THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE INSPECTOR GENERAL

Emergency Construction Projects:

Review of Selected State Office Building Contracts

Robert A. Cerasoli
Inspector General
May 1998

The Commonwealth of Massachusetts

Office of the Inspector General

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May 1998

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chairman of the Senate Ways and Means Committee

The Honorable Chairman of the House Ways and Means Committee

The Honorable Chairman of the Senate Post Audit and Oversight Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Committees

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

I am today releasing a report on emergency state office building construction projects undertaken between 1994 and 1997. My Office's review included a detailed examination of two major emergency construction projects involving the replacement of cooling systems in the Saltonstall and McCormack State Office Buildings. My Office's review found that the Commonwealth anticipated the need to replace the cooling systems but did not take action until the need became critical. Consequently, construction contracts totaling more than $761,000 were awarded using unadvertised, informal emergency contracting procedures.

Some emergency contracts examined in this report reflect a larger problem: inadequate maintenance of state office buildings. Deferring necessary maintenance and repair projects in state office buildings is a costly and inefficient approach to capital asset management. Accordingly, this report recommends replenishing depleted reserve accounts for maintenance and repair projects and improving the planning and coordination of such projects by the responsible state agencies. By investing the necessary resources in proper maintenance of state-owned assets, the Commonwealth would reduce the need for more expensive construction work in the future – and for emergency contracts that do not promote fair competition and cost-effective contracting.

The FY 1999 budget proposal submitted by the House Committee on Ways and Means would also further these objectives by increasing funding for scheduled maintenance and repairs of state facilities and requiring the Division of Capital Planning and Operations to implement an aggressive program of scheduled maintenance and repairs. I urge the Legislature to enact a FY 1999 budget that includes these measures.

Sincerely,

Robert A. Cerasoli
Inspector General

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Executive Summary

In response to complaints forwarded by the Office of the Attorney General, the Office of the Inspector General initiated a review of emergency construction projects undertaken between July 1994 and June 1997 by the Division of Capital Planning and Operations (DCPO) and the Bureau of State Office Buildings (BSOB). Based on an initial review, this Office identified two major emergency construction projects for in-depth review. These projects were anticipated by state officials long before the required advertising and bidding procedures were waived under the emergency provisions of M.G.L. c. 149. The emergency work entailed the purchase, installation, and repair of cooling equipment in the Saltonstall and McCormack State Office Buildings.

The emergency provisions of M.G.L. c. 149 are intended to preserve the health or safety of people or property, and not necessarily to promote fair competition and cost-effective contracting. The procurements summarized in this report illustrate some of the disadvantages of using informal emergency procurement procedures in place of the open, competitive bidding procedures required by M.G.L. c. 149. These contracts were not publicly advertised. Several lacked detailed specifications. In one case, vendors were allowed to submit proposals for a wide variety of financial arrangements whose relative costs could not readily be compared. In another case, the vendor simply received a no-bid contract. It is thus in the Commonwealth's interest to minimize the number and size of emergency procurements of construction materials and services.

This Office does not dispute DCPO's decision to invoke the emergency provisions of M.G.L. c. 149 in 1996 to address the cooling problems in two state office buildings. However, it is striking that state officials anticipated these problems months – and even years – in advance, but either could not or did not address them before they became genuine emergencies.

To address the need for improved maintenance of state office buildings and reduce the Commonwealth's reliance on emergency construction contracts, the Inspector General recommends the following:

1. **The Governor and the Legislature should ensure that reserve accounts earmarked for preventive maintenance and repairs of state office buildings are adequately funded and managed.** By investing the necessary resources in proper maintenance of state-owned assets, the Commonwealth would reduce the need for more expensive repair and renovation work in the future – and for emergency construction contracts that do not promote fair competition and cost-effective contracting.

2. **The institutional and reporting relationship between DCPO and BSOB should be clarified.** Both DCPO and BSOB are responsible for planning and undertaking capital projects involving state facilities. Accordingly, clear lines of authority and accountability are and will continue to be critical to the Commonwealth's ability to address the maintenance and repair requirements of state buildings.

3. **The maintenance funding and program implementation provisions contained in the House Ways and Means budget proposal should be enacted.** These measures represent sound and responsible first steps to addressing the problems engendered by deferred maintenance and neglect of state facilities.

Introduction

The Office of the Inspector General initiated a review of emergency construction projects undertaken between July 1994 and June 1997 by the Division of Capital Planning and Operations (DCPO) and the Bureau of State Office Buildings (BSOB). The Office of the Attorney General had forwarded complaints to the Inspector General regarding the award of emergency construction contracts for state office buildings. Specifically, the complaints alleged that the agencies awarding emergency contracts anticipated the work well in advance of the contracts and, thus, could and should have advertised and bid the work; that the agencies did not always provide the same information to vendors competing for emergency contracts; and that the agencies authorized major changes to the nature and scope of competitively awarded emergency contracts, sometimes after the contracts were executed.

This Office requested and reviewed all records on file at both DCPO and BSOB pertaining to emergency construction contracts awarded during the three-year review period. According to the documents reviewed by this Office, DCPO approved emergency waivers of the construction bid laws for 12 construction contracts over $10,000 awarded by DCPO and BSOB during the review period. The dollar value of these contracts totaled $2,161,145.[1] Figure 1 is a summary table of the contracts reviewed by this Office.

[1] BSOB also awarded several emergency contracts of less than $10,000 during the review period. Since construction contracts under $10,000 do not require advertising and bidding, these smaller contracts were excluded from the review.

Figure 1: Summary of Emergency Projects Reviewed

Building	Awarding Authority	Work	Contract Date	Contractor	Contract Price	Change Orders	Total Contract Amount
Saltonstall	BSOB	Cleaning air ducts		Dec Tam, Inc. *	$ 23,897.00		$ 23,897.00
Saltonstall	DCPO	Moving air intake	9/21/94	Enterprise Equipment Co.	22,450.00	$ 4,900.00	$ 27,350.00
Saltonstall	DCPO	Repair of water main	12/7/94	Master Contractors, Inc.	24,300.00	8,409.96	$ 32,709.96
Saltonstall	BSOB	Lease/Purchase of chillers	5/1/96	Carrier Corporation	268,065.60		$ 268,065.60
Saltonstall	BSOB	Installation of chillers	5/6/96	Enterprise Equipment Co.	253,462.00	84,323.00	$ 337,785.00
McCormack	BSOB	Purchase and installation of chillers	5/20/96	Johnson Controls	98,500.00		$ 98,500.00
McCormack	BSOB	Chiller piping conversion	5/15/96	F.H. Maroney	16,650.00		$ 16,650.00
McCormack	BSOB	Chiller servicing	6/1/96	Carrier Corporation	40,825.00		$ 40,825.00
100 Nashua Street	DCPO	Main renovations	7/12/95	Performance Building Co., Inc.	939,000.00	265,369.93	$ 1,204,369.93
101 Nashua Street	DCPO	Elevator repair	8/21/95	F.S. Payne	95,300.00		$ 95,300.00
102 Nashua Street	DCPO	Heating improvements	9/27/95	P.J. Kennedy and Sons	324,030.00	1,546.74	$ 325,576.74
Hurley	BSOB	Elevator repair	6/10/96	Payne Elevator	54,665.00		$ 54,665.00
TOTAL					**$ 2,161,144.60**	**$ 364,549.63**	**$ 2,525,694.23**

* BSOB was unable to locate this emergency contract or any contract change orders. The $23,897 figure reflects the emergency contractor's bid for asbestos abatement work in the Saltonstall Building.

Public building construction projects in Massachusetts are subject to advertising and competitive bidding requirements under two statutes. M.G.L. c. 149, §§44A-44M applies to contracts estimated to cost more than $25,000; M.G.L. c. 30, §39M, applies to contracts estimated to cost between $10,000 and $25,000. Both statutes contain provisions that permit awarding authorities to dispense with advertising and bidding requirements in emergency situations. For M.G.L. c. 149 projects, the required advertising and bidding procedures may be waived in cases of "extreme emergency" for work needed to preserve the health or safety of people or property.

Based on an initial review, this Office identified two major emergency projects for in-depth review. These projects were anticipated by state officials long before the required advertising and bidding procedures were waived under the emergency provisions of M.G.L. c. 149. The emergency work, for which the Commonwealth paid more than $761,000, entailed the purchase, installation, and repair of cooling equipment in the Saltonstall and McCormack State Office Buildings. These emergency contracts are listed below.

Saltonstall	Lease/Purchase of chillers	$	268,065.60
Saltonstall	Installation of chillers		337,785.00
McCormack	Purchase and installation of chillers		98,500.00
McCormack	Chiller piping conversion		16,650.00
McCormack	Chiller servicing		40,825.00
TOTAL		**$**	**761,825.60**

The Office's in-depth review of these emergency contracts did not lend support to all of the allegations contained in the complaints forwarded by the Office of the Attorney General. Although cooling problems in the two buildings were identified by state officials well in advance of the emergency contracts, the Office's review indicated that DCPO's decision to grant emergency waivers for these projects was justified by the specific circumstances of each contract.

However, the Office's review also confirmed that the informal methods used to procure these unadvertised emergency services and equipment contracts did not promote fair competition and cost-effective contracting. Reducing the need for and frequency of

emergency construction contracts for state facilities is thus a worthwhile policy objective. The Inspector General's recommendations are provided at the end of this report.

The Office provided DCPO and BSOB with a confidential draft of this report. The Office received written responses from the Secretary of Administration and Finance and the DCPO Commissioner. Their responses are included in Appendix A of this report.

Saltonstall Building Emergency Project

Project Summary

Project records and interviews conducted by this Office confirm that both BSOB and DCPO were aware at least a year before the emergency chiller procurement that the cooling equipment in the Saltonstall Building needed to be replaced. Johnson Controls, the private building contractor responsible for maintaining the mechanical systems in the Saltonstall and McCormack Buildings, warned BSOB in June 1995 of the impending failure of the Saltonstall's cooling system. In August 1995, BSOB wrote to DCPO recommending that the system be replaced. According to DCPO officials, however, the presence of asbestos insulation in the building complicated the task of performing this work. DCPO had therefore planned to incorporate the cooling equipment replacement project into a much larger renovation and asbestos abatement project under design in 1995. However, when the Saltonstall Building's cooling equipment failed in March 1996, the larger renovation and asbestos abatement project still lacked a completed design as well as funding. In March 1996, DCPO authorized emergency procurement procedures for the purchase and installation of replacement cooling equipment. A detailed project chronology follows.

In May 1996, BSOB executed two emergency contracts totaling $605,850.60 for the lease-purchase and installation of electric chillers. A chiller is an air conditioning unit that provides cooling action through a refrigerant evaporation process.

Emergency Lease-Purchase Contract for Chillers

BSOB and DCPO documented the need to replace the chillers seven months before DCPO waived advertising and bidding requirements for the purchase.

On June 23, 1995, the Regional Operations Manager for Johnson Controls World Services Inc. (Johnson Controls)[2] wrote a letter to BSOB's Superintendent warning about an impending failure of Saltonstall's cooling system:

[2] Johnson Controls is the state's energy management services contractor responsible for maintaining the mechanical systems installed in the Saltonstall and McCormack Buildings.

> At this time I have two major concerns regarding the machine's ability to provide continuous reliable cooling. First, the requirement of the building to operate on 100% outside air seriously burdens the machine from its base load and extends the hours of operation. Secondly, the machine is an estimated 20 plus years old and should be replaced as it has reached the end of its useful life expectancy.
>
> Due to its age, and the fact that it is a stand alone unit, we feel the BSOB is under tremendous risk should the machine fail during the cooling season.

In an August 17, 1995 letter to BSOB's Superintendent, Johnson Controls repeated its warning about the cooling system:

> We would like to reiterate the fact that if the Dunham Bus[c]h machine should fail, the building will be virtually without cooling. Johnson Controls World Services Inc. feels it has met its contractual obligation regarding the Saltonstall Absorption machine. Extensive labor hours and materials have been utilized in an attempt to maximize its performance level, but it has continued to fail. It is our strong recommendation that a serious effort be made to install a reliable, primary refrigeration unit in the Saltonstall Building. The screw machine is presently operating, but as stated in the memo in June, we cannot estimate how long it can maintain in this capacity.

A week after Johnson Controls' second warning, on August 23, 1995, BSOB's Superintendent informed DCPO of the problem in a letter to the Deputy Commissioner for Construction Services:

> During this current cooling season, we have had increasing problems with steam absorption unit [in] the Saltonstall building. The condition of the absorption unit has now reached the state where it can no longer be considered a reliable source for cooling the building leaving only the 750 ton Dunham Busch screw machine. The building therefore has no reliable back up should the Dunham machine fail.
>
> We have worked with Johnson Controls, the mechanical maintenance contractor for the building, to attempt to remedy the situation. Johnson shares [our] opinion that the machine has most likely reached the end of its useful life, and another unit should be procured. . . . Per our conversations, I understand that the proposed gas conversion of the building would include replacement of the unit, but funds may not be available at this time to proceed with the project.

> Given the above situation, I wish to request we or our staff meet at the earliest convenience to discuss possible action to assure continued cooling of the building.

On September 15, 1995, a Project Manager within DCPO's Construction Services Office prepared a form requesting a study for the Saltonstall chiller replacement project. The Project Manager noted:

> Study/investigation-design needs to be completed ASAP – Perform replacement as emergency project.

More than a month elapsed before DCPO contacted the study consultant, Anderson-Nichols & Company, Inc.[3] On October 25, 1995, the Deputy Commissioner of DCPO's Construction Services Office wrote Anderson-Nichols requesting a proposal for the scope of work as well as a not-to-exceed lump-sum fee and schedule for the study within 21 days. DCPO's description of the scope of work did not characterize the project as an emergency or emphasize the need for an accelerated study schedule:

> Investigate/survey and provide a study for the replacement of the steam absorption and electrical chiller units. Consider the substitution of and appropriate replacement with gas fired units. Units to be addressed are the steam absorption chiller and the 750 ton Dunham Busch screw machine chiller.

Several weeks later, on November 10, 1995, Anderson-Nichols provided DCPO with a three-page proposed scope of work priced at $18,500 for a six-week study:

> We calculate the value of our efforts to be $18,500.[4] This is based on 250 hours of engineering effort at $70.00 per hour, plus $1,000 for printing and project costs. We are in a position to complete this work within six weeks after receipt of your notification to proceed.

DCPO took no further action over the following month.[5] On December 14, 1995, the Deputy Commissioner of DCPO's Construction Services Office completed a form

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[3] DCPO commissioned the study under an existing designer services agreement with Anderson-Nichols.

[4] DCPO records indicate that DCPO ultimately agreed to a not-to-exceed fee of $18,000.

[5] According to DCPO officials, DCPO's construction office believed at that time that the Saltonstall Building chillers would likely last for another cooling season. In response to a confidential draft of this report, the DCPO Commissioner advised this Office that DCPO did not determine that the chillers had to be replaced for the 1996 cooling season until March 1996.

entitled “Request for Reservation of Funds – Extra Services,” that requested funding of $18,000 for the Anderson-Nichols study and noted that the work would be completed 60 calendar days after approval of the funding. DCPO records indicate that a “kickoff meeting” for the study project was held on February 12, 1996, three months after Anderson-Nichols submitted the study proposal to DCPO.

Anderson-Nichols’ 35-page preliminary study, completed on March 19, 1996, established a baseline approach and six detailed alternative plans that included life-cycle cost estimates. The study recommended “Alternative 2,” described as follows:

> [T]wo 600 ton baseline efficiency R-134A chillers (.612 kW per ton at full load) and a 600 ton direct gas fired absorption chiller. . . . The budget price for the absorption chiller is $270,000. The estimated cost for all three chillers, including installation, is $672,070. Installation costs include the cost for a prefabricated double wall metal chimney and assume that there is available shaft space to install the chimney in the building.

Anderson-Nichols also provided a sketch for the placement of the chillers in the Saltonstall garage.

On March 29, 1996, a BSOB engineer wrote an internal memorandum to the BSOB Superintendent recommending that BSOB seek an emergency waiver of advertising and bidding to lease and install two electric chillers in the Saltonstall garage. The memorandum noted that four vendors had already been contacted.

> The cooling season, to commence officially on May 15 (or earlier depending on outside temperatures), is fast approaching, and leaves us little time to contract and complete the installation of the temporary chillers. The overwhelming consensus from the meetings indicate that it is imperative that the Bureau proceed simultaneously and expeditiously with the following:
>
> 1. Request an emergency waiver to DCPO’s legal counsel to lease two 600 ton electric chillers and contract to install all associated electrical/mechanical to connect the chillers to the existing infrastructure. I have already discussed the matter with . . . DCPO Legal Counsel and he understands the urgency of the situation.

2. Request a transfer of $550,000 from DCPO to the Bureau's [BSOB's] account and request for a structural house doctor be assigned to the project. I have already discussed the transfer of funds. . . .

3. After the Bureau has obtained the emergency waiver, execute a contract based on the emergency waiver to install the two chillers.

Since time is of the essence, the Engineering Department has proceeded with contacting 4 chiller manufacturers/rental firms (York, Carrier, Trane and Nu-Temp) and contractors to solicit proposals and installation costs to complete this project.

BSOB submitted an emergency waiver request to DCPO on April 5, 1996; the request was approved by DCPO.[6]

BSOB's emergency solicitation for chillers generated proposals for a wide variety of financial arrangements whose relative costs could not readily be compared.

BSOB provided the four firms from which chiller proposals were solicited with a one-page sheet that contained the following information regarding the emergency chiller contract:

> The Bureau of State Office Buildings is looking for proposals for two electric chillers with the following specifications:
>
> | | |
> |---|---|
> | Capacity | 500-700 ton |
> | Efficiency | .65 or better |
> | Shell Pressure Rating | 300 Pounds |
> | Voltage | 460 Volt |
> | Water Temperature | 44 Degrees |
> | Available By | May 15, 1996 |

BSOB's undated solicitation did not specify a proposal submission deadline, nor did it indicate whether BSOB intended to purchase the chillers outright, lease the chillers, or lease the chillers with an option to purchase them at a later date. By leaving these key business terms unstated, BSOB's solicitation encouraged competing firms to propose their own business terms. Project records indicate that BSOB received one proposal on April 2 and three proposals on April 5. Predictably, the four proposals offered BSOB a

[6] The waiver approval by a DCPO official was undated.

variety of options for procuring the chillers, including a six-month lease with purchase option, a 12-month lease, a 24-month lease, and an outright purchase.

Several proposals also offered special provisions. For example, York International Corporation offered a lease structured to defer the first payment until July 1, the start of the new fiscal year, and to provide BSOB with a rented 900-ton chiller for use until the two 600-ton chillers could be delivered at an unspecified date; Carrier Corporation offered to reduce the purchase price by up to 10 percent for advance payment.

Figure 2 lists the offers included in the four proposals received by BSOB.

Figure 2: Summary of Chiller Proposals for the Saltonstall Building

Vendor	Chillers Offered	Business Terms	Proposed Contract Price	Proposed Purchase Option Price After Full Lease Period
Carrier	1 545-ton chiller (.606 kw/ton) 1 655-ton chiller (.585 kw/ton)	purchase	$262,300, minus up to 10% for advance payment	n/a
Nu-Temp[7]	2 600-ton chillers (.622 kw/ton)	12-month lease	$20,000/mo.	$120,000 per chiller, less 25% of rental fees paid to date (not to exceed 50% of purchase price)
		24-month lease	$16,500/mo.	
	2 600-ton chillers (.572 kw/ton)	12-month lease	$22,000/mo.	$140,000 per chiller, less 25% of rental fees paid to date (not to exceed 50% of purchase price)
		24-month lease	$18,000/mo.	
	1 1,000-ton chiller (.622 kw/ton)	12-month lease	$11,900/mo.	$140,000, less 25% of rental fees paid to date (not to exceed 50% of purchase price)
		24-month lease	$10,900/mo.	
	1 600-ton chiller (.572 kw/ton) 1 600-ton chiller (.622 kw/ton)	12-month lease	$14,400/mo.	no purchase option
		24-month lease	$12,500/mo.	
Trane	1 600-ton chiller (.50 kw/ton) 1 600-ton chiller (.53 kw/ton)	purchase	$384,051	n/a
		12-month lease	$35,064/mo.	$1
York	2 600-ton chillers, plus 1 900-ton rental chiller for use pending installation of the 600-ton chillers	24-month lease, first payment deferred until July 1, 1997	$30,250/mo.	$0

[7] All of Nu-Temp's lease-purchase proposals included the option to purchase the chillers after a mandatory six-month rental period.

As the figure clearly shows, the differing business terms associated with the proposal prices obtained by BSOB had significant financial implications for the Commonwealth. Because the proposals called for the Commonwealth to pay for the chillers over differing time periods, the price proposals were not readily comparable.[8]

For example, the proposal submitted by Carrier offered to sell BSOB two chillers; the proposal submitted by Trane offered to sell BSOB two chillers or lease the chillers for 12 months, after which the Commonwealth could purchase them for a nominal $1 price; and the proposal submitted by Nu-Temp offered to lease BSOB two chillers for periods ranging from six months to two years, with substantial purchase option prices for some leases and no purchase options for others.

Project records show that one vendor provided a second chiller proposal to BSOB on April 17, twelve days after submitting its original proposal. Carrier had initially offered to sell BSOB two chillers for $262,300. In its second proposal, which was solicited by BSOB,[9] Carrier offered to lease two chillers to BSOB for a five-month period,[10] after which BSOB would own the chillers. Carrier's second proposal price of $268,065.60 included almost $6,000 in financing charges not included in the first proposal, which called for an outright chiller purchase. According to BSOB officials, the other three firms were not asked to submit proposal prices based on a five-month lease-purchase arrangement. On May 1, 1996, BSOB executed a contract with Carrier for $268,065.60 based on the financial arrangements outlined in Carrier's second proposal.[11]

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[8] The only reliable method for comparing the prices of varying contracting options that include a stream of payments over time is to compute the present value of each price – that is, the discounted value of the future payments called for under each contracting option. BSOB did not compute the present value of the chiller lease, lease-purchase, and purchase proposals.

[9] This Office was unable to determine why BSOB solicited the additional lease-purchase proposal from Carrier. BSOB officials interviewed by this Office stated that DCPO officials had instructed them to lease rather than purchase the Saltonstall Building chillers; however, DCPO officials stated that BSOB had made this decision.

[10] According to BSOB's Deputy Superintendent, BSOB purchased the chiller three months after executing the lease-purchase contract.

[11] Although BSOB did not conduct a present value analysis of the chiller proposals received by BSOB, this Office's analysis indicates that the cost, computed on a present value basis, of the lease-purchase contract with Carrier was higher than the cost of the initial Carrier proposal, but lower than the cost of the other proposals received by BSOB.

The proposal summary sheet BSOB provided to DCPO was incomplete and inaccurate.

On April 5, 1996, BSOB's Superintendent wrote a letter to DCPO's Deputy Commissioner for Construction Services requesting that DCPO transfer $550,000 to BSOB for the lease-purchase of chillers for the Saltonstall Building. The letter noted:

> Since the March 27, 1996 DCPO/BS[O]B meetings, the Bureau's Engineering Department has worked diligently to contact contractors and suppliers to develop cost estimates to install the electric chillers prior to the onset of the cooling season (Attachment B and C).

Included in the attachments[12] to the letter was a chart listing the four vendors from which chiller proposals had been solicited, chiller delivery dates, and estimated contract costs. The chart listed the estimated contract costs as follows:

Carrier:	$270,000
Trane:	$384,051
York:	$654,000
Nu-Temp:	$300,000

The costs shown in the chart provided to DCPO did not reflect the prices contained in the written proposals received by BSOB. (See the previous Figure 2.) Moreover, the chart did not indicate the range of financial terms and other options offered in the proposals, nor did it provide accurate delivery date information.[13]

One of the two chillers BSOB purchased from Carrier did not meet the delivery terms specified in BSOB's proposal solicitation.

BSOB's one-page solicitation for the chillers specified that the chillers were to be available by May 15, 1996. Carrier's April 5 proposal was accompanied by a cover letter from Carrier's Branch Sales Manager stating that one of the chillers offered by

[12] A second chart attached to the letter listed three chiller installation vendors, their qualifications, the time they would require to complete the installation work, and their estimates of the cost of the installation work. BSOB had not yet solicited written chiller installation bids from these vendors. According to BSOB officials, the information provided to DCPO was based on BSOB's discussions with the three vendors. As will be discussed, the actual bids submitted by two of the three vendors proved substantially higher than their estimates.

Carrier could be delivered four weeks[14] from the order date and noting: "All other chillers are built to order with a 11 week leadtime."

Two of the other proposals contained chiller lease and purchase options that met the May 15 delivery date specified by BSOB. The fourth proposal offered BSOB the use of a 900-pound rental chiller in the interim period between the contract date and an unspecified delivery date for two chillers meeting BSOB's specification.

As noted above, on May 1, 1996, BSOB executed a contract with Carrier based on the financial arrangements outlined in Carrier's second proposal. BSOB's chiller contract with Carrier included only one chiller with a four-week delivery commitment from Carrier. Carrier's proposal had clearly stated that the other chiller would not be delivered for almost three months.

Based on this Office's review, the procedural deficiencies outlined in the previous section appear to have been attributable to the time pressures under which the emergency chiller procurement was conducted. Emergency procurements are by nature exceptions to the rule. These cases demonstrate the rationale for the provisions of M.G.L. c. 149 limiting waivers of advertising and bidding to cases of "extreme emergency."

Emergency Chiller Installation Contract

Also during April 1996, BSOB prepared an invitation for bids for installation of the two Carrier chillers in a new mechanical area to be created in the Saltonstall Building garage.[15] An internal BSOB memorandum dated April 22, 1996 pegged the estimated cost of the installation contract at $265,000.

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[13] For each vendor, the attachment listed a delivery date of June 7, 1996 (almost one month later than the delivery date specified in BSOB's proposal solicitation). However, the proposals received by BSOB offered a range of delivery dates.

[14] According to BSOB's written record of the "walk-through" for installation contractors on April 29, 1996, delivery of the first Carrier chiller was anticipated five weeks from April 22, 1996. It thus appears that the first Carrier chiller may not have met the delivery date specified in BSOB's solicitation.

[15] Because the IFB is undated, this Office was unable to determine the date on which the IFB was issued or the number of days bidders were given to respond to the IFB.

BSOB's April 5 correspondence with DCPO concerning the chiller replacement project contained cost estimates from three vendors for the chiller installation as well as for the chillers themselves. BSOB records indicate that BSOB held a walk-through of the project site for potential bidders on April 29, 1996. On May 1, 1996, BSOB received three bids, two of which were significantly higher than the estimated contract costs BSOB had provided to DCPO three weeks earlier. The following chart compares the contract cost estimates provided by three vendors with the actual bid prices submitted by the same three vendors.

	April 5 Estimate	May 1 Bid
Enterprise Equipment Co., Inc.	$280,000	$253,462
Francis H. Maroney, Inc.	$265,000	$529,000
Johnson Controls, Inc.	$315,000	$639,480

According to BSOB officials, they did not contact the other two bidders to ask them why their prices were more than double the lowest bidder's price. On May 1, 1996, BSOB's Principal Engineer prepared a recommendation to BSOB's Deputy Superintendent for Operations/Engineering recommending that the emergency chiller installation contract be awarded to Enterprise Equipment.

Three days after contracting with Enterprise, BSOB approved an Enterprise proposal for a new scope of services that increased the contract price by $57,642. Project records contain a letter from Enterprise to BSOB dated May 6, 1996 – three days after the execution date of the chiller installation contract. In the letter, Enterprise proposed a new strategy for installing the chillers:

> We would like to offer the Commonwealth a second option which could substantially improve the overall performance of the building cooling in a fashion that will be far less disruptive both in the short term and the long term operation of the Saltonstall Building.

Instead of creating new mechanical space in the Saltonstall garage, as outlined in the IFB and the contract, Enterprise proposed demolishing the existing Saltonstall Building chillers and installing the new chillers in the existing mechanical room. Enterprise

offered to undertake this new service option for a contract price of $311,104 – a 23 percent increase over its initial bid price.

The BSOB Superintendent wrote to DCPO on May 6 (the same date that Enterprise wrote to BSOB) recommending that DCPO approve the $57,642 change order to Enterprise's contract:

> As you are aware, our initial plan was to install the chillers temporarily in the garage and later move them to [the] mechanical room. However, we now believe a substantial cost savings can be made if the new chillers are located directly and permanently to the mechanical room. We have obtained from the installation contractor, Enterprise Equipment Inc., the attached quote of $57,642 which if approved we would like to add as a change order to the installation contract.[16]

According to BSOB and DCPO officials, the change order resulted in substantial net savings to the Commonwealth. They stated that the original scope of work had called for a temporary installation that would have subsequently required additional work costing several hundred thousand dollars in order to move the new chillers to their permanent location. Enterprise's change order proposal consolidated the temporary and permanent installations into one scope of work.

This Office takes no position on the technical merits of the new chiller installation scope of services proposed by Enterprise. However, BSOB's decision to execute the $57,642 change order significantly altering the contract scope of services meant that – notwithstanding BSOB's informal IFB process – BSOB did not pay a competitive price for the work.[17]

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[16] Project records contain a letter dated May 15, 1996 from Enterprise to BSOB, providing a breakdown of the $57,642 change order cost. The cost breakdown showed that Enterprise had given BSOB a $53,350 credit for the work deleted from the original contract scope of services, and added $111,000 to the contract price for the new work added to the contract.

[17] BSOB approved a second change order to Enterprise's contract on July 9, 1997. This change order increased the contract price by $26,681 to $337,785.

McCormack Building Emergency Project

Project Summary

This Office's review disclosed that BSOB engineers anticipated as early as January 1994 that the cooling system supporting the eighth-floor computer operations in the McCormack Building would require substantial redesign within the next two years. This redesign would be necessitated by the planned relocation in early 1996 of major computer equipment operated by the state's Office of Management Information Systems (OMIS) from the eighth floor of the McCormack Building to the Massachusetts Information Technology Center in Chelsea.

Project records indicate that BSOB engineers initiated several contacts with OMIS staff to discuss OMIS' plans and their implications for the eighth-floor cooling equipment between 1994 and 1996. In a September 1995 memorandum to the BSOB Superintendent, BSOB's Deputy Superintendent for Operations/Engineering documented the need to redesign the cooling system and noted that the existing cooling equipment would not function properly after the OMIS move. However, no action was taken until February 1996 – after OMIS had moved its equipment to Chelsea – when Johnson Controls reported that the OMIS relocation had caused damage to the cooling equipment serving the eighth floor. At that point, the BSOB Superintendent wrote to DCPO's Deputy Commissioner for Construction Services, warning that the state's computer information system was at risk and requesting that DCPO assess the situation.

In April 1996, DCPO granted an emergency waiver in April 1996 for the purchase and installation of new cooling equipment and the repair of existing cooling equipment for the McCormack Building. Between April and June 1996, DCPO and BSOB executed three contracts totaling $155,975 for emergency equipment, installation, and repairs relating to the McCormack Building's eighth-floor cooling system. A detailed project chronology follows.

BSOB documented the need to redesign the eighth-floor cooling system five months before notifying DCPO that the cooling system posed an immediate threat to the Commonwealth's computer system.

This Office's review disclosed that BSOB engineers anticipated as early as January 1994 that the cooling system supporting the eighth-floor computer operations in the McCormack Building would require substantial redesign within the next two years. This redesign was necessitated by the planned relocation in early 1996 of major computer equipment operated by the state's Office of Management Information Systems (OMIS) from the eighth floor of the McCormack Building to the Massachusetts Information Technology Center in Chelsea.

In the September 1995 memorandum to the BSOB Superintendent, BSOB's Deputy Superintendent for Operations/Engineering reported on recent meetings with OMIS concerning OMIS' planned relocation in January of OMIS equipment and staff to the new location in Chelsea. The relocation was to entail removing computer equipment from the eighth floor of the McCormack Building, thereby significantly reducing the building's cooling requirements. The Deputy Superintendent noted that the 300-ton chiller serving the eighth floor would not function properly after the relocation and recommended that the cooling system be redesigned:

> [B]oth OMIS and Treasury will keep their area wide network office automation system on the 8th floor and/or the 12th floor. These systems require cooling twenty-four hours a day, seven days a week throughout the year. The estimated cooling requirement is 50 tons. The McCormack's 7th floor existing system[18] is a 300 ton electrical chiller and it is not recommended to be operated for only 50 tons of cooling since that demand is less than 50% of the existing 300 ton chiller.
>
> The same scenario applies to the 150 ton electric chiller located on the 4th floor of the Saltonstall currently used for DOR computer operations.
>
> The Operations/Engineering Department recommends:
>
> - An adequate cooling system be designed so that OMIS and Treasury can continue to use their downsized computer room for a total of 50 tons and the [excess] capacity of the 300 ton chiller be dedicated for a

[18] The cooling equipment for the eighth floor of the McCormack Building is located on the seventh floor.

> separate chilled water loop throughout the building which would provide cooling for the various agencies that require office computer automation rooms with special cooling requirements. Eliminating the numerous small and medium sized packaged air cooled air conditioning units and/or water cooled units would result in reduced utility and mechanical maintenance costs, as well as provide capacity to cool future computer rooms.

- The same scenario is recommended for the Saltonstall Building.

However, the problem anticipated by BSOB in September 1995 was not addressed over the ensuing four months.[19]

On January 30, 1996, the day after OMIS' move to Chelsea, BSOB's Principal Engineer wrote to BSOB's Superintendent warning that the malfunctioning cooling system for the eighth floor could cause the state's computer information system to shut down:

> Due to a reduction of cooling load of over 80% on the 8th floor of the McCormack Building, the 300 ton electric chiller cannot operate properly. At a meeting yesterday, OMIS and Treasury staff informed me of the critical importance of the 24 hour operation of the communication equipment located on the 8th floor. The lack of cooling to this area will most likely cause a shutdown of the state-wide computer information system. . . .

On February 14, 1996, Johnson Controls[20] wrote to BSOB warning that reduced cooling loads could seriously damage the building's chillers for the eighth and fourth floors:

> Prior to the tear down of these chillers for their annual preventive maintenance, we contacted the manufacturers to verify the potential problems that could occur when these machines are being run at virtually non existent load levels. Beyond the strong possibility that the past two months could have caused damage to the chillers, the manufacturers have stated that, as these machines were intended to be run at 80% capacity, they were not designed to unload below 30% for more than a few hours at a time. The effects of unloading at this level, especially 20% to 10% are:

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[19] Because of conflicting explanations provided to this Office by BSOB and DCPO officials, this Office was unable to determine why prompt action to forestall damage to the eighth-floor cooling system was not taken when BSOB documented the need for such action in September 1995.

[20] As noted earlier, Johnson Controls was and is the state's energy management services contractor for the Saltonstall and McCormack State Office Buildings.

- Vanes will close and zero cooling will occur within compressor, causing compressor damage.

- Compressor "O" rings will dry out and become hard, causing refrigerant leaks.

- Zero cooling within the compressor is causing the impeller to overheat and expand. Impeller begins to rub within the casing causing internal damage.

- Surging will occur and the thrust bearing will wear down prematurely.

- Due to surging, diffuser wall can jam . . . .

> Our initial inspection of these units for refrigerant leaks has shown that damage has already begun to occur. As your department had been cautioned about the potential problems, Johnson Controls cannot and will not accept responsibility for the internal damage caused by running the machines at these extremely low levels.

Two weeks after receiving the warning from Johnson Controls, BSOB notified DCPO of the chiller problem created by OMIS' move to Chelsea. In a letter dated February 26, 1996 to DCPO's Deputy Commissioner for Construction Services, the BSOB Superintendent wrote:

> Since the inception of the [Chelsea] MITC project, the Bureau's Engineering Department has been concerned about the operation and balance of the equipment left on the 8th floor after their move.
>
> Due to a reduction of cooling load of over 80% on the 8th floor of the McCormack Building, the 300 ton electric chiller cannot operate properly. OMIS and Treasury staff have stressed the critical importance of the 24 hour operation of the communication equipment located on the 8th floor. The lack of cooling to this area may cause a shutdown of the state-wide computer information system.
>
> I understand that a retrofit may cost up to $250,000 . . . .
>
> If DCPO could assess the situation, I would appreciate it.

On March 14, 1996, Johnson Controls wrote to DCPO confirming Johnson Controls' verbal agreement with DCPO to install a temporary portable two-ton air conditioning unit in the McCormack Building's eighth floor computer room at an initial price of $1,200 and a monthly rental charge of $820. On April 11, DCPO authorized BSOB to waive

advertising and bidding for emergency contracts relating to the installation of a properly sized cooling system for the eighth floor.

Over the following three months, BSOB awarded and signed three no-bid emergency contracts to address the McCormack Building chiller problems that BSOB had anticipated six months earlier:

- On May 15, 1996, BSOB signed a $16,650 contract with Francis H. Maroney, Inc. to repipe the building's 300-ton chiller.
- On May 20, 1996, BSOB signed a $98,500 contract with Johnson Controls to install two 25-ton chillers in the McCormack Building.
- On July 3, 1996, BSOB signed a $40,825 contract with the Carrier Corporation to repair the McCormack Building's seventh-floor chillers.

DCPO's Assistant Commissioner and General Counsel provided this Office with the following explanation of the $98,500 contract with Johnson Controls:

> When the Information Technology Division's move from the eighth floor of the McCormack Building drastically reduced the cooling loads, the core of the Commonwealth's statewide computer system, as well as its accounting, payroll, and MMARs systems' operations, were imminently threatened. Supplemental chilling was essential, without any delay, to prevent these statewide computer systems and the vital services they provide from failing. BSOB requested an emergency waiver and DCPO's assistance in identifying an appropriate response to the imminent threat to these computer systems. As a consequence of the importance of preventing the failure of these systems, and DCPO's extensive project management expertise, DCPO agreed to contract for and oversee the emergency installation of the chillers. For these reasons DCPO's construction office also determined that Johnson Controls, the Building's on site mechanical contractor, was the contractor which could do the work most quickly and reliably, without requiring any additional time to learn the Building's systems. DCPO's construction office verified that the price quoted was reasonable.

DCPO's decision to waive advertising and competition to take immediate steps to safeguard the eighth-floor computer system and to repair the existing chiller may have been justifiable in April 1996. However, if the cooling problems BSOB identified in September 1995 had been promptly addressed, the no-bid $98,500 chiller contract

awarded to Johnson Controls and the $16,650 contract to repipe the eighth floor chiller could likely have been procured more cost-effectively through a fair, open bidding process. The $40,825 contract to repair the damaged chiller on the seventh floor might have proved unnecessary.

Conclusion and Recommendations

The emergency provisions of M.G.L. c. 149 are intended to preserve the health or safety of people or property, and not necessarily to promote fair competition and cost-effective contracting. This Office does not dispute DCPO's decision to invoke the emergency provisions of M.G.L. c. 149 in 1996 to address the cooling problems in two state office buildings. However, it is striking that state officials anticipated these problems months – and even years – in advance, but either could not or did not address them before they became genuine emergencies. Moreover, the procurements summarized in the attached chronologies illustrate some of the disadvantages of using informal emergency procurement procedures in place of the open, competitive bidding procedures required by M.G.L. c. 149. These contracts were not publicly advertised. Several lacked detailed specifications. In one case, vendors were allowed to submit proposals for a wide variety of financial arrangements whose relative costs could not readily be compared. In another case, the vendor simply received a no-bid contract. It is thus in the Commonwealth's interest to minimize the number and size of emergency procurements of construction materials and services.

The emergency cooling equipment purchase and installation contracts for the Saltonstall Building reflect a larger problem that has been extensively documented by the House Post Audit and Oversight Committee, the news media, and others: inadequate maintenance of state office buildings. According to DCPO's Assistant Commissioner and General Counsel, every year for the past four years DCPO has filed legislation that included funding for maintenance and repair projects at state facilities. Because these bills were not enacted, DCPO has had to allocate available funds to emergency and safety projects, while deferring necessary preventive maintenance and repair work. This approach to facilities maintenance is both inefficient and costly.

Chapter 88 of the Acts of 1997 appropriated $45 million in capital spending for emergency deferred maintenance and repair projects within state facilities, including $24 million for projects operated by the Executive Office of Public Safety, the Executive Office of Human Services, and BSOB. Of the $24 million, $1.2 million was earmarked

for maintenance and repairs at state office buildings. DCPO has advised the Legislature that the $45 million appropriation constituted an essential remedial step, but that regular annual appropriations of operating funds would constitute a more appropriate mechanism for funding preventive maintenance and repair projects at state facilities in the future. The Administration has sought legislative authorization for an unconventional sale-leaseback arrangement to fund an estimated $100 million in asbestos abatement, repair, and renovation work on the Saltonstall Building. Under this arrangement, the building would be sold to the Massachusetts Development Finance Agency (MDFA) and then leased back from MDFA over a 30-year period. Because the lease would not legally constitute debt, it would enable the Administration to obtain the necessary funds without affecting the state bond cap. According to DCPO officials, a major advantage of the proposed sale-leaseback arrangement would be the creation and mandatory funding of a capital reserve fund for preventive maintenance and repairs to the Saltonstall Building after the renovation work has been completed. However, this approach will inevitably entail higher financing costs than would be incurred if the Commonwealth issued general obligation bonds to finance the work.

The Commonwealth can establish and fund capital reserve accounts for state facilities without entering into unconventional financing arrangements. In recognition of the need to appropriate operating funds for this purpose, the FY 1999 budget proposal submitted by the House Committee on Ways and Means would increase funding for capital asset maintenance and require DCPO to inventory the maintenance requirements of the Commonwealth's capital assets and to develop a management plan for scheduled maintenance and repairs to those capital assets.[21]

Back in 1980, the Ward Commission identified inadequate preventive maintenance of state facilities as a major cause of expensive building repair projects and unsafe conditions for building users. In its *Final Report to the General Court*, the Ward Commission wrote:

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[21] The Office has not conducted an analysis of the level of funding required to meet the scheduled and deferred maintenance needs of state facilities.

> The Commission has found that poor building maintenance by the Commonwealth has led to the incurring of significant, unnecessary costs; unsatisfactory, even unconstitutional living and working conditions; and the eventual demoralization and lack of safety of those using the buildings. . . . The situation has clearly been one, then, in which maintenance has received almost no funding at all, while repairs have gone underfunded.
>
> A lack of adequate funding, a lack of staff and interest at the central level, and personnel problems at the agencies have created a situation in which buildings occupied by state agencies have deteriorated badly over time, or have not had original defects repaired.

To remedy the problem of inadequate preventive maintenance of state buildings, the legislation enacted on the recommendation of the Ward Commission created the Office of Facilities Management within DCPO and a Bureau of State Office Buildings within the Office of Facilities Management. According to the Ward Commission's *Final Report*:

> The relatively narrow interest of the Office of Facilities Management should ensure that the necessary expertise and familiarity with maintenance and repair needs are developed and projects expedited. . . . [and that] a general standard of building maintenance and repair will be applied to all of the buildings owned by the Commonwealth, including those maintained by the Bureau of State Office Buildings.

Today, however, the Office of Facilities Management is not a separate organizational unit within DCPO; its functions are performed by the Office of Construction Services. Although DCPO's Deputy Commissioner for Construction Services meets with the BSOB Superintendent on a monthly basis, the institutional relationship between BSOB and DCPO is ambiguous and at times problematic. Contributing to this institutional tension are the conflicting statutory provisions governing BSOB: M.G.L. c. 8, §1 states that BSOB is located within DCPO and that the BSOB Superintendent reports to DCPO's Director of Facilities Maintenance (a role currently assigned to DCPO's Deputy Commissioner for Construction Services), whereas M.G.L. c. 7, §4A states that BSOB is located in the Division of Operational Services within the Executive Office of Administration and Finance. Neither provision reflects the reporting structure as

understood by Deputy Superintendent of BSOB, who stated that the BSOB Superintendent reports directly to the Secretary of Administration and Finance.[22]

To address the need for improved maintenance of state office buildings and reduce the Commonwealth's reliance on emergency construction contracts, the Inspector General recommends the following:

1. **The Governor and the Legislature should ensure that reserve accounts earmarked for preventive maintenance and repairs of state office buildings are adequately funded and managed.** By investing the necessary resources in proper maintenance of state-owned assets, the Commonwealth would reduce the need for more expensive repair and renovation work in the future – and for emergency construction contracts that do not promote fair competition and cost-effective contracting.

2. **The institutional and reporting relationship between DCPO and BSOB should be clarified.** Both DCPO and BSOB are responsible for planning and undertaking capital projects involving state facilities. Accordingly, clear lines of authority and accountability are and will continue to be critical to the Commonwealth's ability to address the maintenance and repair requirements of state buildings.

3. **The maintenance funding and program implementation provisions contained in the House Ways and Means budget proposal should be enacted.** These measures represent sound and responsible first steps in addressing the problems engendered by deferred maintenance and neglect of state facilities.

[22] In response to a confidential draft of this report, the Secretary of Administration and Finance advised the Office that he intends to recommend legislation to make BSOB a part of DCPO.

Appendix A: Agency Responses

The original response letters have been scanned and reformatted for electronic publishing. However, the text of the letters has not changed.

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ARGEO PAUL CELLUCCI
GOVERNOR

CHARLES D. BAKER
SECRETARY

April 27, 1998

The Honorable Robert A. Cerasoli
Inspector General
One Ashburton Place
Room 1311
Boston, MA 02108

Dear Inspector General Cerasoli:

Thank you for sharing your draft report, "Review of Emergency Construction Projects," with our office.

We agree strongly with both of your conclusions. The administration has long supported financial mechanisms that provide the discipline to set funds aside for capital repairs in state office buildings. When combined with professional building management, these models go a long way toward preserving our capital assets. The administration has combined these financing mechanisms with private building management successfully in two state office buildings: the Transportation Building and the Massachusetts Information Technology Center in Chelsea. We are proposing a similar model for the Saltonstall Building, once it is renovated.

We also agree that the lines of authority between the Bureau of State Office Buildings (BSOB) and the Division of Capital Planning and Operations (DCPO) need to be clarified, and that their interagency communications should be improved. To this end, I will recommend to the Governor that he should file legislation to make the BSOB a part of DCPO. The Building Superintendent will report to the Commissioner of DCPO. I believe that these changes will enhance the working relationship between the two agencies and eliminate confusion about who holds decision making authority for BSOB policies and procedures.

Again, thank you for the opportunity to review this report. I value your thoughtful comments on this issue.

Sincerely,

Charles D. Baker
Secretary

The Commonwealth of Massachusetts

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ARGEO PAUL CELLUCCI
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CHARLES D. BAKER
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LARK JUREV PALERMO
COMMISSIONER

April 28, 1998

Robert A. Cerasoli, Inspector General
Office of the Inspector General
One Ashburton Place, Room1311
Boston, MA 02133

RE: Confidential Draft Report of April 9, 1998 on Emergency Construction Contracts Entered Into BY DCPO or BSOB

Dear Inspector General Cerasoli:

Thank you for the opportunity to review and comment on your draft report of April 9, 1998 on emergency construction contracts entered into by the Division of Capital Planning and Operations ("DCPO") and others entered into by the Bureau of State Office Buildings ("BSOB"). The report addresses broad policies relating to state building construction contracting, and focuses on two emergency building construction contracts, one entered into by BSOB to replace the chillers in the Saltonstall Building, and the other entered into by DCPO to replace the chillers in the McCormack Building. This letter provides DCPO's comments on the report.

DCPO endorses your two recommendations, which are: (1) that the Commonwealth should adequately fund on-going building repairs and maintenance to reduce operating and replacement costs and to limit the need for emergency projects, and (2) that the ambiguity over BSOB's reporting structure and oversight agency should be clarified, including a clear role for DCPO.

With regard to your first recommendation, DCPO agrees that emergency building construction contracts should be avoided whenever possible in favor of competitively bid contracts, which can be expected to result in lower prices for the Commonwealth. DCPO strongly supports your recommendation that the Legislature fund repairs and maintenance on an ongoing basis so that DCPO and operating agencies have the necessary resources to prevent emergencies from happening, and can avoid potentially more costly emergency

contracts. As your report notes, DCPO has prepared and the Administration has filed bills every year for at least the past four years to replenish DCPO's repair and maintenance accounts.

DCPO undertakes hundreds of building projects every year and has an excellent record of undertaking almost all of our building projects on a competitively bid basis, and of rejecting requests for emergency waivers of the bid laws whenever the relevant project does not meet the legislatively defined "extreme emergency" standard. As your report notes, DCPO has undertaken a limited number of emergency projects. These few emergency projects satisfy the "extreme emergency" standard and relate to work that absolutely must be done without delay. With adequate maintenance and repairs funding, even fewer projects would have to be undertaken on an emergency basis.

There are two major points in your report which DCPO would like to clarify. The first point concerns the Saltonstall chiller replacement project. DCPO did not know seven months before the Saltonstall chillers failed that they would not last through the 1996 cooling season. BSOB's August 1995 letter to DCPO, and the Johnson Controls letters to BSOB which were attached to BSOB's letter to DCPO, noted that the back-up chiller had likely reached the end of its useful life leaving the Building with one chiller and no reliable back-up. DCPO recognized in August 1995 that the Saltonstall chillers were old and, like so many other state building components, needed to be replaced in the not too distant future. As your report recognizes, adequate funding is not available for all necessary repairs and replacements in order to avoid some of these projects from becoming emergency projects. DCPO's construction office believed that the chillers would likely last for another cooling season. It was not until BSOB took apart the chillers in March 1996 that DCPO's construction office changed its opinion and determined that both of the chillers had to be replaced for the 1996 cooling season. Although there might be a difference in opinion on the approach to this project, DCPO made reasonable judgments with the information we had at the time and did not simply wait to create an unnecessary emergency.

The second point in your report that warrants clarification concerns the conclusion that DCPO does not have an Office of Facilities Management as contemplated by the Ward Commission Report. In fact, DCPO has had an Office of Facilities Management ("OFM") for many years. The OFM was under separate direction from the Office of Project Management ("OPM") for most of these years. However, in 1992 DCPO's OFM and OPM were combined to create the Office of Construction Services, under the direction of Ralph Nee. This was done primarily because Mr. Nee had been the Director of the OFM for many years before he was given responsibility for both facilities management and construction project management at DCPO. A professional engineer with decades of public construction and facilities experience, Deputy Commissioner Nee clearly has the expertise and historical background to best manage both of these functions at DCPO.

The OFM's functions include advising agencies which operate facilities on how they can monitor, schedule and undertake on-going repairs, maintenance and replacements of building components and equipment at their facilities. The OFM's functions also include helping operating agencies to implement energy cost savings programs. The OFM's energy program has saved the Commonwealth an estimated $ 88,595,000 over the last 13 years.

Beginning in 1986 or 1987, DCPO's OFM implemented a then state-of-the-art computer system called the Facility Maintenance Management System ("FMMS") as the main component of DCPO's Preventative Maintenance Program. This program is aimed at helping operating agencies track and schedule specific preventative maintenance tasks for major building equipment and systems, generate work orders, and timely identify the need for replacement projects. DCPO offered this FMMS computer program to operating agencies, and many agencies participated in the program initially. Some operating agencies declined to participate, and others eventually stopped using the system.

Over time, use of the FMMS computer system declined, and in 1995 and 1996, the OFM surveyed operating agencies to determine whether the FMMS continued to serve their needs. In 1997 the OFM also participated in a DCPO-wide internal review of computer systems by an outside consultant. The survey process and DCPO's internal computer systems review lead the OFM to conclude that the FMMS, which had been a state-of-the-art system when it was first implemented, had become obsolete and was not as user friendly as are other newer systems. With Ralph Nee's concurrence, I asked project manager Hope Davis to chair a committee of representatives from DCPO and various operating agencies to formulate a plan for a new computer system to help operating agencies monitor, track and schedule building repairs and maintenance and to timely identify replacement projects at their facilities.

Ms. Davis and her committee have made significant progress, and the committee on facilities should be ready to implement its recommendations in the next several months. However, DCPO will need funding from the Legislature to purchase the necessary software and hardware, and to adequately train operating agencies in its use. For the last few years, DCPO's repair and maintenance bond bill, which has not been enacted, has contained a line item of $3 million to implement an updated state-wide computer system for facilities repairs and maintenance.

Again, I want to thank you for this opportunity to comment on your report. DCPO and the Inspector General's Office were created by the Legislature as part of the Ward Commission reforms to address many of the same abuses and concerns involving

public construction. DCPO wholeheartedly supports your report's recommendations and believes that significant benefits could be realized by the Commonwealth if they are implemented by the Legislature.

Very truly yours,

Lark Jurev Palermo
Commissioner

LJP:CDB:br
cc: Charles D. Baker, Secretary, A&F
Jamie Lewis Keith, Assistant Commissioner and General Counsel, DCPO
I:\Virginia\Letters\RCerasoli