



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-6200

NO. 2006-5125-3C

**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ASPECTS OF THE
DIVISION OF CAPITAL ASSET MANAGEMENT
AND MAINTENANCE'S ADMINISTRATION OF
THE EDWARD W. BROOKE AND JOHN ADAMS
COURTHOUSE RENOVATION CONTRACTS
AS OF DECEMBER 31, 2006**

**OFFICIAL AUDIT
REPORT
JUNE 28, 2007**

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION

1

The Division of Capital Planning and Operation (DCPO) was established by Chapter 579 of the Acts of 1980 to assume the duties and responsibilities of providing public-building design, construction, maintenance, and real estate services to state agencies. Under Chapter 127 of the Acts and Resolves of 1999, DCPO changed its name to the Division of Capital Asset Management and Maintenance (DCAMM). Currently, DCAMM manages approximately \$230 million annually in new construction and renovation projects. In addition, DCAMM manages the redevelopment of over 3,700 acres of surplus state property and over 500 active lease agreements on behalf of state agencies.

During fiscal year 1998, the Legislature enacted Chapter 189 of the Acts of 1998, An Act Providing for the Improvement of Court Facilities in the Commonwealth, which authorized the Commonwealth to issue \$730.3 million in bonds for the improvement of state court facilities. Further, this legislation mandated that a master plan be created to develop a rational program to identify priorities for all court capital improvements. Consequently, in December 1999 DCAMM, in consultation with the Supreme Judicial Court and the Administrative Office of the Trial Court, developed the “Master Plan for the Improvement of Court Facilities in the Commonwealth of Massachusetts”(Master Plan). According to DCAMM officials, this Master Plan established a process of collaborative analysis, planning, and review to ensure fair and objective selection and implementation of capital improvements to meet the capital needs of the Massachusetts Court System. Under Chapter 189 and the Master Plan, DCAMM has been given responsibility for the proper planning and oversight of all renovations to court facilities, including the post-construction expansion of the Edward W. Brooke Courthouse and the rehabilitation of the historic Suffolk County Courthouse, which was subsequently renamed the John Adams Courthouse. These two projects, which were completed in March 2005 and January 2005, respectively, were the subject of our audit.

The scope of our audit included a review of certain aspects of DCAMM’s administration of the contracts that it awarded for renovation work conducted at the Edward W. Brooke and John Adams Courthouses for the period between the dates on which the contracts were awarded (May 2003 and October 2001, respectively) through December 31, 2006. Our audit was conducted in accordance with generally accepted government auditing standards for performance audits.

Our audit determined that DCAMM followed applicable statutes in awarding the contracts for the renovation of these two court facilities and had established reasonable internal control procedures over the processing of change orders to these renovation contracts. However, we found that as of the end of our audit period, DCAMM had not collected \$1,443,000 in liquidated damages from the two contractors that conducted the renovation work at the two court facilities because the contractors did not finish the projects on schedule.

AUDIT RESULTS **7**

DCAMM HAS NOT ASSESSED OR RECOVERED LIQUIDATED DAMAGES TOTALING \$1,443,000 FROM TWO CONTRACTORS **7**

The contracts for the renovation of the Edward W. Brooke and John Adams Courthouses contained clauses that allow the Commonwealth to assess liquidated damages against each contractor if they do not meet certain performance criteria. However, we found that as of the end of our audit period, DCAMM decided not to assess \$318,000 in liquidated damages against the contractor that performed the renovation work at the Edward W. Brooke Courthouse, and had yet to assess liquidated damages totaling \$1,125,000 against the contractor that performed the renovation work at the John Adams Courthouse. According to DCAMM officials, they routinely do not assess such liquidated damages when contractors exceed the contract deadline because they need to work with the contractors in the future. DCAMM officials stated that they also would not seek liquidated changes in those instances in which the contractor was delayed because of conditions beyond the control of the contractor, which DCAMM officials contend was the case with the renovations done at the Edward W. Brooke Courthouse. These officials added that, if applicable, they would use the liquidated damage amount as a bargaining tool for final payment of outstanding change orders. Nevertheless, we believe it may be prudent to hold contractors to the terms and conditions of their contracts and to assess these liquidated damages when contractors fail to perform in accordance with the agreed-upon terms of their contracts.

OTHER MATTERS **11**

INTRODUCTION

Background

The Division of Capital Planning and Operation (DCPO) was established by Chapter 579 of the Acts of 1980 to assume the duties and responsibilities of providing public-building design, construction, maintenance, and real estate services to state agencies. Under Chapter 127 of the Acts and Resolves of 1999, DCPO changed its name to the Division of Capital Asset Management and Maintenance (DCAMM). Currently, DCAMM manages approximately \$230 million annually in new construction and renovation projects. In addition, DCAMM manages the redevelopment of over 3,700 acres of surplus state property and over 500 active lease agreements on behalf of state agencies.

During fiscal year 1998, the Legislature enacted Chapter 189 of the Acts of 1998, An Act Providing for the Improvement of Court Facilities in the Commonwealth, which authorized the Commonwealth to issue \$730.3 million in bonds for the improvement of state court facilities. Further, this legislation mandated that a master plan be created to develop a rational program to identify priorities for all capital improvements needed at each court facility. In accordance with this legislation, in December 1999 the “Master Plan for the Improvement of Court Facilities in the Commonwealth of Massachusetts” (Master Plan) was prepared by DCAMM in consultation with the Supreme Judicial Court and the Administrative Office of the Trial Court (AOTC). According to DCAMM officials, this Master Plan established a process of collaborative analysis, planning, and review to ensure fair and objective selection and implementation of capital improvements to meet the capital needs of the Massachusetts Court System. Under Chapter 189 and the Master Plan, DCAMM has been given responsibility for the proper planning and oversight of all renovations to court facilities, including those made to the Edward W. Brooke Courthouse (Brooke Courthouse) and the rehabilitation of the historic Suffolk County Courthouse, which was subsequently renamed the John Adams Courthouse (Adams Courthouse). These two projects, which were completed in March 2005 and January 2005, respectively, were the subject of our audit.

The renovations to the Brooke Courthouse were made to house the Boston Municipal Court (BMC). According to DCAMM’s Director of its Court Facilities Unit, in 1991 a Policy Review Group was established by the AOTC for the purposes of making recommendations concerning the Suffolk County Courthouses. This Policy Review Group consisted of an Associate Justice of the

Supreme Judicial Court, an Associate Justice of the Appeals Court, the Librarian of the Social Law Library, the Chief Justice of the Land Court, the Legal Counsel of the AOTC, the Director of the Court Facilities Bureau of the AOTC, and the Director of the Court Facilities Unit of DCAMM. The Policy Review Group ultimately developed a “Master Plan for the Renovation and Expansion of the Suffolk County Courthouses” (Suffolk County Plan), which stated that the BMC should be housed in the high-rise Suffolk County Courthouse. DCAMM officials stated that the U.S. General Services Administration (GSA), from whom the BMC was leasing space located in the John McCormack Building in Boston, indicated that it was not going to renew the BMC’s lease, and therefore DCAMM needed a quick solution as to where to relocate the BMC. Although the Suffolk County Plan called for the BMC to be relocated into the Suffolk County Courthouse at the time the BMC’s lease was expiring, there were environmental health issues with this building, which was being referred to as a “sick building.” DCAMM officials stated that they believed that since Chapter 189 funds were authorized for the “renovations or replacement of the high-rise Suffolk County Courthouse,” they could utilize these funds to renovate the Brooke Courthouse to house the BMC there rather than at the Suffolk County Courthouse. Consequently, on May 19, 2003, in accordance with the requirements of Chapter 189, DCAMM awarded a design/build (a construction method that utilizes one company for both the design and construction phases of the project) contract for \$12,400,969 to Whiting-Turner Construction Company of Framingham, Massachusetts for the building of new courtrooms, the installation of an elevator, and the reconfiguration of support spaces of approximately 91,000 square feet located in the Brooke Courthouse to support the BMC. The change orders processed against this contract since its award as of December 31, 2006 totaled \$2,280,095, bringing the contract total to \$14,681,064.

The Adams Courthouse, formerly known as the Old Suffolk Courthouse, was completed in 1894. It is listed on both the national and state historic registers as a National Register Individual Property. Under Chapter 203 of the Acts of 1988, DCAMM was mandated to provide for an appellate courthouse for the Supreme Judicial Court, the Appeals Court, and the Social Law Library. The Suffolk County Plan recommends the preservation, renovation, and reuse of the Adams Courthouse for this purpose and further states that renovations to this courthouse were necessary for the safe and efficient functioning of the court. According to DCAMM officials, the Adams Courthouse had suffered from a lack of capital repairs, regular maintenance, and system upgrades over the past 100 years. However, funds for the renovation of the facility were not made available until the enactment

of Chapter 189, which authorized renovations to be done to this facility as a design/build project. When the Master Plan was developed, it incorporated the recommendations of the Suffolk County Plan regarding the Adams Courthouse.

In fiscal year 2000, the Legislature enacted Chapter 236 of the Acts of 2000, An Act Making Appropriations for the Fiscal Year 2000 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects, Section 20 of which modified Chapter 149 of the General Laws, as follows:

The commissioner of capital asset management and maintenance may procure construction contracts for the renovation or repair of the state house and the historic Suffolk county courthouse [Adams Courthouse] in accordance with the provisions of this section.

The procurement of a contract for the renovation or repair of the state house or the historic Suffolk County courthouse shall be deemed a building project for purposes of section 39A of chapter 7.

It further states that DCAMM shall determine the most advantageous proposal from a responsible, responsive, and eligible offeror and that if the most advantageous bidder is not the lowest, the reasons must be written.

Chapter 7, Section 39A, of the General Laws states, in part:

(g1/2) "building project", a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof .
...

As can be seen above, Chapter 236 of the Acts of 2000, which superseded Chapter 189, authorizes DCAMM to procure construction contracts for the renovations of the Adams Courthouse building as a "building project" subject to the requirements of Chapter 149 of the General Laws, "Fair Competition for Bidders on Construction etc., of Public Works", rather than requiring the project to be done as a design/build project. Further, at this time a design company, CBT/Childs Bertman Tseckares, Inc. (CBT), had already been contracted with by DCAMM for the design services relative to the renovations of the Adams Courthouse. Specifically, under Chapter 203 of the Acts of 1988 and the Master Plan, on September 8, 1993 CBT was awarded a contract to provide complete final design services for the renovation of the Adams Courthouse and the high-rise Suffolk County Courthouse. The services included schematic design, design development, construction documents and coordination drawings, bidding assistance, construction administration, interior design services,

and building signage. This contract provided CBT with a lump sum of \$4,463,385 for these design services, with a potential added incentive fee of \$84,570 provided that CBT kept contract change orders at or below 5% of the contract price. Compensation was to be paid on a percentage of completion schedules, and the term for completion was 18 months from the date of DCAMM's authorization to proceed. However, according to DCAMM officials, the design was not completed within the 18-month period due to the unavailability of construction funds and the complexity of relocating the courthouse personnel so that design work could be completed. Consequently, the design contract with CBT was renewed on June 21, 1999. DCAMM officials stated that at this time DCAMM's Commissioner and its Director of Court Facilities determined that DCAMM did not have to rebid this design work, as the renewal was a reduction in scope. Specifically, the 1993 contract required design service for both the high-rise court building and the Adams Courthouse; the 1999 contract only included work for the Adams Courthouse. Further, CBT had already started work on the project, so DCAMM officials determined that it was more efficient to renew CBT's contract than to solicit other proposals for the design. Subsequent to hiring the design contractor, DCAMM awarded a contract for the renovation work at the Adams Courthouse in October 2001 to Suffolk Construction Co. Inc. and NER Construction Management Inc., d/b/a Suffolk/NER, A Joint Venture (Suffolk/NER) for the amount of \$96,349,000. Contract change orders approved on this project as of December 31, 2006 totaled \$21,389,085, bringing the construction total to \$117,738,085. This total does not include costs that are commonly referred to as "soft contract expenditures" for items such as furnishings, equipment, and design costs, which as of May 11, 2007 were estimated by DCAMM officials to be an additional \$28 million¹.

On August 22, 2005, Suffolk/NER filed a Complaint and Jury Demand (Complaint) with the Superior Court Department of the Trial Court (Civil Action No. 05-3631E). The Complaint does not include an amount that Suffolk/NER is seeking to recover, but rather demands a trial by jury for "all sums found due to Suffolk/NER...costs and fees including attorney's fees; and grant such further relief as this Court deems meet and just." The Complaint makes certain accusations against the Commonwealth of Massachusetts, including the fact that the Commonwealth breached its contract with Suffolk/NER in a number of areas such as failing to pay for extra work the Commonwealth requested through contract change orders.

¹ DCAMM indicated that these costs were primarily reduced because of relocation costs, which were included for the Appeals Court and Supreme Judicial Court, but not for the BMC and Superior Court.

In response to the Complaint, on September 21, 2005, DCAMM filed a counterclaim (Commonwealth of Massachusetts, Division of Capital Asset Management Answer and Counterclaim) with the Superior Court Department of the Trial Court (Civil Action No. 05-3631E-BLS). The counterclaim denies the nine counts in Suffolk/NER's complaint and cites 22 affirmative defenses, and counterclaims that Suffolk/NER failed to meet contract terms. For example, the counterclaim states that Suffolk/NER failed to produce a baseline schedule within 30 days of contract execution, and that the schedule, when finally provided 10 months into the project, "was fundamentally flawed, incomplete and not cost loaded." The counterclaim further states that "As a result of Suffolk[/NER]'s failure to do the nonstructural demolition, numerous hidden conditions were not exposed in a timely manner, thus resulting in a numerous, needless, and untimely [requests for information]" and that Suffolk/NER "did not complete the work until January 14, 2005, 375 days late." DCAMM demanded that Suffolk/NER's claim be dropped and that "trial by jury on all issues so triable" judgment be in DCAMM's favor for all additionally incurred costs. As of the end of our audit field work on April 15, 2007, the Complaint was still not resolved.

Audit Scope, Objectives, and Methodology

The scope of our audit included a review of certain aspects of DCAMM's administration of the contracts that it awarded for renovation work to be conducted at the Edward W. Brooke and John Adams Courthouses for the period between the dates on which the contracts were awarded (May 2003 and October 2001, respectively) through December 31, 2006. Our audit was conducted in accordance with generally accepted government auditing standards for performance audits, which require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

To accomplish our objectives, we reviewed applicable laws that were relevant to the process that DCAMM needed to follow in the awarding of these contracts, including Chapter 203 of the Acts of 1988, Chapter 189 of the Acts of 1998, and Chapter 236 of the Acts of 2000. We then reviewed the contract files being maintained by DCAMM to determine whether it complied with these statutory requirements in awarding these contracts. We held discussions with DCAMM officials, a senior associate of Childs, Bertman, Tseckares, Inc., (the design firm for the Adams Courthouse renovation), and officials from the Supreme Judicial Court, and conducted site visits to both

courthouses. We then assessed the system of internal controls DCAMM had established relative to the processing of contract change orders for these contracts. Specifically, we requested and received from DCAMM officials a copy of the policies and procedures DCAMM had established relative to the processing of change orders, which also applied to the two contracts included in our audit. We reviewed these policies and procedures to determine whether they were adequate and in compliance with applicable statutes and regulations.

We then selected a sample of change orders processed against each of these contracts to determine whether the change order process established by DCAMM was consistently followed. Specifically, we selected and tested a sample of 26 of the 218 approved change orders for the Edward W. Brooke Courthouse renovations, which totaled \$1,023,372, or approximately 45% of the \$2,280,993 in change orders processed against this contract through December 31, 2006. For the John Adams Courthouse renovation contract, we selected and tested a sample of 79 of the 349 approved change orders totaling \$15,451,736 or approximately 72% of the \$21,389,085 processed through December 31, 2006. The purposes of our testing in this area were to determine whether the change order process established by DCAMM was being consistently adhered to and whether the change orders being processed by DCAMM for these projects included costs for work that may have been excessive and unnecessary, in that the work could have been done for a lower cost (see Other Matters section of this report).

Our special-scope audit did not include an assessment of the utilization of the renovated space at these two courthouses. Further, although we analyzed the controls DCAMM had established over the processing of change orders and DCAMM's compliance with its established policies and procedures in this area, we did not assess the reasonableness of the number of change orders processed by DCAMM against these two contracts.

At the conclusion of our audit fieldwork, a copy of our draft audit report was sent to DCAMM for its review and comments. Our final report was modified based on the comments provided to us by DCAMM officials.

AUDIT RESULTS

DCAMM HAS NOT ASSESSED OR RECOVERED LIQUIDATED DAMAGES TOTALING \$1,443,000 FROM TWO CONTRACTORS

Our review indicated that the contracts for the renovation of the Edward W. Brooke and John Adams Courthouses contained clauses that allow the Commonwealth to assess liquidated damages against each contractor if they fail to meet certain performance criteria. However, we found that as of the end of our audit period, the Division of Capital Asset Management and Maintenance (DCAMM) decided not to assess \$318,000 in liquidated damages against the contractor that performed the renovation work at the Edward W. Brooke Courthouse and had yet to assess liquidated damages totaling \$1,125,000 against the contractor who performed the renovation work at the John Adams Courthouse. According to DCAMM officials, they routinely do not assess such liquidated damages should the contractor exceed the contract deadline because they need to work with the contractors in the future. DCAMM officials stated that they also would not seek liquidated changes in those instances where the contractor was delayed because of conditions beyond the control of the contractor, which DCAMM officials contend was the case with the renovations done at the Edward W. Brooke Courthouse. These officials added that, if applicable, they will use the liquidated damage amount as a bargaining tool for final payment of outstanding change orders. However, we believe it may be prudent to hold contractors to the terms and conditions of their contracts, and to assess these liquidated damages when contractors fail to perform in accordance with the agreed-upon terms of their contracts. A summary of each of the instances in which DCAMM did not assess the liquidated damages provided for under the two contracts we reviewed are detailed as follows:

a. DCAMM Did Not Assess \$318,000 in Liquidated Damages against the Contractor That Performed the Renovation Work at the Edward W. Brooke Courthouse

Article 8 of the contract between DCAMM and the Whiting-Turner Construction Company for the renovation work done at the Edward W. Brooke Courthouse states:

Article 8. Liquidated Damages. For the purposes of Article VI, Section 2 of the General Conditions of the Contract, liquidated damages shall be as follows: \$3,000 per calendar day.

Further, Section 2 of the General Conditions of this contract states, in part:

A. If liquidated damages are specified in the Owner – Contractor Agreement or elsewhere in the Contract Documents, the Awarding Authority has determined that its damage as a result of Contractor's failure to complete the Work to the point at which it qualified for the issuance of a Certificate of Agency Use and Occupancy will be difficult or impracticable to ascertain. Accordingly, if the Work is not completed to such a point by the date specified in this Contract, the Contractor shall pay to the Awarding Authority the sum designated as liquidated damage in the Contract for each and every calendar day that the Contractor is in default in completing the Work to such point. Such money shall be paid as liquidated damages, not as a penalty, to cover losses and expenses to the Awarding Authority and/or the User Agency resulting solely from the fact that the Work is not completed on time. . . .

C. The Awarding Authority may recover such liquidated damage by deducting the amount thereof from any moneys due or that might become due the Contractor, and if such moneys shall be insufficient to cover the liquidated damages, then the Contractor or the Surety shall pay to the Awarding Authority the amount due. . . .

According to the contract between DCAMM and the Whiting-Turner Construction Company, the renovation work at the courthouse was to be completed by December 1, 2004. A Certificate of Agency Use and Occupancy is completed when the Commonwealth of Massachusetts (in this instance, DCAMM) is satisfied that the project is ready for use and occupancy and has, in accordance with Section 5 of the General Contract Conditions, “reached the state of Substantial Completion.” However, according to the Certificate of Agency Use and Occupancy, the renovation work at the Edward W. Brooke Courthouse was completed on March 18, 2005, which is 106 calendar days past the contractually established completion date. Consequently, in accordance with the terms and conditions of its contract with this contractor, DCAMM could have sought liquidation damages in the amount of \$318,000 (106 days x \$3,000/day).

Regarding this matter, DCAMM officials indicated that they routinely do not assess the contractor such liquidated damages because, in certain circumstances, they can use this contract stipulation as a bargaining tool to settle any outstanding payments. Further, on February 12, 2007 DCAMM’s Deputy General Counsel provided us with a memorandum that stated, in part:

DCAM's contract is written such that if the contractor fails to complete the work required for occupancy within the contract time limit, then liquidated damages are available for the extended time period. Allowing the contractor to complete the work beyond the fixed time limit in the Contract is not deemed a waiver of liquidated damages. Likewise, payment by DCAM after the contract completion date is not considered a waiver provided DCAM reserves its rights (DCAM does reserve its rights on all progress payments made to a Contractor after the contract completion date has passed).

On the other hand, the contract provides that liquidated damages may be waived if DCAM is satisfied that the delay in completion was caused solely by conditions beyond the control of the contractor, and if the awarding authority has not suffered any damages. At the Brooke Courthouse the completion date of record for the Brooke Renovation was March 18, 2005 when the building was ready for occupancy by the Trial Court. [The] Project Manager. . .has opined that there were factors beyond the contractor's control that caused the original completion date of December 1, 2004, to be exceeded. These factors include the number of changes initiated by the Trial Court and/or DCAM. DCAM could have granted an administrative contract extension to the contractor, as I previously mentioned to you, to cover the period between December 1, 2004 and March 18, 2005, but elected not to do so. This can still be accomplished, if necessary, as I understand the project is still open pending completion of some minor punch list items. . . .

Our review of the contract file for this project did not reveal any documentation indicating that it was DCAMM that caused the original completion date of this contract to be exceeded. However, if this in fact is the case, in the future DCAMM should consider formally amending contracts and establishing a new mutually agreeable completion date so that, if this new date is exceeded, DCAMM still has the ability to seek liquidated damages.

b. DCAMM Did Not Assess \$1,125,000 in Liquidated Damages against the Contractor That Performed the Renovation Work at the John Adams Courthouse

Section 1.15 of the contract between DCAMM and Suffolk/NER for the renovation work performed at the John Adams Courthouse states, in part:

Liquidated Damages. The Historic Suffolk County Courthouse is extremely important to the public and to functioning of the judicial process. It is a historic landmark. Accordingly, the Commonwealth intends to expedite the award and completion of this project to the maximum extent possible. Offerors are warned that time is of the essence of the contract and that the completion of the work must be achieved within the specified number of days.

Liquidated damages shall be assessed to the Contractor at the rate of \$3000 per day for not meeting the scheduled Final Acceptance Date.

According to the contract between DCAMM and Suffolk Construction Co. Inc. and NER Construction Management Inc., d/b/a Suffolk/NER, A Joint Venture (Suffolk/NER), the renovation work at the courthouse originally was to be completed on October 31, 2003, but amendments to the contract extended the completion date to January 2, 2004. DCAMM officials indicated that although there is no Certificate of Agency Use and Occupancy, the project was completed for use on January 14, 2005, which is 375 calendar days past the contractually amended completion date. As mentioned in the Background section of this report, there is a pending Complaint and Jury Demand filed by Suffolk/NER, as well as a

Counterclaim filed by DCAMM. Nevertheless, DCAMM could have sought liquidation damages in the amount of \$1,125,000 (375 days X \$3,000/day).

Regarding this matter, DCAMM officials indicated that in this case DCAMM has not given up its right to assess these liquidated damages, which it could use to settle the outstanding claims against the contractor.

Recommendation

In order to address our concerns relative to this matter, DCAMM should take measures to ensure that it consistently enforces all the provisions in its contracts, including those relative to the recoupment of liquidated damages. If DCAMM believes that a contractor did not meet the specified completion date as a result of DCAMM's actions, then in the future DCAMM should consider formally amending contracts and establishing a new mutually agreeable completion date so that if this new date is exceeded, DCAMM still has the ability to seek liquidated damages. This would provide the controls necessary to better ensure that contractors put forth their best efforts to meet specified completion dates.

Auditee's Response

In response to this audit result, DCAMM provided comments which were considered and incorporated in the drafting of our final report. Additionally, regarding our recommendation, DCAMM provided the following comments:

Your point is well taken that DCAMM should be diligent in making a determination as to whether liquidated damages are assessed and should take steps to amend the contract to reflect a mutually agreeable completion date in such instances where the contractor was excusably delayed.

OTHER MATTERS

Prior to the commencement of our audit, concerns were raised in the local media regarding certain renovations that were being made to the Adams and Brooke Courthouses. For example, one article in a Boston newspaper questioned some of these renovation costs, citing that the luxurious, opulent renovations have likened the courthouse to “the Palace of Versailles.”

Based on these concerns, during the conduct of our audit fieldwork, we designed audit tests to assess the reasonableness of certain renovations made at these two courthouses in terms of costs, as well as DCAMM’s reasons for performing these renovations in this manner. However, our ability to conduct audit testing in this area was limited. Specifically, the contracts for these renovation projects were awarded by DCAMM on the basis of a single fixed price for the entire project. As a result, the specific costs that were questioned as being potentially elaborate and unnecessary were not separately identified, and cost comparisons could therefore not be conducted. However, DCAMM officials acknowledge that the following renovations at the Adams and Brooke Courthouses could have been done at a lower cost, and they provided the following explanation as to why the renovations were done in this manner.

Adams Courthouse

Description of Renovation Activity	DCAMM's Reasons for Conducting the Renovation in This Manner
The use of Makore, an imported African cherry wood, in the seven Justice Courtrooms	These materials were requested by the Justices, and DCAMM officials stated that they try to accommodate all reasonable requests from the users of the facility.
Extensive artwork restoration to the atrium ceiling and walls, coffered ceilings, decorative bands, and murals in the building.	The ceiling and artwork was restored to its original grandeur to preserve historic value.

Brooke Courthouse

Description of Renovation Activity	DCAMM's Reasons for Conducting the Renovation in This Manner
Terrazzo tile for the corridor leading from the main lobby.	Terrazzo tile had been installed in the courthouse when it was first constructed, so DCAMM and the designer decided to use the same tile to match the existing tile.

In addition to concerns over the costs for the renovations noted above, there were also concerns raised relative to the renovation work in the judges’ chambers. In order to address these concerns,

during our audit, we conducted site visits to the Adams and Brooke Courthouses. The site visits included a viewing of selective renovations and an overview of the work performed. The overview was presented by DCAMM project personnel and, for the Adams Courthouse, a representative from both the construction and design firms involved in the project. In addition, during our site visit of the Adams Courthouse, we toured the offices of the Supreme Court Justices as well as the Chief Justice's chambers and examined the renovation work performed at these two locations. During our tour of these two offices, we noted that the renovation work was done to maintain the historic integrity of the facility, and did not appear to be opulent. For example, the office of the Supreme Court Justice we toured, in addition to his office areas, contained an approximately 48 square foot kitchenette, a sink, small counter, about four cabinets and a refrigerator. There were no stoves or dishwashers. There was also a private lavatory that was approximately 30 square feet and did not have a shower.

Regarding these matters, DCAMM officials stated that, for all construction projects, DCAMM consults with the users of the facilities and, to the extent possible, tries to accommodate the preferences, concerns, and needs of the users. For both these renovation projects, DCAMM determined that it was reasonable to match existing materials wherever possible. Further, for the Adams Courthouse, DCAMM officials stated that they determined that, in order to comply with state law, they needed to consider the historic value of the building. In this regard, Chapter 9, Section 26, of the Massachusetts General Laws states that the Massachusetts Historical Commission (MHC) "shall encourage all governmental bodies and persons considering action which may affect a historical or archeological asset of the commonwealth to consult with the commission to avoid any adverse effect to such asset." Since the renovations of the Adams Courthouse involved considerable renovations of a historic building, DCAMM consulted with MHC and entered into a Memorandum of Agreement (MOA) dated August 6, 2001 that states, in part: "the proposed changes to the Great Hall [in the Adams Courthouse] will have an adverse effect...on the Building." For example, the initial design and intent of the renovation project was to permit walkthrough access between Government Center and the State House. In order to accommodate this and to allow for required modernizations for security and handicapped access, the original design for the Adams Courthouse called for the entrance floor to be lowered and an elevator wide enough for handicapped access to be installed. However, DCAMM entered into an agreement with MHC to mitigate the proposed renovations' adverse effect on this historic building. Under its agreement

with MHC, DCAMM agreed to conduct photographic recordation of the structure, continue consultations with MHC, and allow MHC to review the proposed materials to be used in the renovations. Consequently, all work at the Adams Courthouse was performed in consultation with MHC, with the intent of maintaining the historic value of the building.