



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE INSPECTOR GENERAL

ANNUAL REPORT

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Joseph R. Barresi
Inspector General

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I. INTRODUCTION

In accordance with Massachusetts General Laws, Chapter 12A, Section 12, I submit for review my fourth Annual Report as Inspector General of the Commonwealth.

The Office's budget was \$965,273 for fiscal 1984 and \$1,056,301 for fiscal 1985. I have requested a budget of \$1,334,535 for fiscal 1986. This would enable the Office to fund two additional positions as assistant general counsels and three more positions as management analysts. Staff shortages in both of these divisions caused a considerable backlog of cases in both the Investigations and Management divisions.

The Office of Inspector General has now existed for three and one-half years. Throughout my administration, I have stressed the importance of careful and prudent programming and planning to avoid unnecessary construction delays, cost increases, design failures, and abandonment of public construction projects, all of which in the past have been a fact of public life. My recommendations to proceed cautiously have frequently been resisted by public administrators intent on instituting their priorities as quickly as possible. In 1984, events in at least two large projects bore out the prudence of my earlier recommendations to proceed in an orderly, unhurried fashion.

In 1982, a proposal was submitted to the Legislature to construct and operate a new multi-purpose Boston arena calling for an annual state subsidy of an estimated \$800,000. My review indicated that this estimate was based on optimistic assumptions and I urged that a thorough feasibility study for a new arena be conducted. In 1984, this full study was completed and it indicated that the annual State subsidy cost of an arena could be as high as \$10 million.

Similarly, in 1983, a fire severely damaged the MBTA's North Station facilities. I was asked to approve a decision to "fast-track" the reconstruction to enable construction to be completed by February, 1985. I pointed out that the "fast-track" schedule was unrealistic and that the "fast-track" procedure was prone to cost over-runs. I proposed a schedule cutting 18 weeks off the MBTA's normal procedures, which would get the job done by April, 1985, with much less risk of cost over-runs. The MBTA publicly accepted my recommendation but indicated at first that construction would not be finished until August, 1985. A top Administration official stated that my recommendation not to "fast-track" "dramatically slowed down construction". At the end of 1984, the MBTA acknowledged, as I predicted, that the construction will finish in April, 1985.

In 1984, my Office referred to the Attorney General cases which could recover over \$235,000 for the Commonwealth and prevent the Commonwealth from paying an additional \$180,000 in wrongfully submitted applications for payment. My Management Division initiated changes in state management practices which have already saved an identifiable \$600,000 to \$1 million. The Commonwealth passed new laws and Norfolk County adopted new procurement procedures at my urging which should result in substantial, if unquantifiable, savings in the future. As the result of my intervention, the children at the Wrentham State School will enjoy a new hospital considerably better than the renovated hospital which was to be built at the same price as the new hospital will cost.

I believe that my emphasis on prevention of waste as well as the detection of fraud and abuse bore considerable fruit in 1984. In 1985, I shall continue to urge prudent planning, no matter how unpopular, as well as continue to investigate those individuals alleged to have violated the public trust.

Organizational Structure

The Office of Inspector General reports to the Inspector General Council for (1) approval of requests for subpoenas over persons, (2) referral of cases to agencies other than the Attorney General or the U.S. Attorney, (3) budget approval, (4) requests for federal funds, (5) establishment of the Inspector General's salary and (6) other assistance and consultation as deemed desirable.

The Office of the Inspector General is divided into three divisions, each headed by its own chief: (1) the Investigations Division, (2) the Management Division, and (3) the Engineering Division. A Financial Investigations Unit staffed with auditors trained in conducting white collar criminal investigations exists within the Investigations Division. Division chiefs, a General Counsel, and administrative staff report to the Inspector General through the First Assistant Inspector General.

II. PERSONNEL (As of December 31, 1984)

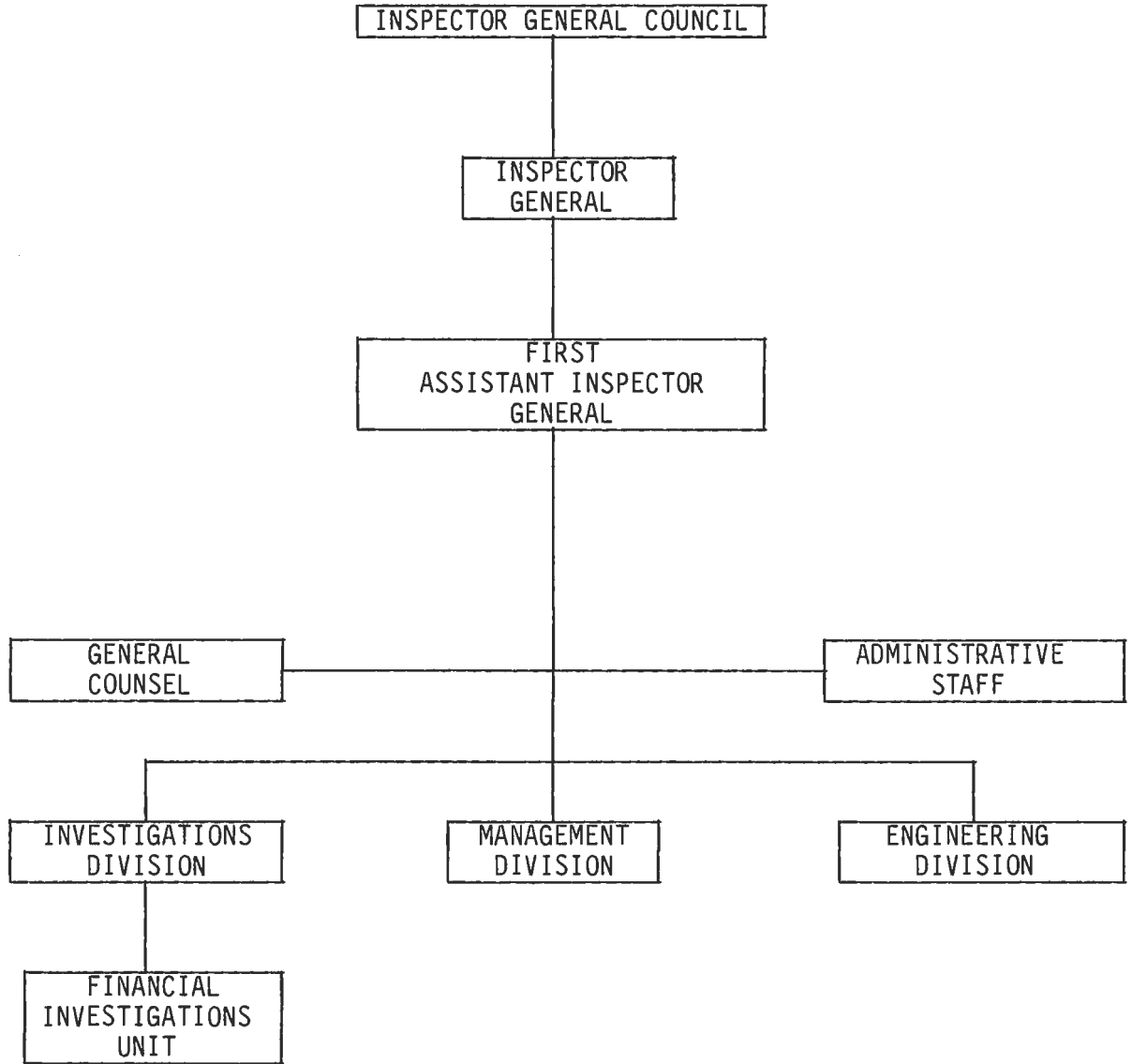
Inspector General Council

Mary B. Newman, Chairman
Charles V. Barry, ex officio
Francis X. Bellotti, ex officio
John J. Finnegan, ex officio
Paul J. McCarthy
James T. Morris
Ellen O'Connor, ex officio
John Wentworth Peirce

Office of the Inspector General

Joseph R. Barresi	Inspector General
Stephen Schultz	First Assistant Inspector General
Stephen E. Cotton	General Counsel
Rachel Kurshan	Assistant General Counsel
Marilyn Tobey	Chief, Engineering Division
Burgess Morse	Chief, Investigations Division
Douglas J. Wells	Deputy, Investigations Division
Frank F. Burns	Investigator
William Fitzgerald	Investigator
Francis X. O'Brien	Investigator
Robert J. Patenaude	Investigator
James P. Vaughn	Chief, Financial Investigations Unit
Neil E. Brennan	Financial Investigator
Donald Morgan	Financial Investigator
Norman Drucker	Chief, Management Division
Jeffrey R. Wulfson	Deputy, Management Division
F. Daniel Ahern, Jr.	Senior Management Analyst
Natalie Ammarell	Senior Management Analyst
Pamela Bloomfield	Senior Management Analyst
Susan Chucker	Senior Management Analyst
Ronald Grenier	Senior Management Analyst
Marie V. Hayman	Senior Management Analyst
Mary Kiernan	Senior Administrative Assistant
Amy Jacobs	Administrative Assistant
Marilyn Poirier	Administrative Assistant
Theresa Ruane	Administrative Assistant
Mary Kavanaugh	Receptionist/Secretary
Wai Cheung	Student
F. Samuel Eberts	Student
Marjorie Ferguson	Student
Richard Littlefield	Student
Lennart Moller	Student
Jeanette Prendable	Student

TABLE OF ORGANIZATION



III. INVESTIGATIONS DIVISION

Massachusetts General Laws Chapter 12A Section 12 requires the Inspector General to provide in his Annual Report a summary of matters reported or referred to prosecutorial agencies and the prosecutions and convictions which have resulted. Chapter 12A Section 12 also provides, however, "that the report shall not list the names of individuals or corporations nor describe them with such sufficient particularity as to readily identify them to the general public in those cases in which no official disposition has been made by the Office of the Inspector General or the Office of Attorney General or the federal prosecutor."

In 1984, the Investigations Division received a total of 114 complaints from outside complainants. In 1984, the division opened 24 new cases. As of December 31, 1984, the division had 22 open cases.

In 1984, the Investigations Division referred 55 complaints to other agencies without opening cases within the Office of the Inspector General. These complaints were either outside the Inspector General's jurisdiction or more within the mandate of another agency to investigate. Specifically, the following number of complaints were referred to the following agencies: Special Office of Investigations (11); State Ethics Commission (8); Bureau of Special Investigations (5); State Attorney General (3); Department of Mental Health (3); U.S. Department of Health and Human Services (3); Executive Office of Commerce and Development (3); Metropolitan District Commission (2); U.S. Customs Office (1); U.S. Housing and Urban Development (1); State Lottery Commission (1); MBTA (1); Commissioner of Corrections (1); Division of Insurance (1); Division of Employment Security (1); Department of Environmental Quality Engineering (1); Registry of Motor Vehicles (1); Division of Fisheries and Wildlife (1); Department of

Social Services (1); Division of Labor and Industries (1); Executive Office of Human Services (1); Office of Campaign and Political Finance (1); Essex County District Attorney (1); Norfolk County Registry of Deeds (1); Town officials (1).

In 1984, as the result of our investigations, one public official and two non-public officials were found guilty of violating criminal laws. Another two public employees were indicted for violation of criminal laws as was one other non-public employee. One public official was fired while six public employees were suspended. Two public employees were charged with violating the State Ethics Law, one of whom was fined \$500. The Office sent to the Attorney General three cases involving a total of over \$100,000 of allegedly stolen public property. The Office sent to the Attorney General one case involving \$66,000 in false claims to the Commonwealth and an additional \$180,000 in questionable billings made to the Commonwealth.

In October, 1983, as a result of a joint investigation by the Office of the Inspector General and the Barnstable County District Attorney's office, Charles Cacciola, former President of Five Star Enterprises and member of the Falmouth Town Finance Committee and of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority's financial advisory board, was indicted for collusive bidding, unlawful restraint of trade, uttering forged instruments, attempting to procure another to commit perjury, and conspiracy to violate the bidding statutes. An indictment for collusive bidding was also returned against Five Star Enterprises, Inc. and its president Melvin Reine. In early 1984, Cacciola pled guilty to the charge of unlawful restraint of trade. He was fined \$1000 and was placed on six months' probation. The counts of uttering, attempting to procure perjury, and conspiracy were not processed.

In 1983, our Office also launched an investigation of allegations of impropriety involving the Department of Public Welfare's Massachusetts

Public Assistance Control Systems (M.P.A.C.S.) contract procurement process. Our findings were referred to the F.B.I. (because of the interstate nature of the suspected activity), leading to a four-count indictment of James Errico, the former marketing director of System Development Co. The charges related to the marketing director's attempts to bribe a consultant to the Department of Public Welfare's contractor selection committee. In March, 1984, Errico pled guilty to wire fraud and bribery. He was sentenced to five years imprisonment, all but six months suspended, three years probation, \$4,000 fine, and 50 hours community service.

In August, 1984, the Office referred for criminal prosecution the results of an investigation of theft of vouchers from the Women, Infants and Children (WIC) program administered by the State Department of Public Health. These vouchers are similar to food stamps, except their use is limited to certain nutritional food for pregnant women and young children. The investigation revealed that Parker-Hill Fenway Neighborhood Service Center voucher clerk Nelly Ann Alicea removed blank emergency vouchers from Parker Hill-Fenway and delivered the vouchers to her step-mother, Mrs. Liduvina Alicea. Miss Alicea and Mrs. Alicea filled out these vouchers at their apartment, using fictitious client names and client identification numbers and signed and countersigned the vouchers. Miss Alicea also delivered stolen vouchers to former Parker Hill voucher clerk Yolanda Lopez Rosero. Both Mrs. Alicea and Rosero took the stolen vouchers to Santana Grocery Store where they delivered the vouchers to the store's owner, Javier Santana, and received cash from Santana for the vouchers. In total, over \$100,000 of WIC vouchers were apparently stolen and wrongfully converted into cash. On November 13, 1984, the four above-named individuals were all indicted for larceny and conspiracy to commit larceny. On December 28, 1984, Liduvina Alicea pled guilty to the charges and was put on probation for one year.

On March 21, 1985, Yolanda Lopez Rosero pled guilty to the charges and was given a two-year suspended sentence and two years probation.

In August and September, 1984, the Office referred for criminal prosecution and/or civil recovery the results of an investigation revealing \$180,000 in questionable billings and an additional \$66,000 in fraudulent claims by a state contractor. The state contractor also made \$1,000 in payments to a state employee overseeing the contract and made false entries in the contractor's books concerning these payments. The case is presently pending in the Office of the Attorney General.

In 1984, the Office referred for criminal prosecution the results of an investigation revealing the stealing of approximately one thousand dollars worth of public property by a public contractor, the subsequent false claim by this contractor to have delivered services for the public agency, and the inability of the contractor to account for an additional several thousands of dollars of public monies. The case is presently pending in the Office of the Attorney General.

In December, 1983, the Office referred to the Department of Environmental Management the results of an investigation of employees of two state parks. The investigation showed that from 1976-1981 seven state employees participated in a scheme involving the removal of fixtures from the buildings and grounds of state parks, the selling of these state-owned fixtures, and the turning of the proceeds over to the supervisor. The Inspector General estimated that the supervisor received at least \$1,300 from the sale of state-owned property. The Inspector General further estimated that the supervisor kept for his personal use over \$1,000 from selling state property. Finally, the investigation revealed that the supervisor and two other employees were part of a scheme in which the supervisor solicited his father-in-law to apply for the permit to sell firewood at a state park in 1980. When the father-in-law received the permit, he turned it over to the supervisor, despite (1) the apparent conflict-of-interest in the supervisor's running the concession and (2) the fact that the

permit stated on its face that it was non-transferable. It is estimated that the employees cleared approximately \$300 from the firewood concession. In early 1984, the supervisor was fired. The other six employees were suspended for various numbers of days.

In December, 1984, the Office referred the results of an investigation to the Metropolitan District Commission for appropriate administrative action. The investigation had revealed that an MDC employee had failed to follow prescribed procedures, provided inaccurate information to the Commission, approved contractor payment forms known to be false, and prepared misleading letters relating to a contract. The matter is presently pending in the Metropolitan District Commission.

In October, 1984, the Office referred the results of an investigation to the Department of Social Services. The investigation revealed that agency personnel were maintaining two bank accounts, possibly for laudable purposes, but nevertheless in contravention of Article 63 of the Amendments to the Constitution of Massachusetts which requires that all money received on account of the Commonwealth be paid into the Treasury. The investigation revealed fourteen checks, in amounts varying from \$5.00 to \$125.00, which were written to state employees for which it was impossible to determine their purpose. Given the potential for fraud and abuse in the maintenance of such accounts, the Office recommended the usage of alternative measures by which contributions may be raised and expended by recognized charitable organizations, which could lawfully achieve the purposes of such accounts with adequate fiscal controls.

Three complaints and one case referred to the State Ethics Commission were still under active review at the close of 1984.

Moreover, in July, 1984, following an investigation by our Office, the State Ethics Commission issued an Order of Show Cause against

Massachusetts Commission for the Blind social worker Lizanne Sharif. The order charged Ms. Sharif with violating Massachusetts General Laws chapter 268A section 23 (§2) (2). Specifically, Ms. Sharif was charged with falsely reporting visiting clients that she did not visit because she was actually furthering her private interests.

In December, 1984, based upon our Office's referral and information developed independently, the State Ethics Commission signed a Disposition Agreement with William Lannon, former superintendent of schools for the city of Cambridge. Lannon agreed to pay a civil penalty of \$500. He admitted to (1) accepting two loans from employees under his supervision, and, (2) by recommending that one of these employees be granted a sabbatical, to giving reasonable basis for the impression that this employee could improperly influence or unduly enjoy his favor.

In December, 1984, the Attorney General referred to the Department of Revenue the results of an investigation of our Office which revealed that an individual apparently did not report over \$100,000 of income on his Massachusetts tax returns.

The Inspector General has undertaken a number of investigations dealing with the Metropolitan District Commission. In the course of these investigations, the Inspector General has had need for information contained in prequalification statements filed by bidders on MDC construction contracts. When the Inspector General first asked to inspect a prequalification statement to determine whether the statement was fraudulent, the MDC denied the request on the basis of its interpretation of G.L. c.29, §8B, which provides that MDC prequalification statements are confidential. The MDC interpreted the statute to preclude disclosure without the contractor's consent. The Inspector General's position was that the MDC, pursuant to c.12A, §9, which authorizes the Inspector General to have access to all documents maintained by or available to any public body involved in the expenditure of public funds, required disclosure in connection with a specific investigation conducted by this Office.

By agreement among the Inspector General, the Commissioner of the MDC, and the Secretary of Environmental Affairs, the issue was submitted to the Attorney General. In a formal opinion, the Attorney General agreed with the position taken by the Inspector General. The Attorney General concluded that adopting the MDC's interpretation "would frustrate the intent of the General Court and compromise the ability of the Inspector General to perform his statutory mandate to detect and prevent illegality or inefficiency in government."

IV. MANAGEMENT DIVISION

The primary goal of the Management Division is to minimize waste and abuse of public funds. In accordance with this goal, the Management Division analyzes performance of public programs; reviews proposed legislation to determine its potential impact; and assists governmental agencies and programs in instituting standards and controls designed to reduce their vulnerability to fraud, waste and abuse. The major activities undertaken by the Management Division during 1984 are summarized below.

The Metropolitan District Commission

Last year's annual report described two reports, issued by the Office in 1983, which examined a total of five case studies illustrating wasteful and abusive management practices within the MDC's Parks Division, and identified a number of serious deficiencies in the MDC's major management systems. As a result of our Office's reports, the Governor convened a task force charged with developing an improvement plan consistent with our Office's recommendation that a massive, coordinated effort be undertaken to bring the MDC back under control. The 1983 Capital Outlay and Transportation Bond bills prohibited the MDC from spending \$64.7 million in new construction funds for Parks Division projects until sixty days after the Governor submitted to the General Court and the Inspector General a report describing the improvements made in the MDC's management capabilities and demonstrating that the MDC had the necessary technical, managerial, and financial capability to execute and maintain the projects. The Inspector General was required to give his written comments to the General Court within thirty days of receiving the Governor's report.

In accordance with the requirements of these bills, the Governor issued his report on the MDC on April 12, 1984. Our Office reviewed this document and concluded that the MDC had not made tangible progress in addressing the deficiencies identified in our earlier management reports. Therefore, in his report to the General Court

issued on May 14, 1985, the Inspector General advised the Legislature that the MDC had failed to meet the legislative requirements of the two appropriations bills. The report noted that deadlines previously announced by the MDC for achieving important agency improvements had not been met; moreover, the Governor's report cited at least eight key areas in which the MDC intended to make improvements, but had not yet made tangible progress. These areas included the MDC's lack of qualified technical staff, its vacant management positions, the unreliable cost-estimating procedures used by the Parks Division, and the absence of both a planning capability and a functioning internal audit unit.

In addition, our report questioned the accuracy of some of the accomplishments claimed by the Governor's report. For example, the Governor's report stated that the MDC's Parks Division had instituted a requirement that study and design contracts be separated, as recommended by our 1983 report. (The Ward Commission strongly emphasized the importance of separating study and design work as a means of preventing waste and abuse.) However, in monitoring a contemporaneous MDC project to design and construct the John Fitzgerald Kennedy Memorial Park in Cambridge, we discovered that the study and design work had been combined into one contract. The Governor's report also contained internal contradictions: one section stated that the MDC's personnel operation had been centralized, whereas another stated that the personnel function was still "fragmented."

Our report cited the MDC's failure to develop a detailed comprehensive improvement plan as a contributing cause of the agency's lack of progress in strengthening its technical, managerial, and financial capabilities. Since the release of the Inspector General's May 1984 report to the Legislature, the Management Division has continued to monitor the status of the MDC's Parks Division and central management systems.

Major Procurements

After evaluating the vendor selection process used by the State Department of Public Welfare in procuring eyeglasses for Medicaid recipients, our Office recommended new procedures which will save the taxpayers of the Commonwealth between \$600,000 and \$1 million over the next three years. The Welfare Department reportedly runs the largest volume purchasing program for Medicaid eyewear in the country: it purchases some 95,000 pairs of eyeglasses annually. In 1981, the Welfare Department had awarded a three-year contract to a vendor at an annual cost of more than \$1.7 million; in August 1984, the Department solicited bids for another three-year contract. Our review of the Department's selection process revealed serious flaws in the evaluation procedures which had been used in 1981 and were about to be used again. These procedures assigned points to bids according to a mechanical rating system which obscured the technical and price differences among bids. Moreover, the procedures contained inaccurate mathematical assumptions, making it possible for the Department to select the high bidder, although believing it was selecting the low bidder. The Inspector General therefore recommended that the Department revise its evaluation procedures, and the Department agreed to do so. Working together, our Office and the Public Welfare Department developed a new procedure which accurately measured the projected costs of all bids and required the Welfare Department to provide a written justification if the contract were awarded to any vendor other than the low bidder.

Of the five bids received, the current vendor's bid was initially determined to be the highest, at a total three-year cost of \$5,094,000. The lowest bid was \$4,136,000. Despite the apparent cost differential between the highest and lowest bids of nearly \$1 million, the Welfare Department's selection committee recommended award of the contract to the current vendor. The Inspector General objected to this recommendation on the grounds that the selection committee's written justifications failed to show any significant technical differences between the products or services offered by the current

vendor and those offered by the low bidder. Staff from our Office and the Welfare Department then conducted an on-site review of the low bidder's capacity to fulfill the terms of the contract, and concluded that the low bidder was indeed capable of doing so. As a result of our intervention, the Welfare Department subsequently decided to award the eyeglass contract to the low bidder. Had the old evaluation procedures been followed, the selection committee would not have been forced to submit a written justification for their recommendation that the contract be awarded to the current vendor, who was a much higher bidder, and the award would have gone unquestioned. The new evaluation procedures forced the committee to state and justify the tradeoffs between price and quality underlying its recommendation. In this case, the tradeoffs recommended by the selection committee were shown to be unreasonable.

In addition, the Management Division reviewed the activities undertaken by the State Department of Public Works (DPW) in procuring consultant services from the Massachusetts Institute of Technology (MIT). During the previous year, the DPW had initiated discussions with and solicited a proposal from MIT regarding a two-year, \$1 million dollar contract to address the agency's needs in the areas of maintenance management, data processing, and training. The DPW had also requested and obtained a waiver from the Department of Administration and Finance of its regulation requiring agencies to solicit formal written proposals from at least three qualified vendors for professional service contracts having a maximum obligation of \$40,000 or more. The Office's review of the procurement process to date and the draft contract under consideration by the Public Works Commission identified a number of potential problems, including the absence of competition in the proposal solicitation process, the contract's imprecise description of the work to be performed, the undocumented \$1 million contract budget, and the professional ties between the project principals (one of whom was a former Planning Director of the DPW) and State officials in both the DPW and the Executive Office of Transportation and Construction, which oversees

the DPW. After the Inspector General raised these concerns, the Secretary of Administration and Finance requested that the DPW stop its negotiations with MIT and solicit competitive proposals for the contract. Subsequently, the DPW decided to award multiple contracts in lieu of one major contract, and to establish competitive selection procedures for the major portions of the work.

In February 1984, the Inspector General issued a report summarizing the findings of a year-long investigation, conducted jointly by the Management and Investigations Divisions, of the procurement procedures and controls used by Norfolk County in administering its plumbing supply contracts during the period from 1980 to 1982. The investigation revealed that the County had failed to ensure that the bid process was sufficiently competitive and that the vendor to whom the contracts were awarded was qualified. The report documented the excessive prices which the County paid the vendor for plumbing supplies. These prices were typically at least 100 percent higher than the list prices for the same items; for some items the mark-up over list price was close to 1000 percent. Our report further revealed that County officials had made unauthorized, wasteful, and uncontrolled contract substitutions: the vendor had billed the County for plumbing supplies that were never delivered, and the County had paid these false billings to cover the cost of non-plumbing equipment -- such as paper shredders, file cabinets, carpeting, and wall plaques --substituted for the contract items. Moreover, the County officials directly responsible for the plumbing supply contract all knew of and sanctioned this practice of making contract substitutions.

Finally, our report found that contract controls and accountability had been undermined by deficient County procurement records and inventory controls; and that, two years later, the County's contract controls remained fundamentally deficient. The report outlined a series of specific recommendations directed at the Norfolk County Commissioners, the State Director of Accounts, and the Massachusetts General Court. The recommendations were designed to institute effective contract procurement and inventory controls for Norfolk

County, and to prevent the recurrence in other counties of problems such as those discovered in Norfolk County. In response to our report, Norfolk County developed and implemented new purchasing regulations. Our Office is currently conducting a follow-up review of the County's procurement procedures and controls.

Public Authorities

Although public authorities are governmental agencies, they are typically not subject to many of the procedures and controls governing executive branch agencies. The Office conducted extensive analyses of the three major legislative proposals for new public authorities considered in 1984. In response to the proposals for a Water Resources Authority, the Office offered numerous recommendations designed to strengthen controls over its activities in a manner that would balance the need for accountability with the need for flexibility. The enacted legislation included many of our recommendations, including a requirement that the Authority establish a permanent internal audit capability; a requirement that the Authority undergo periodic, independent performance reviews; and language clarifying the land disposition requirements to which the Authority will be subject.

The Office also reviewed two proposals for a Court Facilities Authority during 1984. The first bill, submitted by the Governor, called for a limited takeover by the new Authority of those courthouses most in need of repair. We recommended the addition of a series of safeguards, including requirements for minimum professional qualifications for the executive director, written purchasing procedures, written maintenance and repair guidelines, written real property disposition procedures, and an objective assessment of the Authority's performance by an impartial group after a period of three years. We notified the Governor that if our recommendations were adopted in substance, the Office would find the bill acceptable. My Office, the Administration, and the Judiciary then reached agreement on the proposed amendments to the bill.

However, the subsequent legislation reported out by the Joint Committee on the Judiciary bore little resemblance to the Governor's bill. The new bill called for the transfer of all state courthouses to the new Authority. Moreover, it lacked the most basic safeguards against fraud, waste, and abuse. For example, it did not require the executive director to possess even minimal professional qualifications, yet it virtually assured this person life tenure. It exempted the Authority's projects from State procedures governing public design and construction work. It did not require the Authority to ensure fair and open purchasing procedures, nor to dispose of real property in accordance with the procedures established by the Ward Commission. Moreover, the bill required neither an annual independent financial audit nor an independent performance review. In a letter to the Chairman of the House Committee on Ways and Means, the Inspector General detailed these and other concerns regarding the legislation, concluded that the bill was so flawed that any attempt at piecemeal amendment would be useless, and recommended that the bill be recommitted to the Judiciary Committee for reconsideration. The bill was not enacted during the 1984 legislative session.

The third major proposal for a new authority was the MassBank legislation. Our analysis of this complex bill focused on the claims of cost savings, and concluded that many of these claims were likely to be exaggerated. Although we acknowledged that the proposed new agency might offer non-fiscal advantages, we questioned its cost-effectiveness as a vehicle for financing new investments in State and local infrastructure. The MassBank proposal was not enacted during the 1984 legislative session.

Ward Commission Legislation: Updating and Enforcement

Chapter 484

The Office's two-year effort to update the original Ward Commission legislation, Chapter 579, culminated in the passage of Chapter 484 of the Acts of 1984. This omnibus act was designed to correct problems

encountered in the implementation of Chapter 579, to strengthen the safeguards contained in the law, and to reduce unnecessary administrative burdens. For example, Chapter 484 established a new system of annual contractor prequalification to replace the old project-by-project system which reportedly discouraged contractors from bidding and frequently resulted in superficial, inadequate prequalification procedures. The new legislation also simplified and consolidated the numerous statutes governing advertising of construction contracts, thereby making it easier for agencies to understand and comply with Chapter 579 advertising requirements. In addition, Chapter 484 increased agency flexibility to respond to emergency situations. Chapter 484 was based on the work of a one-hundred person task force comprised of government officials, architects, engineers, attorneys, and contractors involved in public construction. The Inspector General convened the task force to develop recommendations for improving Chapter 579 in early 1982.

The Office of Facilities Management

The Management Division conducted a major review of the State Office of Facilities Management (OFM) in 1984. The OFM was established by the Ward Commission legislation for the purpose of monitoring and improving building maintenance activities throughout State government. Our review revealed that the OFM had conducted little monitoring and oversight to date, but that it was attempting to develop a computerized preventive maintenance system to assist with these responsibilities. By the end of the year, we had identified a series of problems with the OFM's system development efforts, and were working with officials from both the OFM and the Office of Management Information Systems to correct the situation.

Sale of Surplus Public Property

The Management Division frequently monitors the procedures used by public agencies to dispose of surplus property in order to ensure that the safeguards and controls established by Chapter 579 are followed.

One such disposition examined by our Office in late 1983 and early 1984 was a bill directing the Division of Capital Planning and Operations (DCPO) to sell a parcel of land owned by the MDC to Boston College at a price equal to the appraised value of the land. The Office opposed the bill on the grounds that it circumvented the requirements of Chapter 579. In response to our opposition, several key changes to the legislation were made. The final bill authorized, but did not direct, the DCPO to sell the land; did not specify the purchaser of the land; and did not limit the sale price to the appraised value of the land. Boston College ultimately purchased the property for \$75,000, a price which was 105% higher than the appraised value. Our recommended changes in the legislation resulted in a net gain to the State of \$35,800.

Another bill reviewed by our Office concerned a parcel of land sold by the Town of Walpole to a private developer. Norfolk County wanted to purchase the property for construction of an agricultural school. The private developer offered to sell the land to Norfolk County on the condition that the County hire him to do the design and construction work for the new school. Legislation authorizing the sale was filed. The Inspector General opposed the bill, arguing that it contained no safeguards against excess design and construction costs or poor quality work by the private developer. The bill did not pass.

Also in 1984, the Management Division developed a standard format for real property bills. The purpose of the format is to ensure that such bills incorporate the procedures required by Chapter 579. The new format is now being used by the legislative staffs of the State Administration and Housing and Urban Development Committees.

Designer Selection Board

The Designer Selection Board (DSB), established by the Ward Commission legislation has jurisdiction over the selection of all designers, programmers, and construction managers providing design services for State building projects subject to Chapter 579. During 1984, the Management Division reviewed the DSB's policies and procedures, and

concluded that its emergency selection procedures were deficient. The DSB had not filed regulations governing emergency selections as required by Chapter 579, thereby exposing the Commonwealth to lawsuits. In addition, the Office objected to several of DSB's informal practices in making emergency selections, including the practice of conducting telephone polls to select designers. The Inspector General therefore recommended to the DSB that it adopt formal emergency selection procedures drafted by our Office. The DSB filed regulations which included some of the procedural changes we recommended; the most important of these changes concerned the existing DSB requirement that the emergency selection procedures must be used if the Deputy Commissioner of Capital Planning and Operations determined that an emergency exists. Instead, we recommended that the DSB adopt the language contained in the statute, which gives the Board the discretion to decide whether or not to initiate an emergency selection on the Deputy Commissioner's recommendation. The new regulations did incorporate this language; however, they continued to permit telephone polls.

Public Works Advertising

Until 1984, the State Department of Public Works refused to advertise its many contracts in the Central Register, a weekly publication established by the Ward Commission legislation to advertise public construction projects put out for bid. We challenged the DPW's interpretation of the applicable statutes, which it interpreted to exempt itself from the Central Register requirements. The DPW agreed to submit the issue to the Attorney General for a formal opinion. The Attorney General issued an opinion agreeing with our interpretation of the statutes. Since 1984, all Department of Public Works construction contracts have been advertised in the Central Register.

Waltham School Renovation

In response to a complaint, the Office reviewed a school renovation project undertaken by the City of Waltham. Our review disclosed that

the City had failed to advertise the project in the Central Register and that it planned to hire a designer without complying with the designer selection process mandated by Chapter 579. After the Inspector General intervened, the City agreed to advertise the project and to convene a designer selection committee in accordance with Chapter 579 requirements. We will continue to monitor this project.

Ongoing Monitoring and Assistance

During 1984, the Management Division continued to monitor and furnish technical assistance to the Massachusetts Convention Center Authority, which is responsible for the reconstruction of Boston's Hynes Auditorium. Milestones reached on this project included submission of the environmental impact report, taking of land in the Prudential Center, completion of most of the detailed design work, and issuance of \$100 million in bonds. In March 1984, the Office issued a public report on the status of the project. The report lauded the Authority for its progress to date, but urged that it devote more attention to monitoring and controlling project costs. When the Legislature first approved the project in 1982, there was no reliable cost estimate. Subsequently, the Authority used an incomplete, highly inaccurate cost estimate by the Boston Redevelopment Authority as the basis for a request to the Legislature for \$115 million in State funds. A year later, the Authority requested and received an additional \$100 million from the Legislature, although the Authority still lacked a complete estimate of the total project cost or any other justification for the amount requested. Our report concluded that, because the State's financial commitment to the Hynes renovation is essentially open-ended, adoption by the Authority of improved financial controls is essential. Specifically, we recommended that the Authority complete a detailed project schedule and budget; institute a design and change order review process; analyze the costs and benefits of financing the project with Authority bonds versus State bonds; improve financial monitoring of ongoing operations; and strengthen the financial oversight role of the Board of Directors. The intent of these recommendations is to improve the balance between the need to

complete the project in an expeditious manner and the need to minimize the cost of the project to the taxpayers.

At the end of the year, the Authority released the results of its feasibility study for a new Boston sports arena; our Office recommended in 1982 that this study be conducted. The original proposal to establish a Bay State Arena Authority to construct and operate a new multi-purpose arena called for an annual State subsidy of \$800,000, to be funded from an increase in the hotel occupancy tax. Our review determined that this projection was based on optimistic assumptions, and that no firm estimate of the final cost existed. Thus, our Office issued a report recommending that the Legislature defer approval of the project until an independent feasibility study could be conducted, and the Legislature acted on our recommendation. According to the feasibility study completed in 1984, the annual State subsidy cost of the arena could be as high as \$10 million.

We also reviewed and recommended several changes to the proposed arrangements to have an outside contractor operate the new State Transportation Building. The changes we recommended were designed to improve the Commonwealth's control over the contractor and to ensure that the experience gained by the State on this project is ultimately applied to the management of other major State office buildings. Our Office also provided comments to the Legislature on a bill authorizing the lease of retail space in the building. The bill, which was enacted in June 1984, requires our Office to review the actual terms of the lease. As of the year's end, the lease was still being negotiated.

The Management Division continued to monitor the efforts of the Worcester Civic Center Commission to expand the Centrum, the city's multi-purpose arena. In early 1984, a City-sponsored study revealed that the cost of adding new exhibition space would exceed the available financial resources, and would also be economically impractical unless an adjoining hotel were constructed. The City then decided to explore the option of expanding the seating capacity of the

main arena. Our office assisted the City in the design of a second study as well as the selection of a consultant. This second study will be conducted during 1985.

The Low Level Radioactive Waste Commission is a legislative commission studying alternatives for addressing the problem of radioactive waste. During 1984, the Commission was considering the creation of a public authority, and requested the Inspector General's opinion. Our Office responded with a list of concerns and recommended guidelines.

Finally, legislation passed in 1984 permits the town of Belmont to construct a cable television system and to lease the system to a private operator. The bill requires the Inspector General to review and comment on the lease before it takes effect.

V. ENGINEERING DIVISION

The Engineering Division had one full-time engineer and three part-time MIT engineering students. During 1984, the Division reviewed a number of design/construction projects that appeared to involve waste of public money. Most of the reviews resulted in recommendations for changes that would result in cost savings and design improvement. Some projects were initiated independently by the Office of the Inspector General. Others were responses to public agencies' requests for assistance. Others were responses to information provided by the general public and by state legislators.

The most significant engineering cases in 1984 are described below:

State House Renovations

In January, 1984, the Legislature appropriated \$28 million for repairing and renovating the State House, leaving to the Division of Capital Planning and Operations (DCPO) the job of determining what to do first. In March, 1984, DCPO released a report proposing a new garage, a new atrium and restaurant, replacement of the heating and cooling systems, a new electrical system throughout the building, office renovations, a telecommunications and security system, roofing and masonry repairs, and landscaping.

In December, 1984, the Inspector General wrote to the Secretary of Administration and Finance to request that the Administration not start work on a final design for renovation of the State House until the Division of Capital Planning and Operations (DCPO) completes the cost and feasibility studies which are required by its own guidelines.

The letter noted that DCPO intended to start the final design without resolving major programming decisions, without developing reliable cost estimates, without establishing coherent priorities, and without determining a reasonable sequence of work. As a result, even the limited renovations contemplated by DCPO are likely to cost millions of dollars more than the project's \$28 million budget. Either the budget will grow or the project will shrink.

In particular, DCPO had failed to follow its own guidelines in the following four areas: (1) telecommunications system, (2) electrical work, (3) construction of an enclosed atrium, and (4) office renovation. These four areas account for \$7 million, one-quarter of DCPO's budget for the project. In a meeting on October 23, 1984, Deputy Commissioner Lee stated that his guidelines are not mandates and need not be followed for this project. However, the letter noted that other state agencies cannot be expected to take DCPO's guidelines seriously if DCPO disregards them itself. Deputy Commissioner Lee further stated that time pressures required DCPO's approach. However, the Deputy Commissioner later acknowledged that DCPO faced no time constraints other than the Administration's desire to maintain the project's momentum. Finally, Deputy Commissioner Lee indicated that the complexity and historical nature of the State House work justified DCPO's failure to follow its own guidelines. However, basic programming and costing questions should have been asked and could have been answered before advertising for a final designer. The Ward Commission stated, "the causes of the many disasters in our buildings have often been ones in which planning, programming, design, construction and operational problems are complex, intertwined and seemingly inseparable." Nevertheless, the Commission added, "the real problem lies not with that complexity, but rather with an inscrutability in programming..."

Specifically, the letter noted that while DCPO had budgeted \$1.2 million for a telecommunications system, DCPO had "never studied the telecommunications needs of the State House." DCPO had admitted that the State may wind up with "empty conduits," and that even these may or may not be in useful locations. The Inspector General noted that DCPO had little idea of what it can obtain for its million dollar budget and no idea of the total cost of upgrading the State House's telecommunications system.

Moreover, DCPO's \$1.4 million electrical upgrade budget was only one-sixth the cost of completely revamping the State House system, and was \$1 million short of the amount required to power the new atrium,

garage, and mechanical equipment DCPO plans to put in. The Inspector General stated that DCPO's plan to do the electrical work piecemeal, instead of all at once, would unnecessarily add \$1 million to the cost of a complete electrical renovation.

The Inspector General noted that DCPO's \$2.5 million budget for a new atrium was based on a design assumption that DCPO admitted the final designer was free to ignore -- namely, that the floors in the atrium will be supported by a series of exposed columns. DCPO had not studied the cost of alternatives to columns, though DCPO's own illustrations of the atrium showed the area open and without columns.

Finally, DCPO had no reliable basis for its \$2 million office renovation budget. DCPO officials had termed the budget an "allowance" for renovating an unspecified number of offices.

In response to the Inspector General's letter, the Administration defended its programming and studies and announced its intention to proceed as scheduled. Our office shall closely monitor the progress of this project in the coming years.

Raymond Hospital, State Schools for the Retarded

In the fall of 1983, the Engineering Division opened its review of potential savings in court consent decree construction involving the institutionalized mentally retarded.

Our Office focused its investigation on the proposed renovation of Raymond Hospital at the Wrentham State School for the Retarded as one of the largest renovation jobs not yet under construction.

The Division of Capital Planning and Operations (DCPO) first informed our office that extensive cost estimates existed showing that renovation was cheaper than new construction. Not until two months later, after extensive inquiry, did DCPO acknowledge that no cost estimates were ever done comparing the cost of renovation of Raymond Hospital to the cost of building a new medical facility at Wrentham.

After discovering that DCPO had undertaken no comparative cost estimates, Inspector General's staff went to Wrentham and met with parents and the medical staff. Equipped with information about what was actually needed -- as well as a litany of problems stemming from the odd shape of the present facility -- the Inspector General's staff sketched diagrams of a more efficient facility and retained the same consultant who had estimated DCPO's costs for the renovation. His report: as of last June, a new building providing facilities at least as good as the renovation could be put up for \$500,000 less.

The Inspector General's staff then asked State officials involved with implementing the consent decrees to review the information put together by his Office. In July, the Inspector General's Office was informed that these officials were unwilling to depart from their longstanding plans for the renovation of Raymond Hospital.

The Inspector General then personally took his case directly to Secretary of Human Services Philip W. Johnston. By September, 1984, Johnston agreed with the IG that a new building was preferable to renovating Raymond, and attorneys from the State contacted Nonnie S. Burnes, lawyer for the Wrentham plaintiffs, to propose a change in plans. The parents agreed that building a new facility was preferable to renovating Raymond Hospital. By December, 1984, DCPO had advertised for a designer to conduct a preliminary study for a new building.

In January, 1985, attorneys for both sides agreed on final language to modify the Wrentham consent decree, and filed a joint motion with the court to permit the building of a new facility. The motion was allowed by the court in February, 1985.

Given inflation, program refinements, and the fact that the original cost estimate for renovating Raymond Hospital was probably too low, the new building may or may not cost less than the amount budgeted for the renovation. On the upside, it should not cost more as the cost of construction will be funded out of capital monies already

appropriated. It is clear that the money spent on the project will now buy a much better medical building.

Specifically, a new building has the following advantages:

- It will be safer in the event of a fire, as the new building will be one story, instead of the four stories at Raymond. The new building will be much easier to evacuate quickly.
- Medical staff will be stationed closer to patients.
- The new building will be more in keeping with modern medical practices. In the renovated building, contaminated materials would have had to be moved through sterile areas. That will not be necessary in the new building.
- The new building will cost less to heat and maintain.
- Patients will not have to be moved out to temporary quarters for a year, as they would have if Raymond were renovated.

While our Office eventually succeeded in obtaining a consensus to build a new facility, it is estimated that one-quarter million dollars was wasted by the Commonwealth's failure to pursue the replacement option earlier. Certain costs, such as design fees for the renovation, were irretrievably lost.

MBTA, North Station Reconstruction

In December, 1983, a fire severely damaged the MBTA's North Station facilities. The damage involved burning of wooden piles throughout the train trestle, most of which stood in water in the Charles River, and some damage to an adjacent steel drawbridge. New electrical work was also required.

In February, 1984, the MBTA requested that the Inspector General approve an accelerated bid and construction procedure by which they hoped to re-open North Station earlier than they could with

conventional bid and construction procedures. The MBTA also proposed to include a considerable amount of new construction at the time as making fire-related repairs. The Inspector General pointed out that the MBTA's plan would violate bidding laws in that bidders would not have complete plans and specifications on which to bid. We proposed alternative methods by which a similar time savings could be effected, including pre-purchase of some construction items by the MBTA. We also noted that the MBTA's internal procedures could be speeded up for significant additional time saving.

The MBTA accepted the recommendation to accelerate its own internal procedures rather than abandoning conventional bid and construction procedures. As of the end of 1984, the project was meeting this accelerated schedule.

Steamship Authority: Terminal Building

During 1984, the Inspector General's Office reviewed design and construction projects of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority. The review is continuing. In September, 1984, the Engineering Division discovered that Authority members were about to approve the pouring of a foundation which did not match the building that was bid on as part of the Nantucket Wharf Reconstruction. The Office's intervention began a negotiating process resulting in savings to the Steamship Authority of \$166,000.

The Authority's field superintendent had been attempting to negotiate with the contractor to substitute a different building for the one bid on and to arrive at a reasonable price for the substitution. However, the members apparently did not know that the go-ahead they were about to give for foundation work would lock them into the substitute building, for which the contractor wanted \$200,000 more than the Authority's engineers thought was reasonable.

The Inspector General advised the Authority to further study the costs of changing designs and to improve its negotiating position by holding off approval of foundation work until both building and

price had been agreed upon. The Steamship Authority voted to accept the Office's advice and in subsequent negotiations, the contractor reduced his price by \$166,000.

The Inspector General's Office is continuing its review of the Nantucket project as a whole, including the sixteen costly redesigns of the Terminal Building which cost \$300,000 in design fees alone. The as-bid construction cost of the building was \$356,000, and substituted 17th design cost \$600,000.

MDC, Nut Island Sewage Treatment Facility

In February 1984, Rep. Thomas Brownell requested that the Inspector General review the MDC's plans to build new buildings at the Nut Island Sewage Treatment Plant. Local citizens had objected that the new buildings were not necessary and would expand the MDC's facility there and increase the inconvenience to local residents.

Review of the project by the Engineering Division indicated that confusion had arisen because the MDC had commissioned two separate studies of the problem by two separate engineering firms, overseen by two separate divisions within the MDC. The studies had different objectives and were not coordinated within the MDC. One study focused on harbor-wide problems and commented on short-term upgrading of the Nut Island facility; the other study addressed the safety problems at the Nut Island facility alone, and recommended that it would be less costly to build a new building than to eliminate the hazards and reconstruct the existing facility. The Engineering Division concurred that significant safety advantages were gained by construction of the new buildings which could not otherwise be achieved within the old ones.

Governor's Office of Economic Development - Haverhill Parking Garage

In March 1984, the Governor's Office of Economic Development asked that the Inspector General review the proposed transfer of the Haverhill Parking Garage from DPW ownership to ownership by the

City of Haverhill. Structural problems had developed at the garage at the time of construction, and it was never completed. The problem is currently in litigation.

The Engineering Division reviewed the structural report done for the city and a review of that report and recommended that the guidelines set forth in the report be followed.

Executive Office of Communities and Development - Holbrook Housing

In January 1984, a local resident complained that a new housing project for the elderly at Holbrook appeared to involve defective construction as well as a delayed timetable. At the time the Engineering Division initiated review, construction had virtually halted and the contractor was disputing defective work claims involving roofing and siding.

After interviews by the Engineering Division with the design firm, housing authority members, and contractor, as well as with EOCD project engineers, the issues were settled and construction was completed satisfactorily. A wider review of EOCD policies and housing authority performance will be undertaken by the Engineering Division in the future.

MDC - Pemberton Pier, Hull

In 1983, Hull residents complained to the MDC that there were construction problems at the new Pemberton Pier. In January, 1984, the MDC Commissioner asked that the Inspector General review the project and either confirm that the construction was satisfactory or advise remedies.

Review of the project by the Engineering Division indicated that the MDC could confirm the quality of materials installed by taking samples and having them analyzed at a nominal cost at a laboratory.

VI. SIGNIFICANT PROBLEMS IN THE AREA OF FRAUD, WASTE, AND ABUSE AND RECOMMENDATIONS FOR CORRECTIVE ACTION

M.G.L. c.12A, §12, requires the Office of the Inspector General to report annually to the Governor and the General Court any significant problems of fraud, waste, and abuse within our jurisdiction and to make recommendations for remedial action. The previous sections of this Report set forth in detail the problems identified by our Office in the previous year and our recommendations for corrective action.

In addition, the Inspector General filed legislation in the present legislative session dealing with two problem areas within the jurisdiction of this Office.

Uniform Procurement Legislation

The Inspector General filed a bill (H.177) which would for the first time establish a modern and fair set of basic procurement contracting procedures for county and local governments in the Commonwealth. This bill is patterned on the Model Procurement Code of the American Bar Association. The bill would replace the confusing and largely ineffective web of existing laws that now govern contracting in matters other than construction and design. The bill would provide a clear and effective code to foster competition and provide safeguards against fraud, waste, and abuse.

Many of the problems detailed elsewhere in this Report stem, at the local level, from the total absence of state-mandated procurement procedures. Instead of coherent and comprehensive procedures, the Commonwealth presently has a laundry list of specific items or services which municipalities are authorized to procure, frequently with the only prescribed safeguard against work or abuse consisting of a limit on the number of years a contract may last. The supplies or services on the list, as well as the statutory durations, have little connection with either cost-effective procurement or with prudent controls. The Inspector General's procurement bill would extensively revamp and modernize procurement safeguards at the local and county levels.

The bill would authorize telephone solicitations on procurements between \$500 and \$5,000; provide for competitive procurement of supplies and services in excess of \$5,000; spell out basic procedures for competitive bidding; prescribe new procedures for the solicitation of competitive proposals where factors other than cost may be taken into account; allow emergency procurements for the first time; allow sole-source procurements in well-defined situations; establish accountability for the procurement of certain professional services; eliminate arbitrary restrictions on multi-year procurements; establish civil penalties for violations of the procurement law and empower the Inspector General, when authorized by the Attorney General, to initiate civil enforcement proceedings.

Designer Selection Legislation

The Inspector General filed two bills to secure better compliance with the designer selection statutes passed as part of the Ward Commission reforms. One of these bills (H.178) would fill a significant gap in the designer selection statutes: the lack of an enforcement mechanism. The bill would empower the Commissioner of Labor and Industries to undertake this important enforcement role. The Division of Labor and Industries currently has jurisdiction to enforce the construction bid laws. No agency, however, has present authority to enforce compliance -- by municipalities, other awarding authorities, or the Division of Capital Planning and Operations -- with the designer selection statutes which help ensure integrity in the construction process. The Inspector General currently responds to complaints about violations of the designer selection laws. As a result of our inquiries, we have seen municipalities selecting designers in the absence of written procedures mandated by state law; engaging in fee-bidding in violation of state law; retaining persons to undertake design work who are not registered architects, in violation of state law; failing to advertise design contracts, in violation of state law; and the failing to make designer selection on a fair and uniform basis, as required by state law. This Office lacks the resources to investigate thoroughly all complaints, nor does this Office have the authority to enforce compliance with the law.

Accordingly, the Inspector General has proposed extending the jurisdiction of DLI to include enforcement of the designer selection statutes. Because of DLI's expertise in the area of construction and enforcement, this is the appropriate agency to take on the essential task of enforcing the designer selection laws. The Commissioner of Labor and Industries has reviewed the Inspector General's proposal and has endorsed it.

In a related bill (H.179), the Inspector General has proposed closing another gap in the designer selection law. The bill would make explicit a requirement which was clearly intended by the present law, but which the law does not explicitly provide: that public agencies which are granted an exemption from the jurisdiction of the Designer Selection Board on the basis of written procedures approved by the DSB must, in fact, follow those very procedures. This proposal would strengthen compliance with laws that are critical to the Ward Commission reforms.

VII. SIGNIFICANT RECOMMENDATIONS DESCRIBED IN PREVIOUS ANNUAL REPORTS
ON WHICH CORRECTIVE ACTION HAS NOT BEEN COMPLETED

M.G.L. c.12A, §12, requires the Office of the Inspector General to report annually on significant recommendations described in previous Annual Reports on which corrective action has not been completed.

Internal Auditing

Last year's annual report recounted our efforts to persuade the Administration to adopt a pilot internal audit program out of current appropriations. Our Office recommended such a program be initiated on a pilot basis by the Secretary of Administration and Finance, with an internal audit unit focusing on high risk areas. Again in 1984, we met with Administration officials and urged the establishment of an internal audit unit, on a pilot basis, in several agencies. Effective internal audit units in line agencies could uncover on a routine basis wastefulness or abuse that our small Office might discern only on a spot basis. Such units would more than pay for themselves in a short period of time. As our Report stated last year, good government requires a widespread and systematic internal audit program aimed at detecting fraud, eliminating potential waste, and improving efficiency.

To date, the Administration has expressed agreement with this recommendation, but has yet to take the affirmative steps the Office has recommended.

Government Land Bank

In 1982, in our Report on the proposed disposition of Boston State Hospital land, the Inspector General recommended that safeguards be adopted to ensure accountability in the disposition of surplus State property through the Government Land Bank. The Land Bank itself took no action in response to this recommendation. Last year, the Inspector General filed legislation (H.180), which is now pending, that would institute safeguards against fraud, waste, or abuse in the

disposition by the Land Bank of property that it may hereafter acquire from the State.

The Government Land Bank's enabling legislation, originally enacted in 1975, was amended in 1979 to permit the Land Bank to acquire surplus property from the State. Before the 1979 amendment, the Land Bank was limited to the acquisition of surplus Federal property. House No. 180 would ensure that, if State property is hereafter transferred to the Land Bank, prudent controls on the disposition of such surplus property will be in place. The bill would require the Land Bank to conduct a public hearing and adopt a redevelopment plan before disposing of former State property, as the Bank must now do before disposing of former Federal property. The bill would also make applicable to the Land Bank basic appraisal and disclosure requirements which apply, under c.579 of the Acts of 1980, to all other surplus land dispositions by the State. These safeguards are: evaluation of the property; disclosure of any difference between the value of the property and the selling price; and disposition through a competitive process, unless there has been public disclosure of the reasons for not utilizing a competitive procedure. Finally, the bill would require the Land Bank to establish rules and regulations setting forth its procedures for disposing of surplus State property.

The proposed legislation has been endorsed by officials representing the Land Bank.

Providing a Civil Penalty for Bid-Splitting

In 1982 and 1983, our Office supported legislation to provide a civil penalty for bid-splitting (i.e., dividing a contract into several smaller contracts for the purpose of evading statutes which require that contracts over a certain value must be bid). Our Office had undertaken several investigations that uncovered acts of bid-splitting. However, our Office could take no effective action, given the inadequacy of current law.

As a result of legislative action in 1984, significant progress has been made in effectively deterring bid-splitting. Legislation filed

by Rep. Richard Moore (D.-Uxbridge) was incorporated into the Inspector General's Task Force Bill, c.484 of the Acts of 1984. The new legislation adds a provision to the General Laws providing a civil penalty of up to \$5,000, as well as double damages, for any person involved in bid-splitting on a construction contract subject to the provisions of either G.L. c.149, §44A, or c.30, §39M.

This remedial legislation, however, does not address bid-splitting in relation to contracts involving procurement outside the realm of construction. At present, the only prohibitions carry criminal penalties. The experience of our Office is that it is almost impossible to use these criminal sanctions effectively. Accordingly, the Inspector General's proposed procurement bill (H.177) would provide a civil penalty for bid-splitting in other procurement areas.

Protection for Whistleblowers

Last year's Report again recommended the passage of legislation to protect whistleblowers. In 1984, the Governor filed a bill prepared by our Office. The bill would have created a civil cause of action against any employer or person acting on behalf of an employer who took or failed to take any personnel action based on a complaint or disclosure of information to a public body, of the possible existence of fraud or abuse. The bill was not enacted.

VIII. RECOMMENDED AMENDMENTS TO CHAPTER 12A

M.G.L. c.12A, §12, requires the Office of the Inspector General to report annually regarding recommended amendments to Chapter 12A.

Codifying the Power to Subpoena Witnesses

In 1984, the General Court passed legislation critical to keeping the Office a viable force. In enacting c.119 of the Acts of 1984, the Legislature codified the Inspector General's power to subpoena witnesses, adding a new §15 to M.G.L. c.12A. This new section of the General Laws retains all of the procedural safeguards that had been written into the Inspector General's original authorization to subpoena witnesses.

The Governor, in filing this proposal on behalf of the Inspector General, had requested that the Inspector General's subpoena power be made permanent. As enacted, however, the summoning power will expire July 1, 1989.

Clarifying and Expanding the Inspector General's Jurisdiction

The Governor filed legislation in 1984 to extend and clarify the Office's jurisdiction. This bill was passed by the House, with one amendment added on the floor; the Senate passed the bill without the amendment, and returned the bill to the House. The House concurred in the Senate version. Thus, the bill had actually gone through Third Readings in both branches of the General Court. The bill was in the process of being engrossed on the final day of the 1984 session when the House adjourned. The Inspector General refiled identical legislation (H.181), which is currently pending.

The Inspector General presently has jurisdiction, pursuant to M.G.L. c.12A, §7, over "fraud, waste and abuse in the expenditure of public funds ... in programs and operations involving the procurement of any supplies, services, or construction [by public agencies]." The Inspector General's bill would amend this jurisdictional definition to

include "fraud, waste and abuse in the expenditure of public funds ... or relating to programs and operations involving the procurement of any supplies, services, or construction [by public agencies]."

The language of this bill was agreed upon by a task force appointed by then Governor-elect Dukakis and chaired by Daniel Taylor. Its members included Stephen Rosenfeld, Thomas Herman, Rep. Larry Alexander, then-Rep. Philip Johnston, Rep. Susan Shur, David Roseman, Bancroft Littlefield, Thomas Norton, David Flynn, Maj. Peter Agnes, and the Inspector General.

As presently drafted, Chapter 12A limits the jurisdiction of the Office of the Inspector General to prevention and detection of "fraud, waste and abuse in the expenditure of public funds." This definition of jurisdiction excludes matters that are closely related to but do not themselves involve the expenditure of public funds. Some of these closely related matters are themselves well within the scope of activities which the Ward Commission investigated and sought to remedy.

For example, the Office could face an argument that it does not have jurisdiction over allegations of fraud, waste, and abuse over some of the many construction programs of governmental authorities -- such as the Turnpike Authority or Massport -- where projects are financed by the issuance of revenue bonds. The proceeds from the sale of revenue bonds have, at least for some purposes, been determined by the Supreme Judicial Court not to constitute "public money." Opinion of the Justices, 354 Mass. 779, 236 N.E.2d 523 (1968). There does not appear to be any policy reason for excluding such construction programs from the jurisdiction of the Office, and, indeed, the experience of the Office and the rationales for its creation argue strongly that the General Court intended inclusion.

In addition, other types of abuses which the Office is equipped to to investigate, and which the Legislature apparently intended to place within the Inspector General's jurisdiction, fall outside the precise

statement of our jurisdiction because an expenditure of public funds is not directly involved. The definition of "procurement" in c.12A, §1, includes not only acquisition but "disposing of" property and services, and it would seem that the Legislature intended that the Inspector General investigate abuses in such dispositions. However, the Office has encountered several areas of abuse in which such dispositions have not involved an expenditure of public funds, and thus are arguably not within the Office's jurisdiction. For example, fraud, waste, and abuse in sale of public lands does not directly involve an expenditure of public funds. Kickbacks in connection with leasing public property are also arguably excluded, as is fraud in payments to an agency by a private concessioner operating on public property. While the Office has handled these cases in the past given our belief that the Legislature intended to give our Office jurisdiction over these matters, it would be better to eliminate the ambiguity presently existing in the law.

Similarly, our Office has encountered cases where agencies procure services through arrangements other than an expenditure of public funds. For example, our Office handled one case involving a city contract to obtain towing services where the city made no expenditure for the services. We handled the case only because the investigation involved related allegations directly within our jurisdiction. Without such related allegations, such a contract would appear to be excluded from the Inspector General's jurisdiction under c.12A as currently written.

In all of the foregoing examples, fraud, waste, or abuse in the acquisition or disposal of public property has an impact on public resources identical in practical effect to situations in which the procurement directly involves an expenditure of public funds. There is no logic to why the Inspector General's investigative mandate should extend to a contract under which an agency is fraudulently induced to spend too much money but not to a contract under which the same agency is fraudulently induced to accept too little in payment.

IX. LIST OF AUDIT REPORTS AND OTHER PUBLICATIONS

1. The Boston State Hospital Land Disposition Proposal: A Case Study of Needed Improvements in the Commonwealth's Management Surplus Real Property, March 25, 1982.
2. Review of House Bill No. 1696, An Act Establishing the Bay State Arena Authority, April 21, 1982.
3. Report on the Proposed Disposition of State Land in the Hyannis Rail Yard, July 28, 1982.
4. Review of House Bill No. 6437, An Act Establishing the Massachusetts Facilities Development Authority, August 5, 1982.
5. Status of Chapter 579 -- Implementation Within the Division of Capital Planning and Operations, October 26, 1982.
6. Final Report of the Chapter 579 Task Force, February 1, 1983.
7. Chapter 579 -- The Omnibus Construction Act: How Cities and Towns Can Comply With Its Requirements, February 25, 1983.
8. Report on the Franklin Park Zoo Tropical Forest Pavilion, May 2, 1983.
9. Report on the Metropolitan District Commission: The Parks Division and Central Management Systems, September 12, 1983.
10. Report on Norfolk County's Plumbing Supply Contract: 1980-1982 and Needed Improvements in the Country's Purchasing System, February 12, 1984.
11. A Report on the Massachusetts Convention Center Authority, March 6, 1984.
12. Inspector General's Comments on the Report of the Governor Relative to Improvements at the Metropolitan District Commission, May 14, 1984.

By agreement among the Inspector General, the Commissioner of the MDC, and the Secretary of Environmental Affairs, the issue was submitted to the Attorney General. In a formal opinion, the Attorney General agreed with the position taken by the Inspector General. The Attorney General concluded that adopting the MDC's interpretation "would frustrate the intent of the General Court and compromise the ability of the Inspector General to perform his statutory mandate to detect and prevent illegality or inefficiency in government."