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# **Office of the Inspector General**

Commonwealth of Massachusetts

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Inspector General

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## **Proposal to Pursue Big Dig Cost Recovery:**

## **Ceiling Installation in the Ted Williams Tunnel**

October 2003

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## Executive Summary

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The Office of the Inspector General (the Office) has been investigating the cost recovery efforts of the Central Artery/Tunnel (CA/T) Project (the Project) since the mid-1990's. "Cost recovery" is the process by which "public and private owners file claims against design and construction management professionals for the costs claimed to be attributable to errors, omissions, or other 'deficient' or unsatisfactory performance ('cost recovery claims'.)"<sup>1</sup>

This Office issued a comprehensive report<sup>2</sup> regarding the Project's cost recovery efforts in December 2000. This report is highly critical of the Project's cost recovery program. This report identified for the first time that no cost recovery had been pursued against Bechtel/Parsons Brinckerhoff (B/PB) and that the cost recovery program had collected only \$30,000 from over \$83 million in claims that had been referred for cost recovery review.

This Office also expressed concern regarding specific cost recovery actions. In a report<sup>3</sup> issued in December 1998, this Office identified a potential cost recovery issue related to the Project's use of anchor bolts in the Ted Williams Tunnel. This Office believes that the problems identified in this 1998 report – which are described in detail below – have not been sufficiently reviewed for cost recovery

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<sup>1</sup> David J. Hatem, "Errors/Omissions Cost Recovery Claims against Design and Construction Management Professionals." The CA/T Professional Liability Reporter 1.4 (1996): 1.

<sup>2</sup> A Review of the Central Artery/Tunnel Project Cost Recovery Program, 2000.

<sup>3</sup> A Review of the Central Artery/Tunnel Project's Use of Anchor Bolts on the C05B1 Tunnel Finishes Contract, 1998.

purposes. Therefore, this Office strongly recommends that the Massachusetts Turnpike Authority re-open the case regarding anchor bolts, and that cost recovery be pursued against B/PB and the Section Design Consultant (SDC) for this contract.

## **Issue**

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The Office first examined the issue of anchor bolts in a December 1998 report. The report concluded that ambiguous contract specifications and poor contractor performance increased the cost of the \$49.5 million C05B1 – I-90 Tunnel Finishes contract by \$850,000. The report made the following findings:

**Finding One:** Poor design specifications created construction difficulties that cost almost \$800,000 to resolve.

**Finding Two:** The Section Design Consultant prepared poor design specifications for anchor bolt installation.

**Finding Three:** The Section Design Consultant prepared unclear testing procedures.

**Finding Four:** The Project paid the contractor to test improperly installed anchor bolts.

**Finding Five:** The Project issued a change order to compensate the contractor for poor subcontractor performance.

**Finding Six:** The Project did not consult with the tunnel designers before allowing the contractor to drill through steel reinforcement in the tunnel roof.

In addition to the report written by this Office, the actions of the Project itself indicate that there may be cost recovery potential in the anchor bolt issue. In 1995, Project officials began reviewing the change orders dealing with anchor bolts for cost recovery purposes.

More than two years later, in May 1997, the Project Director approved a final disposition for the review that recommended no further action. This action closed the issue. However, the Project's Director of Construction had earlier recommended a further review stating: "It appears that costs for this activity could have been avoided if the design[s] were properly coordinated." The final analysis approved by the Project Director concluded that the needed design coordination would have caused schedule delays that would have cost more than the contract changes.

What is not mentioned in Project documents is the role that B/PB played in the coordination of the design contracts and decisions B/PB made or advised to be made concerning schedule and construction techniques. B/PB and the designers had been discussing the anchor bolt issue since at least February 1991. At some point during design completion, officials presumably made a decision that "schedule compression" over-rode constructability issues. This decision led to the anchor bolt change orders that cost \$850,000.

As in December 1998 when this Office first publicly reported this issue, this Office strongly believes that this issue should be re-opened for cost recovery review. Project documents reveal conflicting opinions and lack sufficient detail to explain why the Project Director determined that the issue should not be pursued further.

## **Conclusion**

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Cost recovery is finally getting the attention it deserves. While this Office has long held an interest in the matter, recent media coverage and legislation have propelled deficiencies in the Project's cost

recovery program into the public's awareness. Pursuing cost recovery is critical to making certain that the taxpayers and tollpayers of the Commonwealth are not burdened with costs resulting from contractor errors. Moreover, the Project itself has started to examine its cost recovery program. This Office stated in February 2003:

Under the stewardship of Chairman Amorello and Counsel Michael Powers, the Office of the Inspector General has, for the first time in a decade, received the Turnpike Authority's cooperation and commitment to cost recovery...

Chairman Amorello's commitment to cost recovery is demonstrated by his appointment of Vice Chairman Jordan Levy to coordinate cost recovery efforts against B/PB. Additionally, the hiring of Judge Edward Ginsberg and a team of legal experts has brought credibility and experience to cost recovery efforts. This team has made great strides in identifying potential cost recovery cases that, to date, value more than \$100 million.

In addition to the issues already being reviewed for potential cost recovery, this Office strongly recommends that the Turnpike Authority investigate whether the \$850,000 anchor bolt matter can be reopened and pursued against B/PB and the SDC. The anchor bolt matter requires immediate consideration because of statute of limitation issues; although the legislature extended the statute for 10 years, the project had closed this case in 1997. This Office is prepared to assist the Turnpike Authority's cost recovery efforts in the anchor bolt issue.