



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report-Issued January 9, 2014

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## Massachusetts Department of Transportation Use of Consultants and Contract Employees For the period July 1, 2010 through December 31, 2012





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

January 9, 2014

Mr. Richard A. Davey, Secretary of Transportation and Chief Executive Officer  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Dear Secretary Davey:

I am pleased to provide this performance audit of the Massachusetts Department of Transportation's (MassDOT's) use of consultants and contract employees. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2010 through December 31, 2012. My audit staff discussed the contents of this report with management of MassDOT, and their comments are reflected in this report.

I would also like to express my appreciation to MassDOT for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SMBump'.

Suzanne M. Bump  
Auditor of the Commonwealth

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## INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Massachusetts Department of Transportation (MassDOT) was established by Chapter 25 of the Acts of 2009, An Act Modernizing the Transportation Systems of the Commonwealth. MassDOT was formed through the merger of four former state agencies: the Massachusetts Highway Department, the Registry of Motor Vehicles, the Massachusetts Aeronautics Commission, and the Executive Office of Transportation and Public Works. MassDOT is governed by an independent five-member board of directors appointed by the governor; is subject to state finance laws, including Chapters 7, 7A, 10, and 29 of the Massachusetts General Laws; and uses the Massachusetts Management Accounting and Reporting System, the state accounting system, to process transactions. The MassDOT board also governs the Massachusetts Bay Transportation Authority, the Commonwealth's 15 regional transit authorities, and one transportation association. The secretary of transportation, appointed by the governor, serves as MassDOT's chief executive officer.

During fiscal year 2013, the Office of the State Auditor (OSA) was notified of MassDOT's possible noncompliance with certain provisions of Chapter 29, Section 29A, of the General Laws related to the use of consultants, particularly those providing information technology (IT) services. As a result, OSA initiated an audit of MassDOT to assess the adequacy and effectiveness of the internal controls MassDOT has established over its hiring of consultants and contract employees<sup>1</sup> within its information technology division (ITD) as well as its compliance with applicable laws, rules, regulations, and contractual terms. Our review of MassDOT's controls over the use of contract employees found that it complied with the Commonwealth Terms and Conditions. However, we did identify the following issues related to MassDOT's use of consultants within its ITD.

### *Highlight of Audit Findings*

- During our audit period, four IT consultants were supervising state employees in fiscal year 2011 and two were supervising state employees in fiscal year 2012. Our audit testing did not identify any consultants supervising state employees during fiscal year 2013. By allowing consultants to supervise state employees, MassDOT could be subjecting itself to fines and penalties established under Chapter 29, Section 66, of the General Laws for violating state finance laws.
- Of the 76 consultants working at the agency, 52 had been employed by MassDOT's ITD for 1 year or more, and 1 had been employed for 11 years, despite the intention of the state's Operational Services Division (OSD) that consultant services be temporary, for specific projects,

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<sup>1</sup> During our audit period, MassDOT's ITD was using the services of 24 contract employees, so our testing included a sample of 8 individuals from this population.

and for defined time periods. In addition, the practices employed by MassDOT indicate that it was substituting consultants for state employees, contrary to Chapter 29, Section 29A, of the General Laws. As a result, MassDOT could be subjecting itself to fines and penalties established under Chapter 29, Section 66, of the General Laws for violating state finance laws.

- MassDOT's ITD has not been collecting, retaining, or verifying the required employment forms from IT consultants. As a result, MassDOT cannot be certain that consulting firms have verified all employees' identity and eligibility to work; that foreign workers have the necessary visas for employment; that federal, state, and Medicare tax requirements have been met; that workers' compensation policies are in place; and that the consulting firms have met the requirements of the Massachusetts Health Care Reform Law.

### ***Recommendations of the State Auditor***

In order to address our concerns on these matters, we recommend that MassDOT:

- Continue the practices established in fiscal year 2013 in order to comply with the provisions of Chapter 29, Section 29A, of the General Laws related to the use of consultants.
- Develop and implement written policies and procedures that address the hiring and use of consultants and contract employees within its ITD, including, but not limited to, parameters for hiring, the maximum length of an assignment, and specific functions consultants are allowed to perform. MassDOT should refer to practices under the United States Code in defining the maximum length of employment for its consultants.
- Update job descriptions to reflect the current positions and job responsibilities of its employees. Once job descriptions have been updated, MassDOT should reassess IT demands and determine whether IT functions should be performed internally or by consultants.
- Comply with OSD requirements to collect, verify, and retain documentation related to the use of consultants.

## OVERVIEW OF AUDITED AGENCY

### 1. BACKGROUND

The Massachusetts Department of Transportation (MassDOT) was established by Chapter 25 of the Acts of 2009, An Act Modernizing the Transportation Systems of the Commonwealth. MassDOT was formed through the merger of four former state agencies: the Massachusetts Highway Department (MHD), the Registry of Motor Vehicles (RMV), the Massachusetts Aeronautics Commission, and the Executive Office of Transportation and Public Works. MassDOT is governed by an independent five-member board of directors appointed by the governor; is subject to state finance laws, including Chapters 7, 7A, 10, and 29 of the Massachusetts General Laws; and uses the Massachusetts Management Accounting and Reporting System, the state accounting system, to process transactions. The MassDOT board also governs the Massachusetts Bay Transportation Authority (MBTA), the Commonwealth's 15 regional transit authorities (RTAs), and one transportation association. The secretary of transportation, appointed by the governor, serves as MassDOT's chief executive officer.

MassDOT is made up of the following four operating divisions, which share administrative functions, including human resources, financial and management operations, information technology (IT), and planning:

- The Highway Division includes the roads, bridges, and tunnels of the former MHD and Massachusetts Turnpike Authority as well as certain Department of Conservation and Recreation assets. The division, which has six regional districts, is responsible for the design, construction, and maintenance of the Commonwealth's highways and bridges. The division is also responsible for overseeing traffic safety, engineering activities, and snow and ice removal to ensure safe road and travel conditions.
- The Rail and Transit Division is responsible for all transit, freight, and intercity rail initiatives and oversees the MBTA and all of the Commonwealth's RTAs. The MBTA is a separate organization within MassDOT, though its governing body is the MassDOT board of directors.
- The Aeronautics Division has jurisdiction over the Commonwealth's public-use airports, private-use landing areas, and seaplane bases. Its responsibilities include areas such as airport development and statewide aviation planning; certification and licensing for airports and airport managers; and enforcement of safety and security regulations. The division does not have jurisdiction over Logan Airport.
- The RMV Division is responsible for licensing and registration of vehicles and operators as well as commercial and noncommercial vehicle inspection stations.

MassDOT's information technology division supports the operations of these four operating divisions and in many instances uses the services of contract employees and/or consultants.

## 2. CONTRACT EMPLOYEES AND CONSULTANTS

The Commonwealth defines a contract employee as an individual employed under contract in an employer-employee relationship, as opposed to an individual who is appointed to fill an authorized state position as a state employee. Contract employees work under the direct supervision and control of the state agency that hired them and are considered temporary employees. They are not allowed membership in state retirement plans or employee insurance programs, nor are they eligible for other fringe benefits, such as sick, vacation, or personal leave. They are, however, required to contribute to an alternative retirement plan, namely the Omnibus Budget Reconciliation Act of 1990 (OBRA) plan.<sup>2</sup>

To help state agencies distinguish between the hiring of a contract employee and the hiring of a consultant, the Commonwealth established a policy, jointly issued by the Operational Services Division (OSD), Office of the Comptroller, and Human Resources Division on November 1, 2005, requiring that an Employment Status Form be completed for each contract (therefore temporary) employee. According to this form, an individual is a contract employee unless:

- (1) *The individual is free from control and direction in connection with the performance of the service. . . .*
- (2) *The service is performed outside the usual course of business of the employer. . . .*
- (3) *The individual is customarily engaged in an independently established trade, occupation, profession, or business as services provided for the department.*

If these three statements are true of a person, that person is considered to be a consultant, not a contract employee, and accordingly must be hired using OSD's procurement rules and regulations, as outlined in the above-mentioned policy.

These rules and regulations require the department or agency to justify the need for a consultant by drafting a Request for Responses that details the purpose of the procurement, the anticipated duration of the contract, the contract specifications, and instructions for submission of responses. In addition, consultants, in accordance with Chapter 29, Section 29A, of the General Laws, cannot

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<sup>2</sup> The OBRA plan is a deferred compensation plan that serves as an alternative to Social Security as permitted by the federal Omnibus Budget Reconciliation Act of 1990.

directly or indirectly supervise state employees and cannot be used as a substitute for a state employee position. Further, they cannot have signature authorization or transaction approval authority. The state's Operational Services Division (OSD), the agency responsible for regulating and administering the state's procurement process, has written boilerplate contracts that state agencies can use to hire IT consultants. OSD has published contract user guides that detail how state agencies can use the boilerplate contracts for that purpose. These contracts are known as IT staff augmentation full-service contracts and IT staff augmentation lower-overhead contracts.

**a. IT Staff Augmentation Full-Service Contracts**

Under an IT full-service contract, a Commonwealth agency posts job requirements on the Commonwealth Procurement Access and Solicitation Site (Comm-PASS). There are 46 vendors that the Commonwealth uses to recruit IT consultants, and they submit IT consultants' resumes to an agency for consideration for a specific job. In addition, a Rate Card, which is updated periodically, determines the maximum rates vendors can charge for particular jobs. There are three steps for hiring IT consultants under this type of contract, set forth in the IT Staff Augmentation Full Service Statewide Contract User Guide:

1. *Post the job on Comm-PASS and select a candidate from the resumes submitted. Comm-PASS posting is required for all positions to be filled under this contract. . . .*
2. *Notify the Vendors that a candidate has been selected and sign an agreement with the selected Vendor.*
3. *"On-board" the Resource [the consultant] (obtain forms needed before the Resource can start work).*

**b. IT Staff Augmentation Lower-Overhead Contracts—Category 2A**

Category 2A is for individual IT consultants who have no employers and whom the Commonwealth agency has recruited and wishes to retain. There are two lower-overhead vendors for Category 2A. When the Commonwealth identifies an IT consultant, one of these vendors hires the consultant as the vendor's employee. A lower-overhead (Category 2A or 2B) vendor is less expensive because the Commonwealth agency has already done the work of locating and recruiting an IT consultant. As with full-service contracts, a Rate Card (updated periodically) determines the maximum pay rates for particular jobs. The bill rate (what the agency pays the vendor for Category 2A) is the sum of the IT consultant's pay rate and the vendor's charges. These rates are higher than those for the other type of lower-overhead

vendors because they include a markup for all the employer taxes and other charges that the vendor must pay, typically at least 11% of the total bill rate (and often higher). There are four steps for hiring IT consultants under this type of contract, set forth in the IT Staff Augmentation Lower Overhead Statewide Contract User Guide:

1. *Recruit candidate and negotiate rate. . . .*
2. *Give your Resource contact information for the appropriate contract. . . .*
3. *Sign an agreement with the ITS43<sup>3</sup> vendor. A Statement of Work (SOW) template is posted on Comm-PASS. . . .*
4. *"On-board" the Resource.*

**c. IT Staff Augmentation Lower-Overhead Contracts—Category 2B**

This type of lower-overhead contract is used when the IT consultant already has an employer (a professional staffing firm that is not approved by OSD). In that case, the Category 2B vendor subcontracts with the IT consultant's employer. There are three Category 2B vendors. The bill rate is the sum of the rate paid to the IT consultant's employer and the vendor's charges (under Category 2B, the Commonwealth agency will not necessarily know the IT consultant's ultimate pay rate, because the vendor is subcontracting with the IT consultant's employer rather than directly with the consultant). There are four steps for hiring IT consultants under this type of contract, set forth in the IT Staff Augmentation Lower Overhead Statewide Contract User Guide:

1. *Recruit candidate and negotiate rate. . . .*
2. *Give your Resource contact information for the appropriate contract. . . .*
3. *Sign an agreement with the ITS43 vendor. A Statement of Work (SOW) template is posted on Comm-PASS. . . .*
4. *"On-board" the Resource.*

During our audit period, MassDOT hired its IT consultants from 60 companies, 10 of which accounted for approximately 64% of the total MassDOT IT consultant expenditures during the audit period. A breakdown of these 10 companies is located in Appendix A.

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<sup>3</sup> ITS43 is the code OSD uses to refer to the type of IT vendor discussed in this report.

## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit on the use of consultants and contract employees by the Massachusetts Department of Transportation (MassDOT) for the period July 1, 2010 through December 31, 2012. Our audit was initiated as the result of a notification of MassDOT's possible noncompliance with certain provisions of Chapter 29, Section 29A, of the General Laws related to the use of consultants.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit scope included an assessment of MassDOT's controls over its compliance with applicable laws, rules, and regulations governing the use of information technology (IT) consultants and IT contract employees during the audit period. The objectives of our audit were to (1) determine whether MassDOT is complying with applicable laws, rules, and regulations governing the use and hiring of consultants and contract employees within its information technology division (ITD) and (2) determine whether consultant payments are proper and accurately accounted for.

The audit was limited to reviewing IT consultants and IT contract employees paid under the Massachusetts Management Accounting Reporting System (MMARS) codes for IT Professional Services and for IT Management, Business Professionals, and Administration. The expenditures reported under these two codes totaled approximately \$35 million for the audit period.

In order to achieve our objectives, we performed the following audit procedures:

- Interviewed key officials within MassDOT's ITD in order to obtain an understanding of the systems, policies, procedures, and controls in place over the hiring and use of consultants and contract employees within the division and to assess compliance with Chapter 29, Section 29A, of the General Laws.
- Reviewed IT consultant contracts for services provided to MassDOT to understand the terms and conditions of the agreements. Using a non-statistical sample, we selected 20 out of 131 IT

consultants from fiscal year 2012, reviewed the payments made to these individuals, and compared the supporting documentation with the contract agreements.

- Reviewed controls over MassDOT's use of IT consultants paid under the MMARS code for IT Professional Services. Using a non-statistical sample, we selected the 10 vendors to which MassDOT paid the most money out of the 60 vendors it used during the audit period, which represented 64% of the approximately \$35 million spent during the audit period. We verified that the required vendor forms were submitted to the state's Operational Services Division (OSD) by the selected vendors and confirmed that the vendors were approved by OSD.
- Requested, received, and reviewed MassDOT organization charts for the audit period to determine whether any IT consultants or IT contract employees managed state workers.
- In order to confirm data reliability, obtained appropriation activity and contract expenditure information from systems maintained by MMARS. We compared this information with other source documents and interviewed knowledgeable MassDOT officials about the data. MMARS is widely accepted as accurate and can be used without our performing a comprehensive assessment of its data reliability. We therefore have determined that the data were sufficiently reliable for the purpose of this report.
- Interviewed key MassDOT officials to determine whether IT consultants were supervising MassDOT employees within its ITD.
- Researched federal guidelines such as the United States Code to define "temporary" employment as it pertains to the length of time consultants should be employed.

Based on our audit, we have concluded that, for the period July 1, 2010 through December 31, 2012, except for the issues addressed in the Audit Findings section of this report, MassDOT maintained adequate controls over its financial operations and program activities in the areas tested.

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## AUDIT FINDINGS

### 1. NONCOMPLIANCE WITH STATE LAW AND THE STATE'S OPERATIONAL SERVICES DIVISION'S REQUIREMENTS RELATED TO THE USE OF INFORMATION TECHNOLOGY CONSULTANTS

The Massachusetts Department of Transportation (MassDOT) has not established adequate internal controls related to the use of information technology (IT) consultants that ensure its compliance with the requirements of Chapter 29, Section 29A, of the Massachusetts General Laws and the requirements of the state's Operational Services Division (OSD). As a result, we found instances where, contrary to the law and OSD requirements, consultants were supervising state employees and providing services to MassDOT for prolonged periods. In addition, contrary to OSD requirements, MassDOT was not collecting, retaining, or verifying various employment forms related to its consultants.

#### a. Consultants Supervising State Employees

Chapter 29, Section 29A, of the General Laws specifically prohibits consultants from either directly or indirectly supervising temporary or permanent state employees:

*No person employed by the commonwealth as a consultant so-called shall directly or indirectly supervise another temporary or permanent employee of the commonwealth. Consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions.*

However, the Office of the State Auditor (OSA) determined that during our audit period, four IT consultants were supervising state employees in fiscal year 2011 and two were supervising state employees in fiscal year 2012, based on a review of MassDOT's organizational charts that identified these individuals as holding supervisory positions, with state employees reporting to them. Our audit testing did not identify any consultants supervising state employees during fiscal year 2013. MassDOT officials acknowledged that the individuals in question were supervising state employees (which included the management and direction of these employees on projects). MassDOT stated that these consultants were not involved in hiring or in approving employee time and attendance records.

By allowing consultants to supervise state employees, MassDOT could be subjecting itself to fines and penalties established under Chapter 29, Section 66, of the General Laws for violating state finance laws.

MassDOT officials stated that they were unaware that the practice of consultants supervising state employees violated the law and that they discontinued this practice during fiscal year 2013.

**b. Consultants Providing Services for Extended Periods**

According to OSD's contract user guides, consultant services are intended to be temporary, for specific projects, and for defined time periods. While Massachusetts law does not define a universal limit to the length of temporary employment, the practice of using a maximum period of one year for the employment of consultants is consistent with the practice used under the United States Code (USC).<sup>4</sup> In addition, the practice of having consultants provide services to MassDOT's information technology division (ITD) for extended periods indicates that MassDOT was substituting consultants for state employees, contrary to Chapter 29, Section 29A, of the General Laws. As a result, MassDOT could be subjecting itself to fines and penalties established under Chapter 29, Section 66, of the General Laws for violating state finance laws.

We obtained the dates of hire of the 76 IT consultants working at the agency and found that 52 of these IT consultants had been employed by MassDOT's ITD for 1 year or more, 15 had been employed for 5 or more years, and 1 had been employed for 11 years. MassDOT officials stated that MassDOT has had to use IT consultants to supplement its IT staff because of budget restrictions imposed by the Executive Office of Administration and Finance on the number of full-time employees it can hire. MassDOT also stated that it did not have the in-house expertise to perform the duties that consultants were hired to perform. The IT job descriptions were not up to date, so we were unable to assess whether these duties could have been performed by MassDOT employees.

We found that the lack of written policies and procedures in place defining specific time frames for the employment of IT consultants has contributed to MassDOT's noncompliance with Chapter 29, Section 29A. The following table presents the number of years consultants had been employed with MassDOT at the conclusion of the audit period:

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<sup>4</sup> According to 2 USC Section 72a(i)(1), congressional committees are authorized "to procure the temporary services (not in excess of one year) or intermittent services of individual consultants. . . ." According to 5 USC Section 3109(b), "When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof. . . ." Public Law 107-228 Section 321(c)(4) defines a temporary appointment as "an appointment that is limited by its terms to a period of one year or less."

Years	Number of Workers	Percentage of Total Workers
11	1	1.3%
7	7	9.2%
6	6	7.9%
5	1	1.3%
4	2	2.6%
3	3	3.9%
2	10	13.2%
1	22	28.9%
0	24	31.6%
Total	<u>76</u>	<u>100.0%*</u>

\* The numbers listed in this column do not add up to 100 because they were rounded for space, but the actual amounts do add up to 100.

**c. MassDOT Not Collecting, Retaining, or Verifying Required Employment Forms for IT Consultants**

During our audit period, contrary to guidance provided by OSD, MassDOT was not collecting, retaining, or verifying contract forms, which staffing firms are required to submit. As part of our audit, we requested a list of the staff augmentation workers for fiscal years 2010, 2011, and 2012. Using a non-statistical random sample, we selected 20 out of 131 staff augmentation workers from fiscal year 2012 to review for compliance with the provisions of the IT staff augmentation lower-overhead contract. During our audit period, MassDOT did not comply with OSD's contract user guides, which require the procuring agency to collect, verify, and retain the I-9 Form, the Labor Condition Application, the Representation by Resources Form, the ITS43 Employee Certification Form, and the IRS W-2 form for each employee. Descriptions of these forms are in Appendix B.

MassDOT's ITD staff has acknowledged that MassDOT did not comply with the requirements to collect, verify, and retain these forms for fiscal years 2011 and 2012. They stated that the reason for the lack of compliance was the unsettled environment resulting from the merger of four former state agencies to create MassDOT, and they noted that MassDOT had begun actively collecting the required forms from vendors for fiscal year 2013. The above deficiencies can also be attributed to MassDOT's lack of formal written policies and procedures for the hiring and use of staff augmentation and documentation of contract and tax forms. As a result,

MassDOT cannot be certain that consulting firms have verified every employee's identity and eligibility to work; that foreign workers have the necessary visas for employment; that federal, state, and Medicare tax requirements have been met; that workers' compensation policies are in place; and that the consulting firms have met the requirements of the Massachusetts Health Care Reform Law.

### ***Recommendations***

In order to address our concerns on these matters, we recommend that MassDOT:

- Continue the practices established in fiscal year 2013 in order to comply with the provisions of Chapter 29, Section 29A, of the General Laws related to the use of consultants.
- Develop and implement written policies and procedures that address the hiring and use of consultants and contract employees within its ITD, including, but not limited to, parameters for hiring, the maximum length of an assignment, and specific functions consultants are allowed to perform. MassDOT should refer to practices under the USC in defining the maximum length of employment for its consultants.
- Update job descriptions to reflect the current positions and job responsibilities of its employees. Once job descriptions have been updated, MassDOT should reassess IT demands and determine whether IT functions should be performed internally or by consultants.
- Comply with OSD requirements to collect, verify, and retain documentation related to the use of consultants.

### ***Auditee's Response***

#### ***Consultants Supervising State Employees***

In response to this issue, MassDOT officials stated,

*MassDOT-IT is committed to complying with this provision of state law. We ask, however, for additional guidance concerning the interpretation the Office of the State Auditor is using to define "to supervise" in this context. The draft audit report notes that MassDOT-IT is currently complying with Chapter 29, section 29A—finding that no consultants supervised state employees during fiscal year 2013. Could you please provide additional guidance so that we can respond to the suggestion that four IT consultants may have supervised state employees in 2011 and two employees may have supervised state employees in 2012? Based upon the information we have at this time, that suggestion does not appear to be accurate. For instance, consultants and contract employees are not permitted to hire or fire or to authorize time sheets or invoices, or to participate in employee performance reviews. Some consultants and contract employees have been engaged to provide services which include advice on courses of action or business process procedures. Such advice would sometimes be executed by employees. MassDOT-IT would not expect the provision of such advice to constitute "supervision" within the meaning of Section 29A. . . .*

***Auditor's Reply***

MassDOT has asked for guidance on the use of the term “supervise” as it pertains to Chapter 29, Section 29A, of the General Laws. Although the term is not defined in the General Laws, the standard definition of supervision involves the direction of employees, overseeing the performance of a person or group to be certain that an activity or activities are performing as intended in achieving the mission or goals of a department. It is not necessary for the individual to make decisions about hiring or firing in order for their responsibilities to include supervising employees. Chapter 29, Section 29A, of the General Laws states, “No person employed by the commonwealth as a consultant so-called shall directly or indirectly supervise another temporary or permanent employee of the commonwealth.” Based upon our review of the work being performed by the contractors, we determined that they were supervising employees of the Commonwealth, contrary to statute. Further, as stated in our report, during the course of the audit, MassDOT officials acknowledged that the individuals in question were supervising state employees (which included the management and direction of these employees on projects). However according to its 2013 organization chart and representations made to us by the MassDOT officials, the practice of consultants supervising state employees was discontinued during fiscal year 2013.

***Consultants Providing Services for Extended Periods***

In response to this issue, MassDOT officials stated,

*MassDOT-IT is committed to developing and maintaining appropriate written policies and procedures to address the hiring and use of consultant and contract employees. MassDOT-IT believes that its current policies and procedures comply with the OSD's contract user guide under for IT services, specifically OSD ITS 43. MassDOT-IT has consultant and contract employees provide services temporarily for defined time periods to assist with specific projects. Under our current practices, all proposed consultants and contract employees are presented to the Office of the Secretary of Transportation as part of the annual fiscal budget review, and approved annually during the planning process. To the extent that consultants and contract employees are engaged during a fiscal year outside of that process their engagement is approved by the Chief Information Officer and/or the Chief Financial Officer.*

*The draft audit refers to dates of hire and lengths of employment for IT consultants working at MassDOT-IT. MassDOT-IT is concerned that this discussion may not accurately convey the practices and procedures in place at MassDOT-IT. Consistent with practices used under the United States Code, the contracts that MassDOT-IT uses to procure consultant and contract employee services [are] for limited periods of time. Each contract is subject to renewal and some have been renewed several times. The draft audit appears to suggest that either OSD policy or the United States Code impose*

*restrictions on the renewal of such contract periods. MassDOT-IT would like to better understand the source and extent of any such restrictions. . . .*

*MassDOT-IT is currently undergoing an organizational improvement initiative that includes updating current positions and job responsibilities for all MassDOT-IT employees. A major component of our organizational improvement initiative is to "convert," to the greatest extent possible, activities currently being performed by consultants and contract employees to be in future performed by MassDOT employees. Indeed, during the week ending December 13th we will make employment offers to 6 current consultants and contract employees to become full time state employees. This "conversion" strategy will continue through the remainder of this fiscal year and will be a major component of the FY15 staffing plan.*

### **Auditor's Reply**

In its response, MassDOT asserts that its practices for hiring IT consultants are consistent with the USC, in that these individuals are hired to work for limited periods of time, with each contract being subject to renewal, and some have been renewed several times. As stated in our report, while Massachusetts law does not define a universal limit to the length of temporary employment, the practice of using a maximum period of one year for the employment of consultants is established under the USC and is therefore the criterion that OSA used in assessing MassDOT's compliance with requirements. According to our audit work, almost 40% of the IT consultants used by MassDOT during our audit period had been working at the agency for two or more years. Although the use of these consultants may have been approved each year, the fact that many of them had their employment routinely extended for periods beyond one year is, in OSA's opinion, not consistent with the requirements of Chapter 29, Section 29, and raises concerns that the consultants are being used as substitutes for state employees. Although these individuals' contracts may be for defined periods (e.g., one year), their lengths of service and the fact that, in many cases, their contracts are continuously renewed has to be considered in assessing compliance with Chapter 29.

Based on its response, MassDOT is taking some measures, such as converting some consultants to regular state employees, to address our concerns on this matter.

### **MassDOT Not Collecting, Retaining, or Verifying Required Employment Forms for IT Consultants**

In response to this issue, MassDOT officials stated,

*MassDOT IT currently collects and retains all OSD documentary requirements, and these are available for inspection. . . .*

*While we are sensitive to the perceived over-use of consultants and contract employees our first priority is always to seek required skill sets within the department. This is most important from the perspective of retaining institutional knowledge. However it is not always possible to do this for a number of reasons. The nature of software development and operations itself demands the programming and technology skills and create increased delivery demands not always capable of being met immediately by existing resources. Nor would our current pay scales be considered competitive in local technology markets for the type of skill sets often demanded by technology initiatives. Over the term of their engagement consultants and contract employees do acquire institutional knowledge and expertise in RMV and Highway systems and operations that subsequently become critical to the delivery and operation of DOT services, as a practical matter their services are often re-engaged.*

*Our goal is always to comply with Commonwealth rules and regulations, and to the extent that you or your team can provide assistance your advice is much appreciated.*

***Auditor's Reply***

As stated in our report, during our audit period MassDOT was not collecting, retaining, or verifying contract forms, which staffing firms are required to submit. In its response, MassDOT states that since our audit period, it has been collecting and retaining all documentation required by OSD. Based on its response, MassDOT has taken measures to address our concerns on this matter, which we will assess during our next audit of the agency.

## APPENDIX A

### The Ten Companies to Which the Massachusetts Department of Transportation Paid the Most Money for the Hiring of Information Technology Consultants

	Disbursements	Percentage of Total Workers
McInnis Consulting Services, Inc.	\$ 4,777,442	13.78%
PeopleSERVE PRS, Inc.	3,805,129	10.97%
CGI Technologies & Solutions, Inc.	2,404,971	6.94%
HP Enterprise Services, LLC	2,402,056	6.93%
Exeter Group, Inc.	2,012,550	5.80%
Kforce Inc. & Subsidiaries	1,867,211	5.39%
EMA, Inc.	1,528,289	4.41%
Eliassen Group, LLC	1,140,002	3.29%
Sullivan & Cogliano Designers, Inc.	1,089,670	3.14%
Randstad North America, LP	<u>1,019,254</u>	<u>2.94%</u>
Total	<u>\$22,046,574</u>	<u>63.59%</u>

## APPENDIX B

### *I-9*

This form allows employers to verify the identity and eligibility to work of all employees hired after November 6, 1986. The procuring agency must request copies of the I-9 from the vendor, with the employer's portion completed, before the information technology (IT) consultant begins work.

### *Labor Condition Application*

For IT consultants with H-1B visas (nonimmigrant visas in the United States under the Immigration and Nationality Act) (Section 101[a][15][H] of the United States Code), the Department of Labor requires (under Section 655.734 of Title 20 of the Code of Federal Regulations) the completion of a Labor Condition Application and a posting of a notice that it has been completed. The form allows US employers to temporarily employ foreign workers in specialty occupations.

### *Representation by Resources Form*

The IT consultant must sign this form on or before his or her first day of work. Its purpose is to obtain an agreement signed by IT consultants legally acknowledging that they will keep certain information confidential; that they will return all Commonwealth materials at the termination of the contract; that they will not infringe on intellectual property they have worked on while under contract; that no conflict of interest exists; that they will comply with federal and state tax requirements; and that they are not individually employees of any Massachusetts state or government agency and, as stated on the form, "are not entitled to any benefits, guarantees or other rights granted to state or municipal government agencies, including but not limited to group insurance, disability insurance, paid vacations, sick leave or other leave, retirement plans, health plans, or premium overtime pay."

### *ITS43 Employee Certification Form*

The IT consultant must sign this form on or before his or her first day of work. Its purpose is to obtain certification from the IT consultant's employer that the employer has a valid workers' compensation insurance policy; has contributed to the Massachusetts Unemployment Insurance System; is enrolled in a health insurance plan that provides minimum coverage as required by the Massachusetts Health Care Reform Law; and has withheld and remitted federal and state taxes, as well as Medicare taxes, with each payroll cycle.

***W-2***

The W-2 form is a wage and tax statement issued by the Internal Revenue Service. Around May 1 of each year, procuring agencies must request copies of W-2s for IT consultants and keep the forms in their procurement files. W-2s should be sent by employers to employees before January 31 of each year and should document all wages, salaries, and other compensation the employer has paid to employees. They should also document all taxes the employer has withheld.