



Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2004 Annual Report

May 2005



The Commonwealth of Massachusetts
Office of the Inspector General

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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.

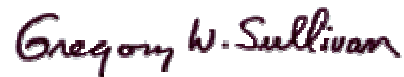
Among the highlights for 2004:

- A case, pursued jointly with the Massachusetts Attorney General and the Massachusetts State Police, that resulted in the indictment of 11 individuals and five companies charged with defrauding the Everett Public School system. Thus far, three individuals and two companies have pleaded guilty in the case.
- The Department of Environmental Protection's admission – nearly two years after the Office of the Inspector General first identified problems with the state's vehicle inspections program – that the program needed improvement. In June, state officials announced that contractor Agbar Technologies planned to spend \$15 million to fix the troubled inspection program.
- The Inspector General's continuing investigation of Bechtel/Parsons Brinckerhoff's management – and mismanagement – of the Central Artery/Tunnel Project.

- A review of the way the Operational Services Division awards the statewide contracts that executive branch agencies must use to purchase goods and services, which led to changes in the agency's management practices and its leadership.
- The new task of auditing the Uncompensated Care Pool that pays for healthcare for the state's uninsured population.
- The Inspector General's role in drafting and implementing Chapter 193 of the Acts of 2004, "An Act Further Regulating Public Construction in the Commonwealth."

Additional copies of this report are available on our website www.mass.gov/ig or from the Office of the Inspector General.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

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Introduction

The Massachusetts Office of the Inspector General is the oldest state-level inspector general in the nation.

It 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, nicknamed the Ward Commission in honor of its chairman John William Ward, produced a 12-volume report documenting massive fraud and waste and detailing legislative recommendations for reform.

“Corruption is a way of life in the Commonwealth of Massachusetts,” Ward, who resigned his post as president of Amherst College to devote all his energies to investigating public corruption, wrote in his fiery introduction to the commission’s final report. “It was not a matter of a few crooks, some bad apples which spoiled the lot. The pattern is too broad and pervasive for that easy excuse.”

Part of the Ward Commission’s solution was to create an independent Office of the Inspector General. The commission also recommended creating a new Office of Campaign and Political Finance and an Ethics Commission.

“The basic concept behind the Office of the Inspector General is that any institution, a corporation, a university, let alone the institution of government, must build into itself a mechanism for self-criticism and self-correction,” Ward continued. “To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste in the procurement of many millions of dollars of goods and services by the Commonwealth, the Commission designed the Office of the Inspector General to be a neutral, impartial and independent office to fulfill that critical function.”

The idea of an independent Inspector General was controversial 25 years ago. For months, the attorney general refused to fill the position. Finally, the Legislature amended the law to allow a majority vote of the attorney general, auditor and governor – rather than a unanimous vote – to fill the post and Joseph R. Barresi became the state’s first inspector general. Barresi served a decade in the office, the legal maximum. Robert A. Cerasoli replaced Barresi in 1991. Gregory W. Sullivan became acting inspector general when Cerasoli departed and was appointed the state’s third inspector general in 2002.

The post remains controversial today – three of the last four governors have tried – and failed – to eliminate the Office of Inspector General.

The Massachusetts Inspector General 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 Inspector General the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and non-criminal violations of law.

The Inspector General employs a staff of experienced specialists, including investigators, lawyers, a certified public account, an architect, computer experts and analysts to investigate waste, fraud and abuse in government. In addition, the Inspector General's office also has attorneys specializing in procurement to assist local governments with best value contracting under the Uniform Procurement Act, M.G.L. c. 30B. The Inspector General also certifies public procurement officials through the 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 of the Inspector General. In 2004, the members of the council were:

Auditor Joseph DeNucci, Attorney General Thomas F. Reilly, Comptroller Martin J. Benison, Secretary of Public Safety Edward A. Flynn, James T. Morris, Alan MacDonald, John M. Callahan and Thomas O. Moriarty.

The Inspector General receives numerous complaints alleging fraud, waste or abuse in government. The staff evaluates each complaint to determine whether it falls within our jurisdiction and merits action. Some complaints lead to extensive investigations. The Inspector General closes others almost immediately – after a preliminary inquiry fails to substantiate the allegations.

When the staff completes a project, the Inspector General usually issues a letter or report detailing findings and recommending reforms to prevent future problems. The Inspector General reports information concerning criminal or civil violations of law to the appropriate authorities, including the Massachusetts Attorney General and the U.S. Attorney for the District of Massachusetts.

Investigations

The Inspector General's investigations of criminal and civil violations of law arise from a variety of sources, including complaints, information developed during the course of other reviews and activities, and requests for review and assistance by other investigative agencies such as local and state police and the attorney general. The Inspector General forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside the Inspector General's jurisdiction or would more appropriately be handled by another agency.

In 2004, the Inspector General reported complaints to a host of agencies, including: the Federal Bureau of Investigation; the Massachusetts Office of the Attorney General; the Massachusetts State Police; the State Ethics Commission; the Massachusetts Department of Housing and Community Development; the Auditor of the Commonwealth of Massachusetts' Bureau of Special Investigations; the Office of Child Care Services; the state Division of Employment and Training; the United States Attorney for the District of Massachusetts; 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 the Inspector General pursued last year.

Everett Indictments

The Office of the Inspector General, the Massachusetts Attorney General and the Massachusetts State Police in March announced 41 counts against 11 individuals and five companies charged with defrauding the Everett Public School system.

The indictments alleged that at least 63 contracts worth more the \$552,000 were obtained by fraudulent means including conspiracy, procurement fraud, bid rigging, bid splitting, presentation of false claims, larceny, receiving stolen property and kickbacks between local businessmen and Everett Public School employees from 1998 to 2003.

As a result of the investigation initiated by the Inspector General, Everett Superintendent of Schools Frederick Foresteire was also indicted on one count of receiving stolen property. The indictment alleges that Everett Public School maintenance manager, Lona DeFeo, and Foresteire's ex-brother-in-law Louis Grande stole two Everett Public School air conditioners worth over \$1,850 and had them installed at Foresteire's home.

Grande was the largest benefactor in the alleged plan to defraud the Everett Public Schools. Grande allegedly participated in numerous bid-rigging and kickback schemes with two other “straw” companies to get around the commonwealth’s sealed bidding process and receive Everett Public School contracts worth over \$250,000.

In the fall of 2004, three individuals and two companies pleaded guilty to charges arising from the Inspector General's investigation and agreed to pay restitution to the city of Everett for the benefit of the schools and fines to the state:

- Anthony Fabrizio, Sr., of Burlington pleaded guilty to conspiracy to commit procurement fraud;
- Roy A. Merenda of Malden, individually and as the owner of Roy Merenda & Sons, pleaded guilty to one count each of procurement fraud and conspiracy to commit procurement fraud; and
- Victor Silva of Haverhill, individually and as the owner of United Building Services pleaded guilty to one count each of procurement fraud and conspiracy to commit procurement fraud.

Rockland Guilty Plea

In September, the former Rockland Sewer Superintendent pleaded guilty to embezzling approximately \$330,000 from the town and was sentenced to 18 months in the Plymouth County House of Corrections.

An official from U.S. Filter, the company that ran Rockland’s sewer plant, also pleaded guilty to embezzlement and the pair were ordered to return the stolen money to Rockland.

The guilty pleas grew out of a 2003 investigation involving the Office of the Inspector General that uncovered the embezzlement. Among other things, the investigation found that the U.S. Filter employee helped the sewer superintendent steal approximately \$50,000 of the money before the town signed its management contract with U.S. Filter in 1998.

Since the embezzlement raised questions about the validity of the contract, the Inspector General recommended that Rockland officials fire U.S. Filter, which they did. The town is currently suing U. S. Filter for more than \$1.6 million.

Vehicles Emissions Inspections

In June 2004 – nearly two years after the Office of the Inspector General first pointed out problems with the state’s vehicle inspections program – the Department of Environmental Protection announced that contractor Agbar Technologies planned to spend \$15 million to fix the program.

The Inspector General’s long-running investigation found that Massachusetts’ test system was so flawed that some 150,000 cars that

actually met the state's emissions standards got a failing grade – forcing their owners to spend as much as \$400 for unnecessary repairs. The Inspector General continues to advocate for rebates for those motorists.

Agbar has until April 2006 to create a reliable testing program for Massachusetts. The Inspector General looks forward to evaluating the improved system.

Boat Moorings Stripped from Private Hands

Change rippled through harbors from Cape Cod to Boston as a result of the Inspector General's July 2003 report, "Favoritism and Private Gain in the Assignment of Boat Moorings in the Town of Harwich."

The investigation found that Harwich Port Boat Works, a private business, controlled many town-owned moorings and leased them to favored customers.

State law requires that the local harbormaster control and assign boat moorings in public waters.

In January 2004, the Harwich Board of Selectmen issued a new Harbor Management Plan that placed control and assignment of boat moorings located in town waters with the Harwich harbormaster as required by state law.

The Inspector General's continuing efforts found similar problems in Quincy and Boston. Both cities responded to the Inspector General's findings by establishing fees for boat moorings. Boston's ordinance also instituted new fees for boat slips.

The Boston ordinance, approved by the Boston City Council in May, requires the identification of all boat owners using slips and moorings in Boston-owned waters. City officials say this will enhance public safety and allow the city to collect permit fees from boat owners, offsetting the high cost of providing police and fire protection for boats moored in Boston Harbor and reducing Boston taxpayers' burden.

In Quincy, the Inspector General found that nearly 300 boat moorings located in city-owned waters were not under the direct control of the Quincy harbormaster as required by state law. The Inspector General's investigation also discovered that private businesses controlled the vast majority of these moorings and were assigning them to boat owners at their discretion.

In June 2004, the Inspector General recommended to the mayor of Quincy that the city take control of all boat moorings in city waters and create a written procedure for the assignment of new and vacant moorings from a waiting list.

In September 2004, the Quincy harbormaster announced that he had created new regulations that would give him control over boat moorings in

Quincy waters. He said the city also planned to create a permit fee for all moorings in Quincy-owned waters. City officials estimated that the new fees would generate \$250,000 to \$300,000 to fund maritime improvements.

Rockland Water and Sewer Plan Halted

The town of Rockland and state officials halted special legislation that would have authorized the town to provide water and sewer service to more than 220 acres of Hingham land owned by developer A.W. Perry, Inc., after an investigation by the Office of the Inspector General revealed the developer's benefit in the proposed law.

A.W. Perry, Inc., whose lawyers wrote the legislation, represented it as necessary to allow Rockland to provide water and sewer services for a new Blue Cross and Blue Shield building in Hingham. The proposed building would sit on the border of the two municipalities and would be most easily accessed through Rockland. However, Rockland needed special legislation to supply water and sewer services to the neighboring town.

During an August 2004 public hearing, A. W. Perry's executive vice president told the Rockland Board of Selectmen that the legislation only involved the 32-acre lot slated for the Blue Cross and Blue Shield building. Following that hearing, the Rockland Board of Selectmen voted in favor of the bill, clearing the way for state action.

However, an investigation conducted by the Office of the Inspector General found that the proposed legislation would in fact authorize Rockland to provide water and sewer service to more than 220 acres of Hingham land owned by A. W. Perry. The broad authorization would have allowed A. W. Perry to develop the land without going to the Rockland Water and Sewer Commission for approval.

The Inspector General brought his findings to the attention of the Massachusetts Legislature, the Governor of the Commonwealth and the Rockland Board of Selectmen. As a result, the governor vetoed the proposed legislation and the Rockland Board of Selectmen withdrew their support for the bill.

The bill was rewritten to limit the authorization for water and sewer service to the 32-acre Blue Cross and Blue Shield site. The Rockland Board of Selectmen approved the rewritten bill in October 2004. The Massachusetts Legislature and the Governor also approved the rewritten.

Braintree Electric Light Employees Fined

The general manager and the electrical engineering manager of the Braintree Electric Light Department acknowledged violating the state's

conflict of interest law and agreed to pay fines following an investigation by the Office of the Inspector General.

In June 2004, the State Ethics Commission fined the general manager, Walter R. McGrath, \$2,000 for violating the state's conflict of interest law by failing to disclose friendships with and entertainment by employees of Power Line Models, a vendor doing business with the light department.

Hugh Joseph Morley, the light department's electrical engineering manager, paid a \$3,000 fine in October 2004 for accepting free golf and Red Sox tickets from employees of the same company.

The Inspector General referred the case to the Ethics Commission after an extensive investigation of the Braintree Electric Light Department. The investigation found that numerous items of substantial value had been bestowed upon the light department's general manager, engineering manager, district supervisor and foreman by vendors under contract with the light department. These gifts included golf outings, lunches, as well as major league baseball tickets.

The Inspector General's report, "Contractor Gifts to Braintree Electric Light Department Employees," was released in October 2002.

Operational Services Division

The Office of the Inspector General explored several aspects of the Operational Services Division and the statewide contracts that state law requires executive branch agencies to use.

The Inspector General found that School Specialty, Inc., the state's approved vendor for school and art supplies, was charging school districts that bought supplies through the statewide contract more than districts that conducted independent procurements. The Inspector General's review found that School Specialty's underpricing violated the Most Favored Customer clause inserted in the statewide contract to guarantee state-sponsored customers the best price.

In a May 2004 letter and subsequent meeting, the Inspector General pushed the state purchasing agent to remedy the situation. In response, the Operational Services Division forced School Specialty to account for the overcharges by temporarily reducing prices on the statewide contract and providing future discounts to Massachusetts' customers.

In January 2005, the Operational Services Division announced it was adding a second company – and competition for School Specialty – to the contract.

Another review found that the Operational Services Division was doing a poor job of harnessing technology to get the best prices for the goods and services the commonwealth buys. In an August 2004 letter, the Inspector General urged the state purchasing agent to increase his use of "reverse

auctions,” on-line bidding forums that drive the price of goods and services down rather than up. The state purchasing agent agreed.

Finally, in December 2004, the Inspector General wrote to the state purchasing agent criticizing “A Deal Too Good To Pass Up,” a procurement loophole sanctioned by the Operational Services Division. Under the “Deal Too Good To Pass Up” loophole, any agency “presented with a great ‘deal’” can bypass the competitive process and simply post a notice that it plans to accept the “deal.”

In response, the state purchasing agent pledged to increase monitoring of “Deal Too Good To Pass Up” procurements.

The Inspector General’s reviews of state procurement procedures also sparked an inquiry by the House Committee on Long-Term Debt and Capital Expenditure, which issued a preliminary report in December.

In January 2005, the administration replaced the state purchasing agent, promoting one of his deputies to the top procurement job. The administration also included a package of procurement reforms – many of which mirrored the Inspector General’s recommendations – in its fiscal 2006 budget proposal.

Tax Credits

The Inspector General wrote a letter to the commissioner of the Department of Revenue in January asking him to examine the Economic Development Incentive Program tax credit and determine whether companies are abusing a program designed to create jobs in the state’s most-depressed communities.

The letter pointed to \$10.5 million in tax credits, including two handed to two multi-billion-dollar companies – insurance giant Manulife Financial and Affiliated Managers Group, an investment management firm – to relocate to prestigious addresses. Affiliated Managers Group got its tax credit after they decided to relocate to a mansion in Beverly. Manulife got its tax break after most of the construction on its offices on the South Boston waterfront was complete.

The tax credit was designed to attract companies to “economically-distressed areas” of the state.

The Inspector General urged the Department of Revenue and the Department of Business and Technology to improve their oversight of the program, which has handed out tax credits worth hundreds of millions of dollars. The letter also asked the revenue department to examine each tax credit to determine whether it complied with the law, to revoke any tax credits taken under false pretenses, and recoup any money owed to the commonwealth.

Following the Inspector General's report, the Legislature asked the Department of Revenue to examine Economic Development Incentive Program tax credits and determine whether any of the money should be returned to the commonwealth. The Legislature is still awaiting this report.

Big Dig Cost Overruns

The Office of the Inspector General continued to focus substantial resources in 2004 on investigating Bechtel/Parsons Brinckerhoff's management – and apparent mismanagement – of the Central Artery/Tunnel Project.

In 2004, the Inspector General issued two reports that made specific cost recovery referrals to the Massachusetts Turnpike Authority's Cost Recovery Team: one concerning trench drain failures in East Boston and another outlining Bechtel's responsibility for the project's cost overruns. The Inspector General also joined with the state Auditor to call the Cost Recovery Team's attention to \$35 million spent on patching leaks in the Interstate 93 tunnel – before the September leak that gushed 300-gallons-a-minute of water onto the roadway.

These reports identified specific management lapses by Bechtel that may have led to more than \$155 million in Big Dig cost increases. They are currently under review by the state Attorney General.

In March, the Massachusetts Turnpike Authority filed a \$146 million breach-of-contract lawsuit against Bechtel, claiming the Big Dig managers failed to disclose the true cost of the project to state officials in order to increase their profits.

Much of the lawsuit is based on the Inspector General's 2001 report, "A History of Big Dig Finances 1994 – 2001."

The \$146 million includes the profits and incentive fees that Bechtel claims to have made for its work on the Big Dig. Bechtel's entire contract will exceed \$2.2 billion by project's end. The report detailed how state, federal and Bechtel officials acted to conceal the true cost of the Big Dig for six years. This could not have been done without the active support of Bechtel. The report also disclosed how Bechtel provided misleading information to the state Legislature and to federal and state oversight agencies.

In December, the Massachusetts Turnpike Authority's Big Dig Cost Recovery Team announced it was preparing to file a second \$100 million lawsuit against Bechtel, seeking compensation for the design and construction management errors that increased the cost of the project.

The proposed lawsuit is based, in part, on the work of the Inspector General. Since 1990, the Inspector General's office has issued nearly 100 reports and letters that together identified more than \$1 billion in

questionable Big Dig costs. The lawsuit is currently under review by the Office of the Attorney General.

Employee Misconduct in Attleboro

The foreman of the Capron Park Maintenance Department in Attleboro retired after being interviewed by the Office of the Inspector General about his habit of building wheelbarrows, birdhouses and other personal projects at a city facility on city time – and selling them for his own profit.

The investigation also found that the foreman took city property, including flowers and lumber for his own use.

Effective and Ethical Contracting

Bernardston

Two examinations of bidding practices in the town of Bernardston found that town officials had violated state bidding laws in 2000 when they bought sand for the highway department and again in 2003 when they disposed of surplus property without properly advertising its sale.

In the case of the sand, Bernardston Highway Department officials agreed to purchase sand from a favored vendor, rather than conducting a competitive procurement as required by state law. When a competitor complained – both to Bernardston officials and to the Inspector General – town officials created false bidding documents to cover up the Highway Department’s violation of state law.

In a February report, the Inspector General recommended – among other things – that the Bernardston Board of Selectmen increase its oversight and supervision of the town’s procurement process.

However, within months of issuing the sand procurement report, the Inspector General received a complaint about Bernardston’s disposition of surplus items – including five vehicles. In this instance, the Inspector General found the town had failed to provide adequate notice of the surplus sale. The investigation also found that some town officials benefited from the poorly-advertised auction. The Inspector General forwarded details of his investigation to the State Ethics Commission.

Scituate Golf Course

At the request of town officials, the Inspector General reviewed Scituate’s process for selecting a manager for the Widow’s Walk Municipal Golf Course and found serious problems with the bid evaluation process.

The Inspector General recommended that Scituate restart its Request for Proposal process, making it clear to both bidders and evaluators exactly what the selection criteria are.

Northbridge Building Committee

An investigation by the Inspector General found that the Northbridge Building, Planning and Construction Committee failed to follow public bidding laws when it hired School Building Support Services without competition to provide administrative support services.

The investigation also found that the secretary and treasurer of School Building Support Services is the wife of the town moderator and that she was the School Building Support Services employee who provided administrative services to the town building committee. In addition, the Northbridge Building, Planning and Construction Committee had paid her \$150,000 from 1999 to 2004, despite the fact that her company had no formal contract with the town.

The town moderator, who is listed on incorporation papers as the president of the School Building Support Services, appointed four of the seven members of the building committee.

Following the investigation, the town manager severed the business relationship between the building committee and School Building Support Services. The town now requires the building committee to follow public bidding laws when it hires consultants.

Uncompensated Care Pool Audit

The Uncompensated Care Pool Audit Unit was created by Chapter 240 of the Acts of 2004. The pool audit unit is responsible for oversight of the Uncompensated Care Pool, which reimburses the commonwealth's hospitals and community health care centers for their treatment of uninsured patients. The state contributed more than \$525 million to finance the \$700 million fund in fiscal 2005.

The overall mission of the audit unit is to review and audit the administration of the Uncompensated Care Pool as well as the free care practices in all Massachusetts hospitals.

Specifically, the Massachusetts Legislature asked the Inspector General to:

- examine hospitals' compliance with rules requiring them to enroll uninsured patients in MassHealth or other available programs before charging services to the Uncompensated Care Pool;
- analyze the charges hospitals are making to the free care pool and determine whether the bills accurately reflect the care given to uninsured patients; and
- investigate whether hospitals are shifting costs to the Uncompensated Care Pool because the pool's reimbursement rate is higher than other public and private payers.

The pool audit unit will issue a report in September 2005 and continue to monitor the effect of state and federal regulatory changes on providing care to the uninsured.

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Construction Reform

The Inspector General played an integral role in drafting Chapter 193 of the Acts of 2004, "An Act Further Regulating Public Construction in the Commonwealth." The new construction reform law was designed to save money for cities and towns by adding flexibility to the procurement process while increasing local accountability to taxpayers.

The Inspector General's involvement didn't end when the governor signed the law in July. The Inspector General continues to be very involved in outreach and education efforts as well as implementation.

Among other things, the Office of the Inspector General has had a hand in drafting technical changes; reviewing prequalification regulations drafted by the Division of Capital Asset Management; developing regulations and guidelines for contractor and subcontractor certification; and developing a matrix listing the qualifications of an owner's project manager.

The construction reform law also charged the Office of the Inspector General with determining whether a municipality is eligible to use alternative delivery methods, including construction manager at risk and design-build. In the later half of 2004, the staff developed regulations and an application process for municipalities to help the Inspector General make those decisions.

As 2005 began, the Inspector General started reviewing and approving communities' applications to take advantage of the innovations in the construction reform law.

The Office of the Inspector General also began its annual reviews of construction procedures for exempt agencies, including the Division of Capital Asset Management, Massport and the Massachusetts State College Building Authority.

In fact, the Inspector General rejected the Massachusetts State College Building Authority's first draft of its construction procedures because two sections appeared to be inconsistent with the law. The building authority revamped its procedures and the Inspector General approved them in November.

The Inspector General's new role in the construction reform law is a logical extension of the office's role in assessing the effectiveness of the school construction reform pilot program outlined in Chapter 28 of the Acts of 2002. Chapter 28 allows six municipalities – Milton, Winchester, Brockton, Everett, Revere and Waltham – to suspend the filed sub-bidding procedure for certain school building projects. The pilot program was designed to assess the pros and cons of amending the filed sub-bid

system, which requires public entities to bid up to 17 subcontracting categories separately for each building project.

Under Chapter 28, the Inspector General must review and approve all bidding documents and contracts for these projects. Thus far, the Inspector General's office has approved project documents in Everett, Milton, Waltham and Winchester.

In February, the Inspector General released an interim report on Chapter 28 that found that eliminating filed sub-bid requirements was not the best solution to all public construction project delivery issues and did not significantly reduce the cost of public building projects. The Inspector General recommended that the 20-member Special Commission on Public Construction Projects retain filed sub-bids in its construction reform legislation and consider additional options. Chapter 193 of the Acts of 2004 retains the filed sub-bid process.

Real Estate Dealings

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

In addition, the Legislature frequently mandates that the Inspector General review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties and municipalities. The Inspector General provides a report on each appraisal to the Commissioner of the Division of Capital Asset Management for submission to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration.

The Inspector General also reviews and comments on the disposition agreements controlling certain conveyances.

The Inspector General requires that all real property appraisal reviews conducted at the direction of the Legislature follow the Uniform Standards of Professional Appraisal Practice published by the Appraisal Standards Board for the Appraisal Foundation.

The Inspector General's appraisal reviewers form an opinion as to whether the analysis, opinions and conclusions in the work under review are appropriate and reasonable. If the reviewer disagrees with an appraisal, the reasons for any disagreement are set forth in the Inspector General's response.

Below are a few examples of real estate matters the Inspector General reviewed in 2004.

Mini-Fenway

The Office of the Inspector General reviewed the proposed lease between the Division of Capital Asset Management and Mini-Fenway Inc., a non-profit corporation dedicated to creating a replica of the Red Sox' ballpark in Quincy.

A law passed in 1998 – and amended in 2002 – gave Mini-Fenway, Inc., a 50-year lease on approximately 12 acres of land abutting the Blue Hills Reservation. Mini-Fenway's plans called for not only a Little-League-sized ballpark but also a domed athletic facility, including basketball courts, a health club and more than one restaurant, to create a year-round attraction.

The Inspector General's review found that the lease did not adequately protect the state's interests once the non-profit corporation began building the domed facility. The Division of Capital Asset Management amended

the lease to address the Inspector General's concerns and plans to build a replica Fenway Park moved forward.

Greylock Glen

The Office of the Inspector General continued its oversight of the Greylock Glen development process, criticizing the Massachusetts Development Finance Agency's draft request for proposal for an "Outdoor Recreation and Environmental Center Facility at Greylock Glen" as too open-ended to permit meaningful competition.

The Inspector General also questioned why the agency, known commonly as MassDevelopment, was holding out the possibility of helping to finance the project without making it clear to bidders what resources were available.

The Inspector General also criticized the Department of Conservation and Recreation for using grant money to hire MassDevelopment as a consultant, which is an apparent violation of state regulations.

Athol Land Sales

A review of the sale of two parcels of land located on Cobb Hill Road in Athol found that the former town manager failed to follow the requirements of M.G.L. c. 30B when he sold lots without a competitive process.

The former town manager also failed to advertise the availability of the land either in a local newspaper or in the secretary of state's "Central Register," as required by law. He also failed to seek advice from the town counsel before he sold the property.

However, the review found no evidence of favoritism in the sales. The Office of the Inspector General recommended that Athol officials seek training in the state's public bidding laws.

Appraisal Approvals

The Office of the Inspector General approved appraisals for:

- a building at 64 Durfee Street in Fall River;
- a warehouse near Union Station in Worcester that was found to be worth \$520,000;
- a land swap between the town of Sandwich and the commonwealth;
- a parcel on Tremont Street in Boston to be used for affordable housing; and
- three parcels to be conveyed to the Shrewsbury Housing Authority for the development of residential group homes for clients of the Department of Mental Retardation.

Rejected Appraisals

The Inspector General rejected two appraisals in 2004, sending both back to the appraiser for more information and analysis.

In the case of a strip of vacant land that is currently part of the Grafton State Police Barracks property, the Inspector General found that the appraiser failed to clearly estimate a separate value for the land in question. The Inspector General approved a revised appraisal in early 2005.

The Inspector General found the methodology flawed for the appraisal of the North Adams Armory property on Ashland Street in North Adams. The Inspector General approved the appraisal in 2005 after reviewing additional information from the Division of Capital Asset Management.

Land Disposition Agreements

The Inspector General reviewed and commented on a second amendment to the land disposition agreement between the Division of Capital Asset Management and The Gutierrez Company that extended some performance dates for the developer's work at the former J.T. Berry Rehabilitation Center.

The Inspector General found a second amendment to the proposed land disposition agreement between the Division of Capital Asset Management and AvalonBay Communities for the former Metropolitan State Hospital to be consistent with the terms of Chapter 309 of the Acts of 1996, which authorized the land transfer.

The Inspector General also reviewed a purchase and sale agreement, allowing the Division of Capital Asset Management to sell vacant land near 100 Nashua Street in Boston to the General Hospital Corporation. Since the land is a component of the Central Artery/Tunnel project, the sale included utility and highway-related restrictions.

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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 Inspector General 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 Inspector General 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 Inspector General's office administers the Massachusetts Certified Public Purchasing Official Program, which the office created eight years ago. The training program is designed to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement.

During the second half of 2004, the Office of the Inspector General revamped its training classes, introducing new rules and concepts created by the state's new construction reform law, Chapter 193 of the Acts of 2004. The Inspector General also created a new course entitled, "Construction Management at Risk under M.G.L. c. 149A: Legal Requirements and Practical Issues" focusing on this new aspect of state law.

Four-hundred and ninety state and municipal purchasing officials took Massachusetts Certified Public Purchasing Official courses in 2004, bringing the total number of participants since 1997 to 5,277.

Public purchasing officials are responsible for procuring the supplies, services and facilities required to provide public services. These procurements involve massive expenditures of public funds. Therefore, it is important that state and local officials understand the process.

In 2004, the Inspector General 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 Inspector General offered a one-day “State Contracting Outline” seminar for state employees seeking permission from the Division of Capital Asset Management to manage construction projects, and a two-day “Advanced Topics Update.”

The Inspector General also offers various non-core curriculum seminars: “Bidding Basics and Contract Administration”; “Bidding for Better Results,” requested by local jurisdictions for more advanced procurement training; and an individualized computer-based training: “Drafting a Model Invitation for Bids.”

Each participant who successfully completes a seminar receives a certificate of completion.

The Inspector General’s office also provided speakers on public procurement laws at programs sponsored by the state’s Operational Services Division, the Plymouth County Department of Public Works, and the state’s Department of Housing and Community Development.

The topics of those talks included municipal bidding laws and real property issues.

Inquiries, Complaints and Protests

In 2004, the Office of the Inspector General responded to more than 2,000 inquiries about M.G.L. c. 30B and other public bidding laws. The Inspector General regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The staff 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.

Publications

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

In 2004, the Inspector General published the following five advisories:

- “Guide to Writing Effective Travel Policies”;
- “Guide to Administering and Complying with Vehicle Management Policies”;
- “Banking Services Procurement Guide for Local Government Treasurers”;
- “Prevailing Wage Rate as Applied to School Bus Contracts”; and

- “A Local Official's Guide to Procuring and Administering Audit Services”.

The Inspector General also continued to publish 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.

Current and past issues of the “Procurement Bulletin” can be downloaded from the Inspector General’s website.

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Legislative Reviews

The Office of the Inspector General reviewed and commented on hundreds of pieces of legislation during the 2003-2004 legislative session. In many instances, lawmakers redrafted bills following the Inspector General's recommendations. Here are some of the changes sparked by the Inspector General's reviews:

Fitchburg Housing Authority

House Bill 4242 would have authorized the Fitchburg Housing Authority to convey a certain parcel of land located in the city to Habitat North Central Massachusetts, without following the requirements of M.G.L. c. 30B, the Uniform Procurement Act. The housing authority no longer needed the parcel and planned to convey the parcel so it could be used for affordable housing.

The Inspector General wrote a letter to the Joint Committee on Local Affairs on November 18, 2003 saying that the housing authority could achieve its intended public purpose for the use of the property by complying with M.G.L. c. 30B §16 (a), (b) and (g). These sections of the law require the housing authority to publicly disclose its plans for the property, determine the value of the property and, if the housing authority plans to dispose of it for less than market value, publish a notice in the "Central Register" explaining the reasons for its decision and disclosing the market value and the planned price.

The bill was amended to incorporate the Inspector General's recommendations and it became law, Chapter 84 of the Acts of 2004.

Division of Capital Asset Management

House Bill 3595 would have authorized the Division of Capital Asset Management to waive the planning and disclosure requirements of the state's real property law when it conveyed a certain parcel of land to the town of Westfield.

The Inspector General wrote a letter to the Joint Committee on State Administration on June 16, 2003 recommending that the legislation be amended to add safeguards, including a provision that the property revert to the commonwealth if Westfield fails to use it for the intended purpose.

The committee amended the bill with the Inspector General's recommendations and it became law, Chapter 403 of the Acts of 2004.

House Bill 3700 would have waived the Ward Commission safeguards in the state's real property law in order to direct the Division of Capital Asset Management to convey a certain parcel of land to private named parties. On June 16, 2003, the Inspector General wrote a letter to the Joint Committee on State Administration recommending changes to the bill, including adding a requirement that the Division of Capital Asset Management obtain an

independent appraisal to determine the property's fair market value and that the buyer pay the commonwealth no less than that price.

The committee incorporated the Inspector General's recommendations and the amended bill became law, Chapter 340 of the Acts of 2004.

Town of Hull

Senate Bill 1154 would have authorized the town of Hull to lease town-owned property at Pemberton Pier without following the requirement of Chapter 30B. The legislation would have eliminated all requirements for public advertising and competition for the lease.

In a December 16, 2003 letter to the Joint Committee on Local Affairs, the Inspector General explained the requirements municipalities should follow for open and fair competition for leases of publicly owned property. Section 16 of Chapter 30B requires that in making public property available to private tenants, a municipality must establish reasonable selection rules, announce those rules publicly, and allow all who believe they merit consideration to apply. As a result of the Inspector General's advice, the legislation was amended to comply with M.G.L. c. 30B §16 (a), (b) and (g) and became law, Chapter 440 of the Acts of 2004.

Senate Bill 1155 would have authorized the town of Hull to lease town-owned property at Nantasket Pier for use as a marine or pier facility without following the requirements of Chapter 30B.

The Inspector General wrote a second letter to the Joint Committee on Local Affairs on December 16, 2003 again explaining the requirements of M.G.L. c. 30B, the Uniform Procurement Act. The committee again amended the bill to comply with M.G.L. c. 30B §16 (a), (b) and (g). It became law, Chapter 439 of the Acts of 2004.

Town of Acton

Senate Bill 1981 would have authorized the town of Acton to lease town-owned property to a named party for the purpose of constructing a private parking facility without following the requirements of Chapter 30B. The Inspector General recommended that the town comply with M.G.L. c. 30B. The bill was amended to incorporate some of the provisions of M.G.L. c. 30B §16 and it became law, Chapter 354 of the Acts of 2004.

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. The Inspector General must report these recommendations annually to the governor and the Legislature.

During the 2003-2004 legislative session, the Inspector General submitted the following seven bills for consideration:

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

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 ensure 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

This proposal would raise bidding thresholds for public works construction projects and building projects to reflect the rising cost of public construction projects.

House 52, An Act Providing for Reform in Public Construction

This measure would introduce the concept of owner's representative to the public construction process. 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. This concept was incorporated into Chapter 193 of the Acts of 2004.

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

This recommendation would clarify 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 would correct that inconsistency in order to clarify its meaning. In addition, this bill would amend M.G.L. c. 30B, §4(a) by permitting awarding authorities to utilize a Request for Proposal process for contracts under \$25,000.

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

This bill would repeal two unnecessary Chapter 30B exemptions: contracts for police-ordered towing and storage of motor vehicles, and trash and recyclable collections.

House 55, An Act Concerning Proprietary Specifications in Public Construction

This legislation would clarify the requirements of M.G.L. c. 30, §39M in the preparation of competitive and non-competitive bids and proposals and 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

This bill would increase the penalties for bid rigging and conspiracies in restraint of trade to match federal penalties. 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 2004 Reports and Publications

The Office of the Inspector General published dozens of reports, letters and guides in 2004. The following documents are available on the Inspector General's Internet site www.mass.gov/ig:

- Economic Development Incentive Program Tax Credits, January 2004.
- Inspector General's Investigation Leads to New Harbor Management Plan for Harwich, January 2004.
- Recommendation to Terminate Rockland's Sewer Operation Services Contract, January 2004.
- A Big Dig Cost Recovery Referral: Poor Contract Oversight by Bechtel/Parsons Brinckerhoff May Have Led to Cost Increases, February 2004.
- An Interim Report on Chapter 28 of the Acts of 2002: A pilot program that suspends filed sub-bidding on certain school construction projects, February 2004.
- Greylock Glen Development Process, February 2004.
- Greylock Glen Grant Agreements, February 2004.
- Bid Fabrication and Cover-up in the Town of Bernardston's Sand Procurement, February 2004.
- Investigation Leads to \$146 Million Big Dig Lawsuit, March 2004.
- Recommendation Regarding Procurement of Scituate Municipal Golf Course Contract, March 2004.
- Investigation Leads to Everett Indictments, March 2004.
- Employee Misconduct in Attleboro, April 2004.
- Statewide Contract for Art and Instruction School Supplies, May 2004.
- The City of Boston Creates Fees for Boat Slips and Moorings, May 2004.
- A Local Official's Guide to Procuring and Administering Audit Services, May 2004
- Investigation Leads to State Ethics Commission Fine for Braintree Electric Light Department Employee, June 2004.
- DEP Responds to Flaws in Massachusetts Enhanced Automobile Emissions Program, June 2004.
- High-Priced Contracts Waste Taxpayer Money, August 2004.
- Lease Disposition to Mini-Fenway Park, Inc., August 2004.
- Disposition of Surplus Supplies in Bernardston, September 2004.
- City of Quincy Establishes Boat Mooring Fees, September 2004.
- Investigation Leads to State Ethics Commission Fine for Braintree Electric Light Department Employee, October 2004.
- Investigation Halts Developer Water and Sewer Plan, October 2004.
- Everett High School Construction - Chapter 28 of the Acts of 2002 Review, October 2004.
- Prevailing Wage Rate as Applied to School Bus Contracts, October 2004.

- A Big Dig Cost Recovery Proposal: Trench Drain Failures Led to Cost Increases, November 2004.
- Big Dig Water Leaks, November 2004.
- Review of Massachusetts State College Building Authority Procedures, November 2004.
- Central Location for a List of Debarred Contractors, December 2004.
- "A Deal Too Good to Pass Up" Contracts, December 2004.
- Investigations Contribute to Planned \$100 Million Big Dig Lawsuit, December 2004.
- Guide to Writing Effective Travel Policies, December 2004.
- Guide to Administering and Complying with Vehicle Management Policies, December 2004.
- Banking Services Procurement Guide for Local Government Treasurers, December 2004.