authority that helped the state launch a \$146 million lawsuit against B/PB in March 2004.

The suit, based in part on our 2001 report on Big Dig cost overruns, accuses the project managers of concealing true cost estimates from state officials in order to keep the project going.

We also released a report identifying potential cost recovery issues to the Massachusetts Turnpike Authority.

We identified 1,600 change orders, costing the state \$125 million, associated with 13 contracts we had previously reviewed at the request of the legislature. A deeper look at a sample of those change orders found more than \$24.8 million in cost increases that could have been prevented if B/PB had taken cost-containment steps we have recommended since 1994.

A second report identified \$65 million in CA/T Project construction cost increases relating to ground movement, or "grout heave," that may be attributable to deficient work by B/PB.

The ground movement, associated with building the section of I-93 from Kneeland to Congress streets, appears to have shifted the Red Line subway tracks and station platform at South Station.

We believe it could have been prevented if B/PB had better anticipated the difficulty of the construction project; better prepared its contract specifications and conducted adequate ground monitoring.

In both reports we recommended that the Turnpike Authority require B/PB to explain cost overruns and any design, management, or other possible

errors that occurred under B/PB's watch. If responsible for these cost overruns, B/PB should pay for its mistakes.

In a third report we reexamined problems with ceiling installation in the Ted Williams Tunnel that we first identified six years ago. Our 1998 report found that ambiguous contract specifications and poor performance by the contractor had increased the ceiling's cost by \$850,000, money that has yet to be recovered.

We recommend that the Turnpike Authority pursue cost recovery against both B/PB and the Section Design Consultant.

The Turnpike Authority has been investigating these matters. This Office has been cooperating and assisting with the Turnpike Authority on this investigation.

Last February, *The Boston Globe* published a three-part series on mismanagement of the CA/T Project by B/PB, which detailed many of the problems we have been talking about for years. B/PB responded with a 17-page response.

In the interest of advancing the cause of cost recovery, we issued a point-by-point rebuttal to B/PB's reply. It is available on our website.

Big Dig Oversight Coordination Commission

This Office warned in May that the Central Artery/Tunnel (CA/T) Project Oversight Coordination Commission (Commission) was set to lose funding at the end of the fiscal year.

The Offices of the Attorney General, the State Auditor and the Inspector General comprise the Commission, which over the years has devoted significant time and resources to oversight of the Big Dig.

Despite our efforts, the Commission lost its funding on July 1, 2003. However, after extensive lobbying the state agreed to partial funding in April 2004. The Commission is expected to be fully funded in fiscal 2005.

New Bedford Oceanarium

The Office and the state Auditor reviewed a contract between New Bedford Oceanarium and a firm called Oceanarium Planning and Development Corporation (OPDC).

OPDC's founder, president and sole stockholder is Peter Nessen.

When the Oceanarium hired OPDC to plan and negotiate for the creation of a joint marine sciences research institute with the University of Massachusetts at Dartmouth (UMass/Dartmouth), Mr. Nessen was a member of the Board of Higher Education, which oversees the state university and college system.

Our review, performed at the request of a state legislator, found that inadequate documentation of OPDC's contract left it unclear why the group hired Mr. Nessen's consulting firm and how they arrived at either the initial \$400,000 fee or the \$400,000 contract renewal.

The records also failed to show whether Mr. Nessen met his obligations under the contract and suggest that the Oceanarium hired others to perform some of the work included in Mr. Nessen's contract.

Department of Revenue Cuts Could Cost Millions

This Office probed budget cuts at the Department of Revenue (DOR) and found that severe staff reductions have decimated the state's tax audit program. Audits of personal income tax are all but non-existent and corporate tax field audits have been sharply curtailed.

In a letter to Governor Mitt Romney, Senate President Robert Travaglini and House Speaker Thomas Finneran, we described how other states effectively generate cash by investing in auditing during budget crises.

In addition, a number of studies have shown that a high-profile audit program causes taxpayers to pay more of what they owe when filing a tax return.

This Office recommended that lawmakers consider providing resources to DOR for the purpose of strengthening the audit process.

Recovering Federal Funds

Following up on a study by the Massachusetts Institute for Social and Economic Research (MISER), this Office found that Massachusetts may be losing \$150 to \$500 million over the next decade in federal funding – including Medicaid funding – because the U.S. Census Bureau undercounts Massachusetts students.

We believe the Census Bureau's methodology underestimates the state's population by tens of thousands of people each year.

This Office asked Governor Mitt Romney, Senate President Robert Travaglini and House Speaker Thomas Finneran to support and fund MISER's efforts to appeal the 2000 census data.

In another letter, we suggested that lawmakers ask MISER to investigate – and fight – a proposed change in federal law that would cut the state’s Community Development Block Grants (CDBG) from \$130 million a year to as little as \$90 million.

Tax Increment Financing

This Office continued its review of the Tax Increment Financing portion of the Economic Development Incentive Program, including examining specific TIF agreements for compliance with state statutes and regulations as well as conformance with the program’s intent.

Banking Services Procurement

As the first step in developing a guide to banking services procurement, we sent a survey to all 351 municipal treasurers asking them about their practices.

We are currently analyzing the data we received and expect to publish the guide on our website in 2004.

Effective and Ethical Contracting

Town of Hanson Land Sale

Commenting on a plan to sell the former Plymouth County Hospital site in Hanson to Baran Partners, LLC, for a senior housing project, the Office noted that several promises of the developer went unmet. We recommended that the town insist on the previously agreed upon payment of \$219,000 at closing rather than accepting a promissory note payable five months later.

Town Hall Improvements in Millbury

The Office found the town violated state construction laws when it failed to solicit sealed bids for an \$18,000 project to install two new doors at town Hall or a \$42,000 project to install carpeting.

Our inquiries also halted the town's plan to enter into an unadvertised \$30,000 contract for a new telephone system.

Although the dollar amounts of all these transactions are small, we told town officials that they pointed to underlying weaknesses in their procurement practices that need to be addressed.

MBTA Commuter Boat Services

This Office reviewed the procurement by the Massachusetts Bay Transportation Authority (MBTA) of a five-year contract to provide commuter boat services from Hewitts Cove Marina in Hingham to Rows Wharf in Boston.

We found several procedural deficiencies that reduced the transparency and accountability of the process. We told the agency that these weaknesses, if left uncorrected, could undermine the fairness and effectiveness of future MBTA service procurements.

In response, MBTA General Manager Michael H. Mulhern said some of the problems we found had already been addressed by a recent revision of procurement policies. He also promised to review our recommendations.

Springfield Technical Community College

As required by Chapter 185 of the Acts of 1995, this Office reviewed a proposed property management agreement between the Springfield Technical Community College Assistance Corporation (STCCAC) and the Appleton Corporation.

Based on the information we reviewed, STCCAC conducted a competitive procurement. However, the resulting agreement did not detail payment terms. We recommended that the agreement incorporate specific payment terms.

Massport Central Garage Expansion Project

The Office worked with the Massachusetts Port Authority (Massport) and the Division of Capital Asset Management (DCAM) to develop alternative procedures for procuring design and construction services for the Central Garage Expansion Project.

Massport decided to model its procedures on the construction manager at risk system, which makes the contractor more accountable for the details, cost and length of the project.

Alternative procurement methods are permitted under Chapter 313 of the Acts of 1998, as amended in 2003.

Court Facilities Improvement Projects

This Office worked with the DCAM to develop construction manager at risk procedures to be used for design and construction of court facilities.

Chapter 189 of the Acts of 1998, as amended by Chapter 245 of the Acts of 2002, requires us to comment on the rules.

DCAM incorporated our major comments and recommendations into its final procedures.

School Construction Pilot Program

Chapter 28 of the Acts of 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 were Milton, Winchester, Brockton, Everett, Revere and Waltham.

The statute requires this Office to review all bidding documents and contracts prepared under the pilot program.

In 2003, we conducted three reviews of Chapter 28 construction-related documents.

In each instance, this Office granted approval. These documents were the city of Waltham's proposed contract with Jackson Construction Company for the construction of the New Plympton Elementary School; the bidding documents for the John F. Kennedy Middle School in Waltham; and the bidding documents for the New Ambrose Elementary School in Winchester.

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Operational Reviews

Illegal Contract in Braintree

The Office identified an illegal contract arrangement between the Braintree Water and Sewer Commission (Commission) and M.X. Messina Company (Messina), a local developer.

The deal called for Messina to reconstruct the Plain Street Lift Station in return for sewer permit fee credits. The agreement gave Messina permit fee credits equal to the total cost of the work, to be used on any parcels owned by Messina or “affiliated entities.”

In addition to failing to follow state bidding laws, the contract also failed to specify the cost of the reconstruction project, require Messina to document its expenditures or specify a completion date, leaving the Commission with almost no control over the project.

In fact, the cost of the reconstruction project – and the value of the sewer permit fee credit – was not determined for more than three years after the Commission signed the agreement with Messina. Messina reported expenditures of more than \$250,000.

Building Committee for Greenfield Middle School Renovation

The Office examined the actions of the town building committee overseeing the renovation of Greenfield Middle School and found that the volunteer panel did not provide effective fiscal and managerial oversight and failed to conduct its business in accordance with applicable laws.

Because of the lax oversight, numerous contracts failed to comply with legal requirements. The committee also bought too much furniture and equipment for the school and paid unnecessary processing fees to its owner’s representative.

We recommended that when cities and towns delegate responsibility for a major construction project to a volunteer building committee, they take several steps to tighten control over the project, including appointing a project manager and developing a project-specific oversight plan. We also recommended that municipalities provide building committee members with training in procurement laws and sound business practices.

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Real Estate Dealings

The Office reviews a variety of real property transactions each year to ensure that the public interest is adequately protected.

In addition, the Legislature frequently mandates that the Office review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties and municipalities. The Office provides a report on each appraisal to the Commissioner of 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.

We require that all real property appraisal reviews conducted at the direction of the Legislature follow the Uniform Standards of Professional Appraisal Practice (USPAP) published by the Appraisal Standards Board for the Appraisal Foundation.

The Office's appraisal reviews 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 are set forth in the Office's response.

Former Lawrence Mills in Lowell

This Office found mathematical errors – totaling \$156,000 – in the appraisal for land and buildings at the former Lawrence Mills in Lowell to be sold by DCAM to Riverfront Development, LLC (Riverfront).

Carrying out our responsibilities under Chapter 36 of the Acts of 1999, we also reviewed – and commented favorably on – the land disposition agreement (LDA), which called for Riverfront to redevelop the old mill buildings into condominiums and stores.

Former Metropolitan State Hospital in Lexington and Waltham

We reviewed the appraisal and land disposition agreement for some 23 acres at the site of the former Metropolitan State Hospital and found a minor calculation error in the LDA.

The LDA, which came out of a competitive bidding process, called for AvalonBay Communities, Inc., to build 430 rental units. Most of the apartments would be luxury units but some would be set aside for low-

income tenants and others would provide housing for clients of the Department of Mental Health.

The development is mainly in Lexington with a small portion in Waltham.

We noted that the LDA called for AvalonBay to pay less than the appraised value but that DCAM believes that improvements required in the agreement give the Commonwealth full value.

Chapter 309 of the Acts of 1996 required our reviews.

In January 2004, the Commissioner of DCAM wrote a letter to the Inspector General indicating that a correction had been made in accordance with the Office's recommendation.

In May 2004, the Commissioner sent an amendment to the LDA for our review. We approved the amendment, which among other things, reduced the development at the site to 387 rental units.

Former Belchertown State School

We reviewed DCAM's draft lease with the New England Small Farm Institute, Inc., for more than 400 acres of land and buildings at the former Belchertown State School to be used for a Small Farm Demonstration and Training Center.

The legislation requiring the lease, Chapter 664 of the Acts of 1986, calls for the lease price to be set at not less than fair market value for a period not to exceed 30 years.

The amended lease, which reflected recommendations we made in 2002, calls for the New England Small Farm Institute (Institute) to pay the Commonwealth \$1.00-a-year, plus "in-kind services" valued at \$22,000 per year (the appraised value as of April 2003), to be adjusted by the Consumer Price Index.

We identified several problems with the second draft of the lease, including the lack of any minimum maintenance requirement and restricted access to the Institute's records.

Former Boston State Hospital Site

We reviewed several documents related to the sale of about 18 acres at the former Boston State Hospital to Harvard Commons Limited Partnership to be developed by Cruz Development Corporation.

We believe the development is in keeping with the intent of Section 301 of Chapter 60 of the Acts of 1994, which calls for the creation of affordable housing; economically and environmentally sound redevelopment and support for mental health clients.

We expressed concern about news reports alleging that Cruz Management Corporation, a company related to Cruz Development, owed substantial fines to the city of Boston. DCAM said they would require Cruz to pay the fines before the property closing.

Other Appraisals

We also approved the appraisals for the following:

Land at the site of the former Foxborough State Hospital as detailed in Chapter 312 of the Acts of 1996;

Approximately 12.6 acres of State Police Academy land at 340 West Brookfield Road, New Braintree, described in Chapter 268 of the Acts of 2000;

About 1.7 acres of land in Harold Parker State Forest in North Reading subject to Chapter 173 of the Acts of 2001;

Easements on two other parcels of land inside Harold Parker State Forest off Winter and Salem streets in North Andover to be conveyed to Maritimes & Northeast, LLC for an interstate natural gas pipeline as described in Chapter 264 of the Acts of 2002;

Some 63 acres at the former Hingham Armory on Shipyard Drive in Hingham to be conveyed from the MBTA and the Department of Environmental Management to Sea Chain LLC for the Hingham Shipyard Redevelopment Project as spelled out in Chapter 171 of the Acts of 2001;

Approximately 22 acres of land at Medfield State Hospital described in Chapter 180 of the Acts of 2002 to be transferred from DCAM to Medfield's Water District with an easement interest as a Water Withdrawal Permit issued by the Department of Environmental Protection for the withdrawal of up to 200,000 gallons a day;

Two parcels on Ashfield Mountain Road in Ashfield – one owned by the Commonwealth and one privately held – as described in Chapter 418 for the Acts of 2002;

Some 11 acres of undeveloped land on Ricciuti Drive in Quincy to be leased to Mini-Fenway Park, Inc., for public recreational purposes in accordance with Chapter 183 of the Acts of 2002;

A swap of state-owned and town-owned land inside the Sandwich Wildlife Management Area on Quaker Meetinghouse Road in the town of Sandwich as described in Chapter 272 of the Acts of 2002;

A swap of land inside Upton State Forest on Lackey Street in Upton for a parcel off Plummer Road on the Blackstone River in Northbridge detailed in Chapter 231 of the Acts of 2000; and

A portion of a sewer line corridor easement within a Commonwealth sewer easement off Holt Road in North Andover as specified in Chapter 271 of the Acts of 2002.

Former Worcester County Land Disposition to West Boylston

The Office also approved three release deeds for approximately 61 acres that belonged to Worcester County and are being bought by the town of West Boylston for municipal uses.

We previously approved the appraisal for the land as directed in Chapter 125 of the Acts of 2002.

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 by answering inquiries, complaints and protests. The Office also formulates policy on M.G.L. c. 30B, the procurement law that local governmental bodies follow when they buy supplies, services, equipment and real property.

Training and Professional Development

The Office administers the Massachusetts Certified Public Purchasing Official (MCPPO) Program, which we created seven years ago. We designed the MCPPO program to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement.

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 helped in the development of the MCPPO program and the individual seminars that constitute the program.

Since 1997, close to 5,000 participants from local and state government have attended MCPPO seminars.

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. Therefore, it is important that state and local officials understand the process.

The MCPPO program meets the 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.

In 2003, the Office offered three basic three-day seminars: *Public Contracting Overview*, a prerequisite for other courses, that 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 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.

In addition to the core curriculum seminars in the certification program, the MCPPO program last year offered a new one-day *State Contracting Outline* seminar for state employees seeking DCAM's permission to manage construction projects.

The MCPPO program also offered various non-core curriculum seminars: *Bidding Basics and Contract Administration*; *Bidding for Better Results*, requested by local jurisdictions for more advanced procurement training; and *Local Government Real Property Transactions Under M.G.L. c. 30B*, a seminar developed to provide advanced training in the request for proposal (RFP) process for the acquisition and disposition of real property conducted by local public officials. There were also two individualized computer-based trainings: *Drafting a Model Invitation for Bids* and *Information Technology*.

The program's seminars, presented in locations around the state, attracted almost 300 attendees in 2003. The following table lists the number of seminars delivered and total attendance at each seminar throughout 2003.

Seminar	Number	Attendance
Public Contracting Overview	3	60
Supplies and Services Contracting	2	34
Design and Construction Contracting	4	99
Bidding Basics and Contract Administration	1	16
Bidding for Better Results	1	7
Local Government Real Property Transactions	1	18
State Contracting Outline	2	59
TOTAL	14	293

Each participant who successfully completes a seminar receives a certificate of completion. Public purchasing officials who complete required seminars and meet the educational and experience requirements become eligible to apply for various MCPPO designations. In 2003, there was a near 30 percent increase in certifications from the previous year; 66 participants earned one of ten possible MCPPO designation types, bringing to 493 the total number of new certifications awarded since 1998.

MCPPOs must maintain their knowledge and skills and document continuing professional education to achieve re-certification every three years. In 2003, 17 public purchasing officials fulfilled the renewal requirements and were re-certified by the Office, bringing the total number of re-certifications received to 27 since 2002.

The following table illustrates the designations awarded by the Office in 2003.

2003 Designations	Number Awarded
MCPPO	38
Associate MCPPO	5
MCPPO for Supplies & Services Contracting	7
Assoc. MCPPO for Supplies & Services Contracting	5
MCPPO for Design & Construction Contracting	1
Assoc. MCPPO for Design & Construction Contracting	1
MCSPPO	3
MCSPPO for Design & Construction Contracting	4
Assoc. MCSPPO for Design & Construction Contracting	2
Re-certifications	17
TOTAL	83

Outside the MCPPO program we also provided speakers on public procurement laws at programs sponsored by the UMASS Donahue Institute's 2003 Chief Fire Officer Management Training Program; Massachusetts Collectors and Treasurers Association; the Massachusetts Municipal Auditors and Accountants Association; the Massachusetts Association of School Business Officials; the Massachusetts Facilities Administrators Association; the Massachusetts Association of Public Procurement Officials; the Massachusetts Association for Pupil Transportation; the Brookline Town Meeting Members Association; the

Berkshire County District Highway Superintendents Association and the Attorney General's 2003 Municipal Forum.

The topics of those talks included Municipal Bid Laws; Procuring Banking Services; School Construction Issues; Designer Selection – How to Get the Best Fit for Your Project; Proposed Changes in Procurement Laws; Bidding Basics; Government Contracting and Procurement and Transportation Contracts.

Inquiries, Complaints, and Protests

In 2003, the Office responded to more than 2,000 inquiries about M.G.L. c. 30B and other public bidding laws, resulting in close to 2,500 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 following pages offer a sample of the local procurement cases we reviewed in 2003.

Hale Hospital and Glynn Memorial Nursing Home

The city of Haverhill sold the former Glynn Memorial Nursing Home for \$779,000 thanks to our recommendation to seek an independent appraisal and solicit bids for the property.

The lucrative sale offered a sharp contrast to the city's earlier plan to sell the former nursing home to Essent Healthcare Inc, the company that purchased Hale Hospital in 2000, for less than \$200,000.

In a series of letters, we insisted that Haverhill use a competitive process to sell the former nursing home. We also argued against special legislation that would have waived the state's bidding laws to allow the non-competitive sale.

In the process, we also investigated allegations that Essent and another bidder conspired to keep the nursing home's sale price down. We found no evidence of collusion.

Our insistence on independent appraisals helped the city set the minimum bid price for the former nursing home at \$750,000. The winning bidder, Kapasi Associates, proposed using the ground floor of the building for doctors offices and the first floor for a center for alternative medicine.

Athol Fire Station

We encouraged the town of Athol to rebid the sale of a former fire station after the town counsel concluded that the original solicitation process had violated state law.

Before our intervention the Board of Selectmen – following the town counsel's advice – had voted to proceed with the sale to Mercury Properties Group, Inc. rather than face a potential breach of contract suit.

We pointed out that the Supreme Judicial Court had previously invalidated a contract that did not follow public bidding procedures.

We recommended that Athol restart its disposition process in compliance with M.G.L. c. 30B. The town followed our recommendation.

Bellingham Public Schools Child Care Services

This Office reviewed an agreement between Bellingham Public Schools and the YMCA to provide child care services both before and after school from September 1 to December 31, 2003. There was no competitive process used to procure this agreement.

However, since the YMCA's use of space was non-exclusive, we believe that the agreement was a license – rather than a lease – and, therefore, not subject to the requirements of M.G.L. c. 30B, §16.

RFP Process for Dorchester Land

This Office found fault with the city of Boston Department of Neighborhood Development's (DND) request for proposal process to dispose of three parcels of land on Pierce Street in Dorchester.

The selection criteria of the RFP required proposers (or a proposer's selected home builder) to have prior construction experience but failed to say DND planned to give preference to builders with experience in Boston.

However, the evaluation records showed that proposers without building experience in Boston were ranked lower than those who had Boston experience.

We recommended that DND redraft the RFP to include all evaluation criteria along with the ranking for each criteria.

Town of Cohasset Senior Housing Project

This Office examined a contract between GLC Development Resources LLC (GLC) and the town of Cohasset for services related to a proposed senior housing project.

The town said GLC was providing design services and, therefore, fell within M.G.L. c. 30B's exemptions.

However, our review of documents in the case found that not all of GLC's services – for instance, a rental revenue projection - fell under the designer exemption.

We advised the town that the non-design services had to be bid despite being part of a contract including design services and that its failure to bid the non-design services could invalidate the contract and prevent payment.

Gateway Regional School District

This Office reviewed Gateway Regional School District's (Gateway) invitation for bids (IFB) for furniture, furnishings and equipment, written by Caolo & Bieniek Associates, Inc., and found, among other things, that the specifications were too vague to permit meaningful competition.

We recommended that Gateway cancel the IFB, redraft it and start over.

Lynn Release of Deed Restriction

This Office looked at the city of Lynn's plan to waive a lease restriction on a property sold for \$825 a decade ago on the condition that it be used only for parking or landscaping.

Although removal of deed restrictions after a public RFP process can raise questions of fairness, we found that in this case, because so much time had passed, favoritism did not seem to be an issue.

We recommended the city determine the value of the deed restriction and seek compensation for removing it either through an RFP process or through a negotiated sale – depending on whether the value was above or below \$25,000.

Sassamon Trace Golf Course

We reviewed two contracts involving Sassamon Trace Golf Course in Natick.

The first was a contract with Griffin Engineering Group, LLC (Griffin) for environmental monitoring of the municipal golf course.

The town, according to documents we examined, first entered into an engineering services contract with Griffin in connection with the construction of the golf course.

When construction was finished the town hired Griffin - without following proper procurement procedures - to provide environmental monitoring.

While the engineering services contract appeared to fall under M.G. L. c. 30B's exemption for design contracts, the environmental monitoring contract clearly did not.

Since a contract made in violation of M.G.L. c. 30B is not valid and no payment may be made under such contract, we recommended that the town conduct an IFB or RFP process for the remainder of the environmental monitoring work in accordance with M.G.L. c. 30B.

We noted that if the time required to comply with state procurement laws would endanger the health or safety of people or their property, Natick's procurement officer could make an emergency procurement.

We also reviewed whether the town's evaluation of responses to an RFP for the operation and management of Sassamon Trace Golf Course and whether the town properly documented its rationale for the contract award.

It appears, based on the documents we reviewed, that the town received five proposals in response to its RFP.

The town determined that the proposal submitted by Sterling Golf Management, Inc. was the only proposal that met all of the minimum evaluation criteria set forth in the RFP. The town also determined that Sterling Golf Management, Inc. met all of the comparative evaluation criteria for a highly advantageous proposal.

Since the town only received one proposal that met the minimum evaluation criteria, the town's failure to complete the comparative evaluation phase of the RFP process did not invalidate the contract. M.G.L. c. 30B requires that only proposals which meet the minimum evaluation criteria be evaluated using the comparative evaluation criteria.

Pioneer Valley Planning Commission

This Office examined the Pioneer Valley Planning Commission's RFP for engineering and consulting services.

We determined that not all of the services described in the RFP – including a market study and a safety and security analysis - are exempt from the M.G.L. c. 30B procurement procedures under the exemption for designers.

We recommended that the planning commission follow M.G.L. c. 30B to procure the entire contract.

Rockland's Contract with USFilter

The town of Rockland cancelled its contract with USFilter for the operation of the town's sewer treatment plant after an investigation by this Office found the contract may have been illegal.

A separate forensic investigation conducted by the town's consultant, Melanson, Heath & Company, of the Rockland Water and Sewer Commission, as well as public allegations of malfeasance by the former superintendent of the Sewer Department and a former employee of USFilter, raised serious questions about the propriety of continuing the present contractual relationship between Rockland and USFilter.

Since the information seems to indicate that USFilter may not have been selected through a legitimate, open and competitive process, the legal status of the current contract is uncertain.

Contracts awarded in violation of M.G.L. c. 30B are invalid and no payments can to be made pursuant to such contracts.

Anna Parker Soccer Field in Saugus

We reviewed – and found several problems with - a recent RFP process conducted by the town of Saugus to lease the Anna Parker Soccer Field.

The Saugus Youth Soccer Association (SYSA) submitted the only proposal in response to the RFP and obtained a lease for a term of eight years with an option to renew for an additional four years.

We believe the process was flawed because the RFP did not include terms that were later incorporated into the lease. Many of the new terms were favorable to SYSA and may have been prejudicial to a fair competition.

We recommended that Saugus include lease terms and conditions in future RFPs for the rental of town-owned property. We also recommended that the town enter into a supplemental agreement permitting the town to oversee and audit construction costs.

Wayland Public Safety Communications Equipment

We reviewed the town of Wayland's RFP for public safety communications equipment and services.

Although Wayland purchased telecommunications equipment under a statewide contract with Comtronics, some of the equipment included in Comtronics' proposal was not part of its statewide contract.

Purchases using statewide contracts are exempt from M.G.L. c. 30B.

However, if Wayland bought equipment Comtronics did not include on the statewide contract without a competitive process, the town violated state bidding laws.

We recommend that before municipalities make purchases from statewide contracts, they check the contract to ensure that the purchase is actually covered by the statewide contract, rather than relying on a vendor's statement that the entire purchase is covered under the statewide contract.

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 2003, 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 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 2003, the *Procurement Bulletin* included articles on real estate dispositions, general contractors and school bus transportation bidding.

Current and past issues of the *Procurement Bulletin* can be downloaded, as well as the following procurement publications that are available from the Office's website.

- *Vehicle Trade-Ins Under M.G.L. c. 30B;*
- *M.G.L. c. 30B Advisory: Insurance Consultants Must Be Licensed;*
- *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property;*

- *Designing and Constructing Public Facilities; and*
- *Practical Guide to Drafting Invitations for Bids and Requests for Proposals.*

Legislative Reviews

The Office is obligated under its enabling statute, M.G.L. c. 12A, to review all legislation filed in each Legislative session. When appropriate, the Office provides written and oral testimony to the Legislature and the Governor on proposed legislation; often, the Office recommends specific amendments to bills. In the 2003-2004 session, the Office commented on hundreds of pieces of legislation. This section highlights some of the legislative reviews conducted by the Office during 2003.

Construction Reform

This Office played an integral role in drafting construction reform legislation designed to save money for cities and towns by adding flexibility to the procurement process while increasing local accountability to taxpayers.

Senate 2358, developed by a 20-member panel including the Inspector General, was released in May 2004.

State Facilities Lease Agreements

This Office wrote to the Joint Committee on State Administration in opposition to House No. 1207. This legislation would waive the requirements of M.G.L. c. 7 and other applicable laws in order to allow DCAM, on behalf of the Department of Environmental Protection (DEP), to renegotiate unspecified facility leases in order to obtain reduced lease rates for the remaining period of the existing leases and to approve noncompetitive extensions of such leases for up to three years beyond the ten-year limit imposed by M.G.L. c. 7.

This Office advised that the most effective method of obtaining reduced lease rates for Commonwealth agencies is to harness the forces of the competitive marketplace through the advertised process mandated by M.G.L. c.7. By granting blanket authority to DCAM to extend any and all DEP leases for three years, House No. 1207 would deprive the taxpayers of the benefits of market competition.

This Office recommended that, if there were compelling reasons to extend specific DEP leases, House No. 1207 should be amended to identify those leases and state the justification for forgoing competition. Moreover, any such legislation should contain pricing safeguards to ensure that the lease rates governing the extensions compare favorably with lease rates available in the commercial marketplace.

The Committee ordered House No. 1207 to a study.

William Russell Allen House in Pittsfield

This Office wrote to the Joint Committee on State Administration to oppose House No. 2534. This legislation would waive the planning and disclosure requirements of the state's real property law in order to direct DCAM to lease the William Russell Allen House to the Berkshire Regional Retirement Board for a term of 99 years.

We recommended several changes be made to the bill if the Legislature determined that special legislation should be enacted to authorize the disposition of this property to the Berkshire Regional Retirement Board.

Among other things the bill should: state the purpose of the disposition and any use restrictions; precisely identify the property to be conveyed; require an independent appraisal to establish the fair market value; require the property to revert to the Commonwealth in the event that the property is not used for the intended purpose; and require that the disposition be subject to the requirements of M.G.L. c.7, §40J.

The Committee amended House No. 2534 with recommendations from this Office.

Trust Capital Asset-Land Transfer

This Office sent a letter to the Joint Committee on State Administration opposing House No. 3700. The bill would waive the Ward Commission safeguards contained in the state's real property law in order to direct DCAM to convey a certain parcel of land to named parties.

We saw no public policy justification for authorizing the unadvertised disposition to a named private party of state-owned property that may not be surplus to the needs of the Commonwealth or other public entities.

However, if the Legislature determines that special legislation should be enacted to authorize this disposition, we recommended that they include the same safeguards we added to the William Russell Allen House transaction.

A new draft of the bill was substituted – No. 3985 – which incorporated this Office's recommendations.

Authorizing Braintree to Lease Certain Property

This Office sent a letter to the Joint Committee on Local Affairs and Regional Government in regard to House No. 4098. House No. 4098

would allow the town of Braintree to lease the Watson Park Branch Library to the Braintree Historical Society or another approved entity notwithstanding M.G.L. c. 30B.

We recommended that the bill be amended to be subject to M.G.L. c. 30B, §16.

House No. 4098 became law, Chapter 120 of the Acts of 2003, without incorporating the recommendation of this Office.

Fitchburg Housing Authority

We sent a letter to the Joint Committee of Local Affairs regarding House No. 4242. This bill would authorize the Fitchburg Housing Authority to convey a certain parcel of land located in the city to a named party, Habitat North Central Massachusetts, notwithstanding M.G.L. c. 30B.

Understanding that the Housing Authority no longer needed the parcel and would like to convey the parcel for its original intent, affordable housing, we still believe the Housing Authority would achieve its intended public purpose for the use of this property by complying with M.G.L. c. 30B §16 (a), (b) and (g).

House No. 4242 received passage to be engrossed with this Office's recommendation.

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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 seven legislative proposals submitted for consideration in the 2003-2004 legislative session.

House 50, An Act Clarifying Oversight by Municipal Financial Officers of Municipal Light Department Expenditures

The first proposal clarifies the role and responsibilities of public officials pertaining to reviewing expenditures and activities of municipal light plants. This 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 ensures that M.G.L. c. 164, §§56A-56D and §63 are applicable to both municipal light boards and commissions of cities and towns.

House 51, An Act to Raise Public Bidding Thresholds

The second proposal would raise bidding thresholds for public works construction projects and building projects. The bidding thresholds need to be updated to reflect the rising cost of public construction projects.

House 52, An Act Providing for Reform in Public Construction

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

House 53, An Act Making Technical Changes to Chapter 7 and Chapter 30B

The fourth proposal clarifies a definition in the Designer Selection Law, M.G.L. c. 7, §§38A½ - O. Chapter 237 of the Acts of 2000 amended these sections of chapter 7; however, the terms used are not consistent with those used in other sections of the law. This proposal corrects that inconsistency in order to clarify its meaning. Additionally, this bill amends

M.G.L. c. 30B, §4(a) by permitting awarding authorities to utilize an RFP process for contracts under \$25,000.

House 54, An Act Repealing Certain Exemptions to Chapter 30B

The fifth proposal would repeal two unnecessary Chapter 30B exemptions. Contracts for police ordered towing and storage of motor vehicles and trash and recyclable collections would be subject to the bidding requirements of the Uniform Procurement Law.

House 55, An Act Concerning Proprietary Specifications in Public Construction

The sixth proposal would clarify the requirements of M.G.L. c. 30, §39M in the preparation of competitive and non-competitive bids and proposals. This proposal would clarify existing confusion regarding proper use of proprietary specifications.

House 56, An Act to Increase Penalties to the Federal Levels for Bid Rigging and Conspiracies in Restraint of Trade

The seventh proposal would increase the penalties for bid rigging and conspiracies in restraint of trade to the federal level. Presently, the Commonwealth's antitrust statute is inadequate to protect the citizens against such flagrant crimes as bid rigging. This practice harms municipalities within the Commonwealth; it forces them to pay much more for their necessary goods and services.

Listing of 2003 Reports and Publications

MBTA Procurement of Commuter Boat Services, January 2003.

Promulgation of Inspector General's Chapter 28 School Construction Subcontracting Procedures, January 2003.

Information on Chapter 28 of the Acts of 2002, A School Construction Pilot Program, February 2003.

Vehicle Emissions Test Results Under the Massachusetts Motor Vehicle Inspection Program, February 2003.

Inspector General's Proposed Reforms to the Public Bidding Laws, February 2003.

Management Update on Two Charter Schools, February 2003.

A Recommendation for Cost Recovery Against the Big Dig's Management Consultant: Grout Heave-Related Contractor Claims on the C11A1 Contract, February 2003.

Analysis of Bechtel/Parsons Brinckerhoff's Reply to *The Boston Globe's* Investigative News Series Concerning the Big Dig, February 2003.

Completion of the Greenfield Middle School Renovation Project: Building Committee Oversight, September 2000 - August 2001, February 2003.

Braintree's Sewer Permit and Sewer Bank Program, May 2003.

Investigation Leads to State Ethics Commission Fine for Greenfield Police Chief, June 2003.

The City of Quincy: Investigation into the Removal of Records and Erasure of Computer Files from the Former Mayor's Office, June 2003.

M.G.L. c. 30B Advisory: Insurance Consultants Must Be Licensed, June 2003.

Investigation of DEP's Administration of the Massachusetts Motor Vehicle Inspection Program, July 2003.

Favoritism and Private Gain in the Assignment of Boat Moorings in the Town of Harwich, July 2003.

Proprietary Specifications in Public Construction Projects, July 2003.

Disposition of Hale Hospital and Glynn Memorial Nursing Home Under M.G.L. c. 30B, §16, August 2003.

Proposal to Pursue Big Dig Cost Recovery: Ceiling Installation in the Ted Williams Tunnel, October 2003.

A Review of the Contract Between the New Bedford Oceanarium and the Oceanarium Planning and Development Corporation, November 2003.

Misappropriation of Public Property at Medfield State Hospital, December 2003.

Contractor Gifts to Chicopee Electric Light Employees, December 2003.

A Big Dig Cost Recovery Referral: Contract Mismanagement by Bechtel/Parsons Brinckerhoff May Have Increased Big Dig Costs, December 2003.