

Testimony of Inspector General Jeffrey S. Shapiro, Esq., CIG

Regarding the MassDOT Service Plaza Procurement Before the Senate Committee on Post Audit and Oversight

March 24, 2026

Chair Montigny, Vice Chair Collins, Ranking Member Fattman, members of the Committee:

Good day.

I am Jeffrey Shapiro, the Inspector General for the Commonwealth of Massachusetts.

Thank you for the opportunity to testify before your committee again regarding MassDOT's unsuccessful service plaza procurement. I appreciate the committee's continued focus on this issue, not just as a case study of a failed procurement, but also as a cautionary tale through which specific lessons can be learned and acted on.

In my last appearance before the committee, I informed you that the OIG planned to issue an investigatory letter regarding this procurement by the end of February. This was a rare use of my discretion as the Commonwealth's Inspector General under Chapter 12A, as OIG investigations and reviews are normally confidential. However, I believed that given the timing of the previous hearing and the conclusion of the OIG's report, it was incumbent upon me to inform the committee of the review. Now that the investigatory letter has been released, I will review my findings and recommendations regarding this procurement and bring context to the committee as it continues its work to identify lessons learned through its oversight function. I will also discuss MassDOT's recent announcement about their new approach to the procurement and provide my insights to hopefully prevent future issues.

Considering that the committee has been following this procurement for some time, I will not re-tell the entire story of this procurement. Instead, I will focus on the portions that the OIG highlighted in its investigatory letter.

To begin, I would like to establish a baseline by identifying some findings from the investigatory letter dated February 27, 2026, which I sent to Interim Secretary Eng. While MassDOT created a procurement process and established a framework for conducting the procurement that *could* have resulted in a consistent and fair basis to evaluate proposals, MassDOT did not follow its own procedures when executing the plan. This is especially concerning given the procurement’s significant value and duration, up to a 35-year lease, spanning multiple plazas. MassDOT should have followed its procedures at a minimum. No procurement of this size, scope, and significance should rest on such a weakened foundation.

That our investigation resulted in eight findings in what would have been a 35-year lease should give pause. While no one finding was the likely fatal blow to this procurement, the combined effect of the flaws undermined the integrity of the procurement process. At some point when you have eight or ten paper cuts, you are actually bleeding.

The following are the OIG’s eight key findings and resulting recommendations:

1. Conflict-of-Interest Form

First, before reviewing the initial proposals, the evaluation organization members had to sign a Conflict-of-Interest Disclosure Statement attesting that they did not have a real or apparent conflict of interest.

MassDOT’s Conflict-of-Interest Disclosure Statement did not contain space for members to disclose relationships that could pose a real or apparent conflict of interest. The form only contained a certification that the member did not have a conflict. The form instructed members to disclose real or apparent conflicts to the Deputy General Counsel for Operations and Maintenance in writing. This directive was inconsistent with the procedures manual, whose instructions indicated the members must disclose a potential conflict of interest to the chair of the selection committee and facilitators.

My recommendation, therefore, is that the Conflict-of-Interest Disclosure form include at least two spaces: one space for members to disclose the names and their relationship with individuals or entities that pose real or apparent conflicts of interest, and another space for authorized individuals to sign that they have reviewed

the disclosure and either the relationship does or does not create a real or apparent conflict of interest.

2. Communications with Applegreen and Suffolk Construction

One of the reasons it is important to have clear instructions and places to disclose potential conflicts of interests is to address and prevent perceptions of conflict of interest.

While three members of the selection committee informed the OIG they had disclosed potential conflict of interests, the perceived chair of the selection committee did not reveal pre-existing relationships with individuals affiliated with Applegreen, including individuals at Suffolk Construction and a board member of Applegreen. His communication with them continued throughout the procurement process, including during key times during the final evaluation period.

As previously reported, the regular occurrence of these communications, despite suggestions that they had nothing to do with the underlying procurement, does beg the question: What would the threshold for an appearance of a conflict of interest be? These communications created the appearance of a conflict of interest, undermining the integrity of the procurement process.

My recommendation to prevent this in the future is to require conflict-of-interest training for all members of the selection committee that includes addressing the specific risks, including personal relationships with proposers, financial interests, and how to mitigate reputational risks during the evaluation process. The training for selection committee members and facilitators should describe apparent, as well as real, conflicts of interest.

3. Violations of the Rules of Contact

My letter details multiple points of *ex-parte* communications between affiliates of Applegreen and MassDOT. The *ex-parte* communications from the two affiliates violated the Rules of Contact. The communications directly related to the procurement, the lease, or the RFP, which the Rules of Contact prohibited. The language of the rules clearly stated that the prohibition on contact remained in effect until a final agreement was signed.

While there were other members of the selection committee who attended meetings with Applegreen post-award, the OIG views these communications differently from the Chief Strategic Officer's communications. The selection committee members were not acting *ex parte* and were within their roles in attending the meetings.

My recommendation to address this issue in the future is two-fold. First, strengthen the controls by including in the Rules of Contact that evaluation organization members must disclose necessary communication with proposers and their affiliates, such as for ongoing projects or pre-existing matters. Second, agencies must remind both proposers and evaluation organization members of their continuing duty to abide by the rules of the RFP and procedures throughout the process, and train employees how to respond to proposers who violate the rules.

While much of the focus of the previous two findings has been on the interactions of the Chief Strategic Officer and Applegreen, it is important to understand that the fault of this procurement process does not solely sit on *his* shoulders. This procurement's faults were a combination of individual behavioral decisions made by the members of the committee, as well as a structurally unsound decision-making process.

4. Weighted Subfactors in the Evaluative Criteria

For the initial and final evaluations, the selection committee was to evaluate the strengths and weaknesses of the proposals against the two sets of criteria included in the RFP. The final proposal evaluations had two pass/fail criteria and seven weighted qualitative criteria to be scored on a 100-point scale. After issuing the RFP, MassDOT made amendments that revised qualitative criteria and requested additional information for the final proposals.

During its review, the OIG found that selection committee members gave different weight to the subfactors for this criterion. Some members assessed and critiqued estimated future fuel sales and the goal to increase use of electric vehicles heavily, while others did not focus on this when scoring. Some selection committee members considered each proposer's capital expenditures and investments in their decision-making and scoring. However, the proposer's capital investments were not a subfactor for this criterion. Another member gave greater weight to one of the proposals estimated retail sales based on the aesthetics of the plazas.

When MassDOT updated the Revenue Terms criteria, it created multiple subfactors related to revenue that selection committee members would use in their evaluations. The selection committee had the input and assistance of subject matter experts as they reviewed the proposals and they deliberated together. Neither of these steps was sufficient to ensure that the selection committee had a common understanding of whether to give some subfactors greater or less weight than others.

Based upon these changes and lack of orange-to-orange comparisons that are objective, the OIG does not believe proposals can be directly compared as different strengths and different weaknesses from each proposal were weighed differently by different selection committee members.

My recommendation is that agencies assign specific weighting to subfactors within qualitative criteria in an RFP, as recommended by the American Bar Association's Model Procurement Code. The subfactor weighting should outline the importance of each subfactor and provide clarity to the proposers and selection committee on the relative weight of each subfactor.

5. Documentation and Scoring Worksheets

MassDOT provided scoring worksheets to each selection committee member, on which members were expected to take notes during their independent reviews and record their justifications for scoring. Three of the seven selection committee members did not write any comments or scoring justification on their final proposal evaluation worksheets. This begs the question: As memory fades over time, when future oversight agencies or auditors look at these materials, how would one ever understand how a selection committee member graded something as a seven rather than a six or an eight? Upon further inquiry, MassDOT did produce three separate sets of notes with comments, but they were from different phases of the evaluation process.

The lack of adherence to documentation procedures was not limited to the selection committee members. MassDOT's procedure for selection committee members to keep notes at key times during the process supports its own goal for a fair process. But by not ensuring that members kept and produced notes, MassDOT did not adhere to the procedures to meet its goal.

This failure to adhere to procedures, combined with the unstandardized weighting of subfactors, undermined MassDOT's ability to demonstrate a consistent and fair process. My recommendation is to adhere to the procedures manual and requirements related to documentation and require that all selection committee members document their reasonings and justifications behind their decisions. Such documentation should be completed prior to accepting scores from selection committee members. Facilitators must enforce documentation requirements by requesting members' notes, checking that worksheets include both scores and justifications, and ensuring that all required documents are maintained in the procurement file.

6. Outreach to Subject Matter Experts and Flow of Information

The procedures anticipated that all requests for clarification from any of the individuals in the evaluation process would be in writing and flow through the facilitators. The facilitators were responsible for obtaining the clarification from the necessary party, routing it back to the requestor, and documenting the request in the procurement file. However, the procedures manual does not address whether and when it is appropriate for a selection committee member to reach out to other divisions within MassDOT for information to assess a proposal. The procedures include diagrams that show requests to subject matter experts going through the facilitators; the written instructions addressed requests for clarification to and from the proposers.

In May of 2025, the Chief Strategic Officer requested financial information from MassDOT's Real Estate division about Global, which was both a proposer and an operator under the current leases. He forwarded that information to one of the subject matter experts asking how realistic the company's modeling was. The expert provided the Chief Strategic Officer with additional information and agreed that a portion of the modeling seemed optimistic. The Chief Strategic Officer sent the information by email to one other selection committee member. The OIG was unable to ascertain whether he shared the information with the entire selection committee in some other manner, for example, during the deliberations.

My recommendation is to clarify procedures for selection committee members' outreach and engagement with subject matter experts and other divisions within the agency. Ensure that selection committee members understand the processes for engaging subject matter experts, as well as how to handle any information gathered

from subject matter experts. I also recommend holding employees accountable for deviating from the procedures.

7. Live Scoring

At the end of the final proposal stage, the selection committee participated in a final scoring of the evaluation criteria. The facilitator conducted a “live scoring” or “roll call” process in which each of the selection committee members announced their score, one by one, for each evaluation criteria.

MassDOT’s use of a live, roll call scoring method increased the risk of perceived bias in the procurement process. A secret scoring method would have prevented such influences and would have ensured that each selection committee member scored based on their own analysis.

Therefore, I recommend that MassDOT use a closed or sealed scoring environment which enables and ensures that selection committee members score proposals independently.

8. Capital Programs Committee (CPC) Approval

Prior to presenting to the full Board of Directors, MassDOT was required to present to the Capital Programs Committee, a subcommittee that routinely reviews major procurements for approval. MassDOT did so a week before the scheduled full Board meeting. Members of the subcommittee expressed dismay at the lack of previous communication regarding this procurement, considering that the project began more than a year earlier. They expressed concern that they were asked to approve the award on short notice with limited information in order to meet a procurement deadline.

The CPC declined to vote on whether to approve moving forward with the new agreement, instead allowing the procurement team to present to the full Board on the condition that sufficient information about the procurement was made available to Board members prior to the meeting. Although MassDOT had been providing briefings to directors starting in May, those briefings were only on the background of the procurement, not the actual bids or selection. It was clear from the June 11 meeting that the members did not feel informed about the size, scope, and duration of the project.

While I do not know what was covered in the briefings to the Board members, it is clear from the CPC members' discomfort that the lack of information for the subcommittee seems inconsistent with the purpose of the subcommittee and at a minimum created a reason for pause.

MassDOT should not rely on private briefings in lieu of public meetings, particularly on significant and complex procurements. Board members can benefit from hearing questions from their fellow members and having time to ask MassDOT for additional information to make an informed vote. Additionally, if the structure of the organization is based on a public board, thus giving it an oversight role by design, effort should be made to maximize opportunities for public discussion. Information about major procurements should be presented early and regularly to the CPC and the full Board at public meetings to ensure that members have the information they need to fulfill their duty and responsibility.

NEW PROCUREMENT PROCESS

Having reviewed the contents of my letter, this would be an incomplete conversation if I did not also discuss my understanding of MassDOT's recently announced changes to their approach as they begin their new procurement.

Though you will certainly hear more about the new approach from those who I understand will be following me before this Committee later today, my understanding is that MassDOT's new procurement will rely on three major changes:

1. Breaking the procurement into three smaller packages;
2. Using a design-build framework rather than simple real estate leases; and
3. Conducting the procurement using a **P3 Commission** approach, which is designed to provide independent oversight while developing the RFP. This approach also relies on the initial step to reassemble such a commission which

was first introduced but not actually utilized by former Governor Deval Patrick.

Regarding the first point, I have long been a proponent of restructuring larger procurements through smaller bundles, as this enables broader competition from smaller bidders and more palatable and enforceable contract management. It also enables bidders the flexibility to bid on one, two, or all three packages at once. I welcome this aspect of the new approach. This was an area of inquiry that the OIG had with the city of Boston regarding its last general student transportation procurement and whether or not the three bus yards could be the basis for three contracts rather than one. Ultimately, at that time the city made the argument for it being one contract.

The second and third portions cannot be discussed in a vacuum, so I must discuss both at once.

At the outset, I would like to establish our terms, as the terms “design build” and “public-private partnership” in this context are not as they are often understood.

There is generally an understanding in government circles of **public-private partnerships**, or **P3s**. In this context, however, the P3 Commission solely relates to P3s that either use the “design, build, finance, maintain, operate” or “design, build, maintain, operate” models, as defined in Chapter 6C, Sections 62 and 63 of the Massachusetts General Laws. This is *not* the design-build framework for public works projects under Chapter 149A. Under these specific frameworks, which are only for MassDOT projects, the private vendor must intend to operate and maintain the facility they construct.

Some will point to the New Balance building and construction of Boston Landing as an example of such a successful P3 project. Indeed, the process produced results: Boston Landing’s construction took approximately two years, a timeframe fast by most public construction standards. This is a major benefit of P3. However, New Balance never intended to operate the MBTA Boston Landing station, and so it is not subject to the P3 Commission framework.

Here, with service plazas, the vendors will be operating and maintaining a commonwealth transportation facility. As such, while I am intrigued by the possibilities a **P3 Commission framework** can produce, I urge caution, as **Massachusetts does not yet have a history of successful projects that have gone through this P3 Commission process.** In fact, no projects to my knowledge have fully gone through this process. I do note that under the P3 Commission framework, the Governor, Treasurer, Senate President, and Speaker all have a role in making appointments to the P3 Commission. Also, the Inspector General and Attorney General have 30 days to review a draft of the proposed form of contract and provide the Commission with any objections to it.

This happens prior to the issuance of the RFP.

Further, as we have seen throughout the original procurement, it is one thing to establish procedures; it is another to ensure they are sound and execute the procedures faithfully.

I look forward to how the reconstituted P3 commission will play a part in promoting a fair, transparent, and unbiased new procurement. I also look forward to MassDOT's implementation of my recommendations to ensure the lessons learned from the previous procurement are not lost.

CONCLUSION

And now, despite being invited to testify before you today, just like a house guest there is a time to conclude the visit. Therefore, here are the two long-awaited words the committee has been waiting for: **in conclusion.**

The good faith of the public, on which our government relies, is dependent on the good faith administration of fair and transparent government processes. While not many in the public focus on such tedium as government procurement procedures, the drip-drip-drip of noncompliance, poor execution, and undisclosed conflict of interest is as eroding to the public's good faith as it was to this procurement. This procurement should not be judged based on its lack of contract award at the end of its process; instead, the failures throughout the process show how poorly this lease could have gone had a contract been awarded.

Now, with renewed attention, MassDOT has a new opportunity to demonstrate to the public its dedication to its own named goals of an objective, fair, and consistent procurement. Indeed, each agency, and each of MassDOT's employees, have an obligation to uphold the highest standard in procurements. I have made eight recommendations to assist MassDOT in doing so. It is my hope that MassDOT will be able to meet its goals through the lessons learned in this procurement.

Thank you again to this committee for the opportunity to detail the OIG's findings and for your important role in the legislative oversight of state agencies. I look forward to working with you and MassDOT to ensure that our government works better tomorrow than it did today.

With that, I welcome your questions.

Thank you, Mr. Chair and Members of this Committee.