

December 4, 2020

OFFICE OF THE ATTORNEY GENERAL
FAIR LABOR DIVISION, BID PROTEST UNIT

In re:

Division of Capital Asset Management and Maintenance
Strategic Plan for Incarcerated Women in Massachusetts

Protestors:

Andrea James, Mallory Hanora,
Members of Families for Justice as Healing and the
Building Up People Not Prisons Coalition

**PROTESTORS’
POSITION STATEMENT**

INTRODUCTION

This matter comes before this Office on a bid protest filed by Andrea James, Mallory Hanora, members of Families for Justice as Healing, and the Building Up People Not Prisons Coalition [hereinafter “the Protestors”] on November 16, 2020 with the Fair Labor Division of the Attorney General’s Office to formally protest a “House Doctor Request for Proposal” [hereinafter “House Doctor RFP”] issued by the Division of Capital Asset Management and Maintenance on August 19, 2020 for a “Strategic Plan for Incarcerated Women in Massachusetts,” Mass. State Project Number DOC2002. The awarding agency of the House Doctor RFP is the Division of Capital Asset Management and Maintenance (DCAMM) and the identified User Agency is the Department of Correction (DOC). There was no published notice of designer selection for the RFP; the RFP was issued to a limited pool of specific firms pursuant to existing House Doctor contracts which were entered into for the study, planning, design & construction of courthouses on behalf of User Agency the Executive Office of the Trial Court.

The Protestors raise two overarching concerns: (1) this request for proposal exceeds the scope of the existing House Doctor contracts, as advertised by the Designer Selection Board last

year, and therefore should be declared void;¹ (2) DCAMM may have specifically solicited proposals from existing but substantively inapposite House Doctors in order to avoid further public scrutiny of project DOC2002, as would be invited by a new Public Notice of Designer Selection, skirting notice requirements in G.L. c. 7C, §§ 44–57.

BACKGROUND

The project at issue here, Mass. State Project No. DOC2002, arises out of long-term planning by DCAMM and the DOC for a public building project to incarcerate women in the Commonwealth. In December 2011, DCAMM published *A System Master Plan for Massachusetts Corrections: The Corrections Master Plan: The Final Report* [hereinafter “Corrections Master Plan”].² The Corrections Master Plan detailed “significant overcrowding” at

¹ In its position statement submitted today, December 4, 2020, in response to Protestors’ bid protest, DCAMM argues that a bid protest is an inappropriate vehicle to raise this challenge, as the Protestors are contesting a “task assignment,” and did not object to the underlying House Doctor contract. This argument is unavailing. The premise of the Protestors’ grievance is that DCAMM intentionally evaded the Designer Selection Law by trying to slip in a project that *required independent advertisement pursuant to the Designer Selection Law* as if it were a mere task assignment, but the tasks available under the existing House Doctor contracts are limited to projects on behalf of User Agency the Executive Office of the Trial Court and this “task assignment” instead was an entirely independent project on behalf of User Agency the Department of Correction that required separate advertisement. It would be inappropriate to require Protestors to have challenged the properly-entered underlying 2019 House Doctor contracts as a threshold matter in order to be able to challenge a later misuse of those contracts in a manner that violated the Designer Selection Law. DCAMM errs in suggesting that this protest is untimely and moot. The protest was timely filed to challenge the House Doctor RFPs, which should have been publicly disseminated as a new project for design services. Further, DCAMM invites this Office to cancel the December 8th hearing because the issue is moot since “the Commonwealth is not currently proceeding with the Requests for Proposals attached to the Building Up Communication as Exhibits A and B.” This invitation is equally unavailing. This is the second time with respect to this project that DCAMM has purported to withdraw the project before this Office could render a decision. Further, this is the first notice the Protestors have received that the Commonwealth is no longer pursuing these Requests for Proposals. At the most recent Justice Involved Women Panel on November 16, 2020, DOC staff members indicated the project was moving forward. This pattern of withdrawals before adjudication subject entirely to the discretion of DOC and DCAMM fits the definition of a problem that is capable of repetition yet evading review, a recognized exception to the mootness doctrine. Even if this Office determines that a hearing is no longer required on this record, the Protestors request that this Office render a formal decision clarifying the scope of a House Doctor contract entered for a specific purpose and single user agency and advising DCAMM that this project should have been separately advertised. Further, Protestors assert that a hearing is necessary to determine if DCAMM has submitted versions of the House Doctor RFP to the other three firms contracted as House Doctors on Mass. State Project Number DCP1921, and to determine whether DCAMM is moving forward on those Requests for Proposal.

² DIVISION OF CAPITAL ASSET MANAGEMENT & MAINTENANCE, *A SYSTEM MASTER PLAN FOR MASSACHUSETTS CORRECTIONS, THE CORRECTIONS MASTER PLAN, THE FINAL REPORT 4* (2011), <https://www.mass.gov/doc/corrections-master-planpdf/download>.

MCI-Framingham and recommended “the development of regional women’s correctional centers,” including the Suffolk County House of Corrections in the East Region, MCI-Framingham in the Central Region, and the Western Massachusetts Regional Women’s Correctional Center (at Chicopee) in the West Region. The Corrections Master Plan estimated that 1,700 beds for women in the Commonwealth would be “needed” by 2020.³ We note, with the benefit of hindsight, that this estimate was staggeringly off-base. On November 30, 2020, there were a total of 531 women incarcerated in the Commonwealth (175 at MCI-Framingham, 29 at South Middlesex Correctional Center, 12 in Barnstable County, 47 in Bristol County, 17 in Essex County, 11 in Franklin County, 87 in Hampden County, and 153 in Suffolk County).⁴

In addition to concerns about severe overcrowding far beyond the facility capacity, for years advocates and state inspectors have raised alarm about environmental health conditions at MCI-Framingham and the DOC’s failure to safeguard the health of women in its custody. MCI-Framingham first opened in 1877, with additional “cottages” opened in 1965. Four of those cottages were closed in 2016 after testing revealed high levels of PCBs in window sealant, a known carcinogen hazardous to human health.⁵ “In October [2016], women at MCI-Framingham were suddenly moved out of the four cottage housing units on the compound. This led to widespread concern among the women about possible exposure to asbestos or mold, as well as concern over conditions in their new housing. The DOC told [Prisoners’ Legal Services of Massachusetts] that the cottages were not closed because of asbestos or mold, but because PCBs

³ *Id.* at 10.

⁴ MASS. DEP’T OF CORR., WEEKLY COUNT SHEET (Nov. 30, 2020), <https://www.mass.gov/doc/weekly-inmate-count-11302020/download>.

⁵ See Michelle Williams, *Cost to renovate MCI-Framingham, the oldest women’s prison in the U.S., considered prohibitive*, Mass Live News (Feb. 26, 2020), <https://www.masslive.com/news/2020/02/mci-framingham-the-oldest-womens-prison-in-the-us-to-close-inmates-to-be-relocated-to-bay-state-correctional-center-in-norfolk.html>.

were found in the window caulk (the sealant around the window panes).”⁶ “In past years, [MCI-Framingham] has been plagued with overcrowding.”⁷

Conditions at MCI-Framingham have drawn the ire of environmental health inspectors for years. In its most recent public health inspection in January 2020, the Community Sanitation Program (CSP) of the Massachusetts Department of Public Health discovered 116 repeat environmental health violations at MCI-Framingham that DOC had failed to resolve since its prior inspection in June 2019. One of the CSP’s chief concerns was the utter lack of cleanliness in food service:

The CSP is concerned with the chronic rodent and insect issue in the food service areas and recommended increasing all pest control methods to twice a week and ensuring that all sticky traps are replaced more frequently. It was stated during the inspection that insects are coming into the Central Kitchen through a crevice around the kettle basin; the CSP strongly recommends blocking this crevice to decrease the presence of insects. The CSP also recommended a higher frequency deep cleaning policy which includes cleaning under all storage shelves and equipment in food service areas.⁸

The DOC has an incontrovertible pattern of failing to resolve documented threats to human health at MCI-Framingham. Over the last five years, at each bi-annual inspection MCI-Framingham has had more than 100 documented repeat violations; across these 11 inspections, the average is 147 unresolved environmental health violations per inspection.⁹ In its June 2017 inspection, DPH detailed black drinking water and serious issues of “chronic dampness” and

⁶ *PLS Notes*, Prisoners’ Legal Servs. (Jan. 2017), <http://www.plsma.org/wp-content/uploads/2017/02/201701NE.pdf>.

⁷ Shira Schoenberg, *State considers closing MCI-Framingham prison by 2024*, Mass Live News (Dec. 16, 2019), <https://www.masslive.com/news/2019/12/state-considers-closing-mci-framingham-prison-by-2024.html>.

⁸ Executive Office of Health and Human Services, Dep’t of Public Health, Bureau of Environmental Health, Community Sanitation Program, *Facility Inspection – MCI Framingham* (Feb. 14, 2020), <https://www.mass.gov/doc/mci-framingham-january-30-2020/download>.

⁹ January 2020 ([116 repeat violations](#)); June 2019 ([107 repeat violations](#)); January 2019 ([139 repeat violations](#)); June 2018 ([138 repeat violations](#)); January 2018 ([147 repeat violations](#)); June 2017 ([192 repeat violations](#)); January 2017 ([137 repeat violations](#)); June 2016 ([124 repeat violations](#)); January 2016 ([153 repeat violations](#)); June 2015 ([186 repeat violations](#)); January 2015 ([180 repeat violations](#)).

“mold growth,” writing, “The Department is strongly concerned with the absence of a safe and sanitary supply of water for normal drinking needs within this area and requests you provide a plan describing the interim measures you have implemented to ensure the health and safety of inmates and staff while this violation is being corrected.”¹⁰ Though DOC has repeatedly denied a mold infestation as the impetus for closing the cottages, in a two-year audit of medical care at DOC facilities published in January 2020, Massachusetts State Auditor Suzanne Bump noted, “Because of a mold infestation, some female inmates’ medical files that were stored at Massachusetts Correctional Institution (MCI)—Framingham were quarantined and could not be obtained for review.”¹¹

Despite this extensive record, throughout 2019, DOC denied to advocates at meetings of the Justice Involved Women Panel¹² that conditions at MCI-Framingham posed a threat to human health and habitation and that DOC had any intention or plan to shutter MCI-Framingham. Meanwhile, between August and October 2019, the Suffolk County Sheriff’s Department entered into Memoranda of Understanding with Sheriff’s Departments in Norfolk, Plymouth, and Essex Counties to house women held pretrial and women serving county sentences who had, until that time, been incarcerated at MCI-Framingham—following the eastern regional plan identified in the 2011 Corrections Master Plan. Further, throughout the summer and fall of 2019, the firm Faithful+Gould completed draft facility assessments of the

¹⁰ Executive Office of Health and Human Services, Dep’t of Public Health, Bureau of Environmental Health, Community Sanitation Program, *Facility Inspection – MCI Framingham* at 24 (June 27, 2017), <https://www.mass.gov/files/documents/2017/07/zm/mci-framingham-report-6-17.pdf>. *Id.* (“The unfinished wall and wall behind the warewash machine is constantly exposed to chronic dampness and food debris which has resulted in deterioration and mold growth throughout the area.”).

¹¹ Commonwealth of Mass., Office of the State Auditor, *Official Audit Report of Massachusetts Department of Correction For the Period July 1, 2016 through June 30, 2018* at 7 (Jan. 9, 2020), <https://www.mass.gov/doc/audit-of-the-department-of-correction/download>.

¹² This Panel was created as a standing panel as part of the 2018 Criminal Justice Reform Act omnibus law.

South Middlesex Correctional Center (dated July 26, 2019)¹³ and Bay State Correctional Center (dated September 29, 2019)¹⁴ in anticipation of the as-of-then-unannounced effort to close MCI-Framingham and rehab existing correctional campuses to functionally create a new women’s prison. The facility assessments had been commissioned and proposed in April and May 2019.¹⁵

In October 2019, days after the final county MOUs were entered,¹⁶ women incarcerated at MCI-Framingham were abruptly moved in the early morning hours to the Suffolk County House of Corrections (“South Bay”), with just hours’ notice to them, without being able to retain all of their property or transfer their commissary funds, and without any notice to their families or loved ones. In a public statement released on October 8, 2019, Suffolk County Sheriff Steven W. Tompkins explained that his department had ended its contract with Immigration and Customs Enforcement to detain immigrants because “The jail plans to instead focus resources on women entering the Suffolk County jail, which ‘will soon be an expanded population,’ according to the statement.”¹⁷ Tompkins announced that beginning the week of October 8, “the county jail will begin receiving more women awaiting trial and women who have been convicted and sentenced from Plymouth, Essex, and Norfolk counties.”¹⁸

¹³ FAITHFUL+GOULD, REPORT OF FACILITY CONDITION ASSESSMENT, SOUTH MIDDLESEX CORRECTIONAL CENTER, 135 WESTERN AVENUE, FRAMINGHAM, MASSACHUSETTS 01702 (July 26, 2019), <https://www.mass.gov/files/documents/2019/11/26/DSB-19-40-Draft-FCA-Report-South-Middlesex-Correctional-Center.pdf>.

¹⁴ FAITHFUL+GOULD, REPORT OF FACILITY CONDITION ASSESSMENT, BAY STATE CORRECTIONAL CENTER, 28 CLARK STREET, NORFOLK, MASSACHUSETTS 02056 (Sept. 29, 2019), <https://www.mass.gov/files/documents/2019/11/26/DSB-19-40-Draft-FCA-Report-Bay-State-Correctional-Center.pdf>.

¹⁵ *Id.* (“This report was completed in general accordance with the ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process, Faithful+Gould’s proposal for Facility Condition Assessment services dated May 8, 2019 and the State of Work for Facility Condition Assessments as issued by the Division of Capital Asset Management and Maintenance and dated April 17, 2019.”).

¹⁶ MOUs on file with Protestors. The Essex County MOU was signed by Sheriff Kevin Coppinger on October 8, 2019. The Plymouth County MOU was signed on August 29, 2019.

¹⁷ Tori Bedford, *Suffolk County Sheriff Breaks Contract With ICE*, WGBH NEWS (Oct. 8, 2019), <https://www.wgbh.org/news/local-news/2019/10/08/suffolk-county-sheriff-breaks-contract-with-ice>.

¹⁸ *Id.*

In his initial explanation for entering the MOUs and accepting county-sentenced and pretrial-detained women from Essex, Norfolk, and Plymouth Counties, Sheriff Tompkins explained that he knew MCI-Framingham would be closing and agreed to accept women in view of that decision by DOC. As WGBH News reported on October 11, 2019,

Tompkins said his decision this week to stop housing Immigration and Customs Enforcement detainees at his Boston jail is based on a need to provide more beds for hundreds of [incarcerated women] who would be displaced by the closure of MCI-Framingham.

“When we became aware of the fact that they were going to close, I reached out to Tom Turco, the secretary of public safety,” Tompkins told WGBH. “We do some fantastic gender-specific programming and we are more than willing to take all the little ladies in.”

Cara Savelli, a spokeswoman for the State Department of Correction, said late Thursday there is no such plan to close MCI-Framingham, which currently holds about 450 inmates.

Roughly 200 of the women held there are awaiting trial, many them sent from county sheriffs’ departments — such as Essex, Norfolk and Plymouth counties — whose jails don’t have female units.

Those three counties confirmed they now plan to send female inmates to Suffolk County’s jail, instead of the state-run prison in Framingham. Sheriffs’ departments from Essex, Norfolk and Plymouth counties said Thursday they didn’t know of any plans to close Framingham, but they opted for Suffolk because it’s closer to their headquarters, easier to reach by public transportation and is more aligned with their treatment programs for inmates.¹⁹

However, in a retraction issued the same day that reporting was published, Sheriff Tompkins was apparently compelled to walk back his statements about MCI-Framingham closing. As reflected in a 2:00 PM update to the WGBH News story,

¹⁹ Chris Burrell & Philip Martin, *State Denies Suffolk Sheriff's Claim That Framingham Women's Prison Is Closing*, WGBH NEWS (Oct. 11, 2019), <https://www.wgbh.org/news/local-news/2019/10/11/state-denies-suffolk-sheriffs-claim-that-framingham-womens-jail-is-closing>.

Friday afternoon, Suffolk County Sheriff Steven Tompkins retracted his statements claiming the state-run women’s prison at Framingham is closing. He said parts of the prison are closing temporarily for renovations, creating a need for women inmates to be held elsewhere. But a spokesman for the State Department of Correction (DOC) also disputed that statement. Jason Dobson from the DOC said there is no renovation project happening at MCI-Framingham that would reduce prison beds.²⁰

Even as Sheriff Tompkins endeavored to provide a full factual explanation to the public, DOC continued to obfuscate and disclaim its clear intention to close MCI-Framingham and engage in a new public building project—as evidenced not only by the October 2019 move of incarcerated women to South Bay but also by the facility assessments it had solicited for the South Middlesex and Bay State Correctional Centers, prepared in July and September 2019.

FACTUAL AND PROCEDURAL HISTORY

On December 4, 2019, DCAMM released a Public Notice of Designer Selection (DSB List# 19-40) through the Designer Selection Board for Mass. State Project No. DOC2002, “Bay State Correctional Center – Women’s Facility.” The User Agencies identified in the Public Notice (DSB List# 19-40) were the Department of Correction and the Executive Office of Public Safety and Security (EOPSS). The notice was published in the Commonwealth’s Central Register, Volume 39, Issue 49 (December 4, 2019). It was not published in a newspaper. Proposals in response to the Public Notice were due January 8, 2020.

The project identified in DSB List# 19-40 was for a \$650,000 study of how to design and construct the Bay State Correctional Center into a women’s prison at a cost of roughly \$50 million—which, along with a potential expansion at South Middlesex Correctional Center, would replace MCI-Framingham as the Commonwealth’s women’s prison. DSB List# 19-40 explained DOC’s belief that the construction project would adopt a “trauma-informed design.”

²⁰ *Id.*

On January 21, 2020, the Building Up People Not Prisons Coalition (BUPNP) sent a letter to Governor Charlie Baker and Secretary Thomas Turco III of EOPSS (1) opposing the proposed plan to study the construction and rehabilitation of two existing correctional campuses to effectively create a new women’s prison and (2) disclaiming the false notion that *any* prison could ever be trauma-informed as incarceration is itself traumatic. On January 22, 2020, the Designer Selection Board met to consider the proposals that had been submitted in response to DSB List# 19-40. Members of Families for Justice as Healing and BUPNP attended in numbers to oppose the project and register their concerns on the record at the meeting of the Designer Selection Board.²¹

On January 29, 2020, the Protestors sent a formal bid protest to this office—the Bid Protest Unit within the Fair Labor Division of the Attorney General’s Office—because the Designer Selection Board had failed to advertise DSB List# 19-40 in a newspaper of general circulation, a requirement of the Designer Selection Law, G.L. c. 7C, § 47.²² The Designer Selection Board was scheduled to meet to interview and choose finalists for Mass. State Project No. DOC2002 (DSB List# 19-40) on February 5, 2020, but that meeting of the Designer Selection Board was cancelled.²³ In private follow-up by the Attorney General’s Office, DCAMM was asked whether they had properly advertised the Public Notice in a newspaper, but

²¹ DESIGNER SELECTION BOARD, MINUTES OF THE 987TH MEETING (Jan. 22, 2020), <https://www.mass.gov/doc/minutes-of-the-987th-meeting/download> (“Members from the Families for Justices As Healing (FJAH) were present to share their concerns with the Board regarding building a new prison. In response to the attached letter sent to Governor Baker from the members of FJAH, Rebecca Sherer stated that as a Board the members do not get involved with any monetary value or contracting for any projects set before them. The members role is strictly to select designers for state agencies. Once a designer is selected and given to the agencies the Board does not get involved further. The Board suggested that the members of FJAH get in touch with a representative at Department of Correction (DOC) or maybe a state representative.”).

²² BUILDING UP PEOPLE NOT PRISONS COALITION, BID PROTEST LETTER (Jan. 29, 2020), <http://charleshamiltonhouston.org/wp-content/uploads/2020/06/Bid-Protest-Letter-and-Enclosure-1.29.20.pdf>.

²³ See Designer Selection Board, Agenda of the 988th Meeting, Wednesday February 5, 2020 at 8:30 AM, <https://drive.google.com/file/d/1tdTFPjKbas0f0zXscZ7o-GwflL8rmhwKj/view>.

upon information and belief, DCAMM did not respond or confirmed that the notice had not been properly advertised in a newspaper. In an email on February 5, 2020, Assistant Attorney General Deborah Anderson asked Executive Director Bill Perkins of the Designer Selection Board to give her notice when DSB List# 19-40 had been re-advertised and new meetings had been scheduled. He responded by email on February 5, 2020, “Will do but I don’t think anything is imminent.” Over the next few months, there was no public confirmation that DCAMM and DOC were cancelling the project, but it was not re-advertised.

On August 19, 2020, DCAMM privately released a new Request for Proposal (RFP) on behalf of User Agency the DOC using the same Mass. State Project No. DOC2002 which had been used in DSB List# 19-40.²⁴ This Request for Proposal was sent to specific firms under existing House Doctor contracts with DCAMM that had been entered into for the study, design, and construction of courthouses on behalf of user agency the Executive Office of the Trial Court. As the example RFP to the firm Finegold Alexander Architects shows, the governing House Doctor Contract was for Mass. State Project No. DCP1921-HD1, “Planning, Study & Design – Courts.” However, the Scope of Services Request in the RFP was for Mass. State Project No. DOC2002, “Strategic Plan for Incarcerated Women in Massachusetts” and the “User Agency” was “Department of Correction.”

In late summer and early fall of 2020, members of several advocacy organizations emailed Liz Minnis, Deputy Commissioner for Planning at DCAMM, to ask for the House Doctor RFPs upon hearing a rumor about their existence and to check on the status of the Bay State project. She provided the documents accordingly. Without advocates’ specific requests to

²⁴ See, e.g., DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE, HOUSE DOCTOR REQUEST FOR PROPOSAL TO FINEGOLD ALEXANDER ARCHITECTS (Aug. 19, 2020), <https://drive.google.com/file/d/1GkPfkMk2NnS-NXVOMYiLFX3Lc-xDL45/view>.

see these documents, the House Doctor RFPs were only available to the firms and not to the public until they were specifically requested.

On November 16, 2020, the Protestors sent another formal bid protest to this Office because DCAMM had failed altogether to advertise this new request for proposals under the Designer Selection Law. The bid protest explained that DCAMM had solicited proposals for Mass. State Project No. DOC2002 from substantively inapposite House Doctors, beyond the scope of services in their publicly advertised House Doctor contracts for Mass. State Project No. DCP1921 which were entered for the study, design, and construction of courts on behalf of user agency the Executive Office of the Trial Court. In this way, DCAMM's House Doctor RFP evaded the public notice requirements of the Designer Selection Law, G.L. c. 7C, §§ 44–57. On November 16, 2020, at a meeting of the Justice Involved Women Panel, a representative from DOC conceded that the intention behind the proposed strategic plan was to inform the building project at Bay State Correctional Center, which DOC continues to pursue under Mass. State Project No. DOC2002. On November 17, 2020, Assistant Attorney General Deborah Anderson emailed Mallory Hanora inquiring as to whether the new RFP includes “Design Services.” Mallory Hanora responded by email on November 19, 2020 confirming that the RFP does include “Design Services” as defined in G.L. c. 7C, § 44, and therefore falls within the required projects to be advertised under the Designer Selection Law.

On Monday, November 30, Assistant Attorney General Deborah Anderson announced this Office was setting up a Bid Protest Hearing for this matter on Tuesday, December 8 at 11:00 AM and Position Statements from both parties were due by Friday, December 4. The Protestors timely submit this Position Statement on December 4, 2020.

ARGUMENT

The issue here is whether DCAMM's private solicitation of proposals for Mass. State Project No. DOC2002 on behalf of the Department of Correction from existing House Doctors who were retained and who entered contracts through a public designer selection process for the exclusive purpose of conducting projects related to the study, design, and construction of courts on behalf of the Executive Office of the Trial Court violated the Designer Selection Law.

I. The Designer Selection Law Applies to Mass. State Project No. DOC2002.

As a threshold matter, the requirements for designer services on public projects are set forth in M.G.L. c. 7C, §§ 44-57. The express purpose of these statutory requirements is to:

ensure that the commonwealth receives the highest quality design services for all its public building projects; provide for increased confidence in the procedures followed in the procurement of design and design related services; promote consistency in the methods of procurement of design and design related services for all public building projects in the commonwealth; foster effective broad-based participation in public work within the design professions; [and] provide safeguards for the maintenance of the integrity of the system for procurement of designers' services within the commonwealth[.]

G.L. c. 7C, § 44(a); *see also* § 4:3 Designer services, 57 Mass. Prac., Mass. Construction Law (quoting G.L. c. 7C, § 44(a)). By its own terms, the Designer Selection Law only applies to projects seeking "design services." As defined in G.L. c. 7C, § 44(b), "design services" include: "any of the following services provided by any designer, interior designer, programmer, or construction manager in connection with any public building project:

- (i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;
- (ii) preparation of drawings, plans, or specifications, including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;
- (iii) supervision or administration of a construction contract;

(iv) construction management or scheduling.”

The House Doctor RFPs for a “Strategic Plan for Incarcerated Women in Massachusetts” would fall squarely within subsection (i). The project is the equivalent of a “master plan,” “study,” or “cost estimate[] or program[]” sought “in connection with” a “public building project” that is to be provided by “any designer, interior designer, programmer, or construction manager.”

Strategic plans are commonly solicited as projects through the Designer Selection Board. A search for “design services” in the central registry delivered a number of other strategic plans.²⁵

Although the House Doctor RFP scope of services request is self-titled as a “strategic plan,” as opposed to a “master plan,” the substance of the RFP indicates it is seeking a study which will include cost estimates and “identify priorities to guide investment decisions” (House Doctor RFP at 7) made by DCAMM in connection with a public building project. The proposed “extensive data collection and analysis” (House Doctor RFP at 8) and in-depth “statewide overview of existing facility conditions, deferred maintenance backlog, capital investment needs, and current facility space inventories” (House Doctor RFP at 9) also indicates that this constitutes preparation of a plan or study in connection with a public building project, Mass. State Project No. DOC2002, which was the same project number previously used for the “Bay State Correctional Center – Women’s Facility” in DSB List# 19-40. Accordingly, the Designer Selection Law applies to this House Doctor RFP and it was required to be publicly advertised.

²⁵ See, e.g., PUBLIC NOTICE OF DESIGNER SELECTION, DSB LIST# 19-26 (“Study, Planning, Design & Construction of Statewide Offices & Workplace”) (Aug. 21, 2019), <https://www.mass.gov/files/documents/2019/08/21/DSB-19-26-Study-Planning-Design-and-Construction-of-Statewide-Offices-and-Workplace.pdf> (noting that immediate services authorized under the proposed House Doctor contract include “Strategic Plan”); TOWN OF WAYLAND, REQUEST FOR QUALIFICATIONS, TOWN-WIDE RECREATION FACILITY STRATEGIC PLAN, RFQ 17-24 (Feb. 2017), <http://waylandrec.com/wp-content/uploads/2017/02/17-24-RFQ-Rec-Facilities-Town-Wide-Strategic-Plan-legal.pdf> (“This RFQ shall be governed by the designer selection law, M.G.L. Chapter 7C, Sections 44 to 58 . . .”).

II. DCAMM Intentionally Evaded Public Notice Requirements of the Designer Selection Law.

Instead of publicly advertising these House Doctor RFPs, DCAMM tried to fit a square peg into a round hole by soliciting proposals for Mass. State Project No. DOC2002 from contracted firms that had been retained and underwent a public designer selection process for an entirely distinct set of projects, user agency, and scope of services. When an awarding authority advertises a House Doctor contract for a limited purpose (here, the study, design, and construction of courts) and on behalf of a specific user agency (here, the Executive Office of the Trial Court), any subsequent projects that fall within that House Doctor contract must be on behalf of that specific user agency and to supply those services. To allow otherwise would defeat the purpose of the Designer Selection Law, giving the awarding authority carte blanche to seek *any* project on behalf of *any* agency without *any* public scrutiny, and thereby undermining the statutory objectives of the Designer Selection Law in G.L. c. 7C, § 44(a), quoted *supra*.

A. The House Doctor Contracts Concern the Executive Office of the Trial Court Only.

The House Doctor RFP was sent to firms governed by House Doctor contracts arising out of Mass. State Project Number DCP1921, “[Study, Planning, Design & Construction of Courthouses](#).” These House Doctors were selected in April 2019 through the Designer Selection Board pursuant to [DSB List #19-06](#). The notice for the House Doctor project was issued on February 13, 2019, submissions were due March 6, 2019, and five finalists were selected on [April 3, 2019](#). As described in the Project Overview of the Public Notice of Designer Selection for DSB List #19-06, the contracts pertain to DCAMM projects on behalf of user agency the Executive Office of the Trial Court to conduct maintenance and rehabilitation of courthouses and other infrastructure of the Massachusetts Court System. The example “Potential Projects”

identified on page five of DSB List# 19-06—projects which might arise under the House Doctor contract—are instructive; each begins, “In close collaboration with the Executive Office of the Trial Court,” indicating that DCAMM understood at the time it advertised DSB List# 19-06 that requests for proposals would relate exclusively to projects on behalf of the Executive Office of the Trial Court, the sole user agency identified in DSB List# 19-06. Based on a public records request, it appears the House Doctor contracts for Mass. State Project No. DCP1921 were entered in June 2019. The proposals submitted in response to DSB List# 19-06 also indicate that the parties understood projects would be on behalf of the User Agency “Executive Office of the Trial Court.” The House Doctor Contract for HDR Architecture, obtained through a public records request, includes the underlying proposal submitted in response to DSB List# 19-06 by HDR Architecture. In a flowchart submitted as part of the DSB Application Form, the “User Agency” is identified as “Executive Office of the Trial Court.” The House Doctor contract itself defines the “user agency” as “The department, county, commission, board or agency that will occupy the Project or for which the Project shall be undertaken.” At no point in *any* of the materials related to DSB List# 19-06 or the contracts that were ultimately entered pursuant to that Public Notice of Designer Selection is the Department of Correction mentioned as a user agency on the project.

B. The “House Doctor Request for Proposal” Concerns the Department of Correction.

The project to study women’s incarceration in connection with the public building project for Bay State Correctional Center on behalf of DOC does not fit within the existing House Doctor contracts for the planning, study, and design of courts, and therefore was unlawfully solicited. As explained above, the user agency identified in Mass. State Project No. DCP1921 for the House Doctor contracts was the Executive Office of the Trial Court. As the August 2020

House Doctor RFP concedes, the House Doctor contracts at issue here govern “Planning, Study & Design – Courts.” However, the August 2020 House Doctor RFP requested proposals pursuant to Mass. State Project No. DOC2002, “Strategic Plan for Incarcerated Women in Massachusetts.” The user agency is identified as the Department of Correction, *an entirely different user agency* not covered by the House Doctor contracts or original project description advertised by the Designer Selection Board for Mass. State Project No. DCP1921. DCAMM simply has no authority to request proposals from these House Doctor contractees on behalf of a *different, unadvertised* user agency—the Department of Correction—for an entirely different project not within the scope of Mass. State Project No. DCP1921.

C. DCAMM Evaded Public Notice Requirements.

DCAMM is aware that this project requires public advertising and review through the Designer Selection Board (G.L. c. 7C, § 46 et seq.). Mass. State Project No. DOC2002, the governing state project number for the scope of services request in the House Doctor RFP, was also the project number identified in [DSB List # 19-40](#), “Bay State Correctional Center – Women’s Facility.” DCAMM prepared that December 2019 notice of designer selection on behalf of the Massachusetts Department of Correction (DOC) and the Executive Office of Public Safety and Security (EOPSS). DCAMM ultimately withdrew the request for proposals for Mass. State Project No. DOC2002 through DSB List #19-40 after the Protestors filed a bid protest with this office because the Designer Selection Board neglected to advertise the notice in a newspaper. The House Doctor RFP provides a brief history of DSB List #19-40:

In January of 2020, a public meeting was held by the DSB to short list three applicants for interview two weeks later. At that meeting, about a dozen members from a local advocacy organization attended the meeting and spoke to their opposition to the project (see meeting minutes). DCAMM and the DSB listened to the advocates and suggested they have an opportunity to be included in

the study process, which would be the first step in the design effort. Subsequent to the meeting, the administration received a letter from the advocacy group noting that the DSB had not advertised the project in a newspaper – a requirement of the Designer Selection Law. At that point, due to the procurement’s clerical error, the project was withdrawn from consideration. In preparing for next steps, DCAMM and DOC decided to take a step back and look more broadly at the needs of women in the system, evaluate the potential impacts of the 2018 Criminal Justice Reform Law, and develop a strategic plan prior to hiring a designer for a capital investment.

Accordingly, with respect to this very project, DCAMM was on notice of the precise requirements of public advertising for Mass. State Project No. DOC2002—having failed to meet them once before and withdrawing the project from consideration after a formal protest. While this excerpt from the House Doctor RFP suggests DCAMM and DOC heard advocates and withdrew the project from consideration in order to change course, the decision to commission a “Strategic Plan for Incarcerated Women in Massachusetts” from architecture firms who underwent a public selection process for their competency and qualifications to study and design courthouses reflects, at best, a misunderstanding of advocates’ abiding opposition to Mass. State Project No. DOC2002, and at worst, intentional evasion of the designer selection law through an opaque process of existing contracts. In either case, these House Doctors were not selected to work on projects on behalf of the DOC or EOPSS. This RFP plainly exceeds the scope of services DCAMM contracted these House Doctors to perform.

D. DCAMM Otherwise Obstructed Transparency.

The decision to request proposals from existing House Doctors instead of advertising the proposal for a “Strategic Plan for Incarcerated Women in Massachusetts” is in keeping with the Commonwealth’s attempt to complete this process in the dark, without engaging residents of the Commonwealth—especially those most affected. In response to an email inquiry from a member

of the Protestors' coalition seeking the submitted proposals in response to the House Doctor RFP, which DCAMM treated as a public records request, DCAMM declined to provide the proposals, saying, "The proposals, which implicate policy positions being developed by the agency, remain under deliberation and therefore are exempt from disclosure at this time pursuant to Exemption (d) of the Public Records Law. Exemption (d) applies to inter-agency or intra-agency records relating to policy positions being developed by an agency."²⁶

Exemption (d) of the public records law "is limited to recommendations on legal and policy matters found within an ongoing deliberative process that are contained within inter-agency or intra-agency memoranda or letters."²⁷ But solicited proposals in response to a Request for Proposal that evaded a mandatory public process should not fall within this exemption. Invoking this exemption reveals DCAMM's desire to prevent public engagement with Mass. State Project No. DOC2002 during the selection phase; had DCAMM properly engaged the Designer Selection process, these proposals would be subject to a public hearing prior to final selection.

III. The Proposed Strategic Plan is Outside the House Doctors' Expertise.

It is inappropriate for architecture and design firms to lead the creation of a strategic plan for incarcerated women. Their expertise lies in designing and constructing a built environment, not in exploring the personal, economic, political, and social dynamics that land a woman on a jail or prison bunk. For decades, the Commonwealth and others have studied women's incarceration. The Commonwealth presently has a Justice Involved Women Panel created by the 2018 Criminal Justice Reform omnibus law, which is actively considering the range of issues

²⁶ This email exchange was enclosed as Exhibit D to the bid protest letter submitted on November 16, 2020.

²⁷ WILLIAM FRANCIS GALVIN, SEC. OF THE COMMONWEALTH, A GUIDE TO THE MASSACHUSETTS PUBLIC RECORDS LAW 20 (2020), <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>.

this proposed “Strategic Plan” would address.²⁸ The Protestors conducted a Listening Tour with women from the Commonwealth’s most-incarcerated corridor last year and recently published the results—no woman suggested a new prison would have met her needs or prevented further criminalization.²⁹ Yet existing recommendations for policy changes to reduce incarceration and help women heal have gone unheeded.³⁰

Any “Strategic Plan” regarding incarcerated women should be led by experts: currently and formerly incarcerated women;³¹ researchers on common causes of women’s incarceration; mental health, substance use, and trauma counselors and professionals; housing advocates; and others with expertise in ending the root causes of women’s incarceration. Incarceration is

²⁸ The establishing language makes clear that this Panel is already tasked with the kind of inquiry this Strategic Plan would effectively duplicate (“SECTION 223. (a) Notwithstanding any general or special law to the contrary, there shall be established a panel on justice-involved women to review and report on the impact of this act and other criminal laws on women and make recommendations on gender-responsive and trauma-informed approaches to address the pretrial, incarceration and rehabilitation needs of justice-involved women. The panel shall review and consider improvements including, but not limited to, family visitation policies, available reproductive health care, gender-specific, pretrial services and programming offered within correctional institutions and post-release transitional assistance and supports for women.”).

²⁹ See generally *Listening Tour*, FAMILIES FOR JUSTICE AS HEALING (2020), <https://justiceashealing.org/listening-tour>.

³⁰ Existing reports and recommendations on women’s incarceration in the Commonwealth are too numerous to list. We have compiled an appendix with a sample from the last fifteen years, enclosed herewith.

³¹ While the House Doctor RFPs note that the Strategic Plan will include greater transparency and will invite active participation from “key stakeholders” who will be engaged in a “collaborative effort,” it remains true that DCAMM and DOC are relying on architecture and design firms to conduct a study wholly outside their professional training and expertise, at the expense of the leadership of those who are most expert. Further, the House Doctor RFPs make no explicit commitment to engage formerly or currently incarcerated women in the proposed process. The consultation and collaboration of outside experts reads as particularly disingenuous when representatives from DOC, including Acting Assistant Deputy Commissioner Allison Hallett, have stated publicly at meetings of the Justice Involved Women Panel that DOC remains intent on conducting a building study and capital plan for the prison at the Bay State property. See *Minutes of the Justice-Involved Women Panel Meeting*, MASS.GOV (Sept. 21, 2020), <https://www.mass.gov/event/justice-involved-women-panel-meeting-2020-09-21t110000-0400-2020-09-21t130000-0400> (“Chairwoman Hallett stated that in August of 2020, an RFP was issued by DCAMM to House Doctor consultants for a strategic planning consultant team. . . . A strategic plan is expected by the summer of 2021. After review of the planning study findings a building study will need to be done to develop the capital plan for the facility needs for women including the impact on MCI Framingham and Bay State Correctional facility before any possible relocation.”). The Protestors fear that any process led by architects will, by design, develop a strategic plan focused on correctional construction as its centerpiece and remain closed to the prospect of centering alternatives to incarceration, diversion, and decarceration as central recommendations and investments.

traumatic, and there is no such thing as a trauma-informed prison. By inherent function and design, prisons are sites of trauma—family separation, solitary confinement, strip searches.

Instead of engaging a design firm to conduct a strategic plan as a precursor to a still-intended building study, the Commonwealth should create a viable plan for decarceration via diversion, pretrial release, community-based alternatives, clemency, parole, compassionate release and commensurate reentry supports: housing, counseling, treatment, and employment. Resources that would otherwise be spent on incarceration should be invested in healing, transitional and permanent housing, living wage employment and small business development, and both mental health and substance use treatment at cost-savings to the Commonwealth.

Not only are architects manifestly unqualified to develop a strategic plan on women’s incarceration, but these professionals have a vested interest in new prison construction.³² Indeed, past projections by DCAMM to evaluate incarceration needs have *vastly overestimated* future incarceration and the need for new bedspaces; the 2011 Corrections Master Plan projected that in 2020 the Commonwealth’s correctional needs would amount to “26,991 total bedspaces or 27,662 including civil commitments,”³³ with a total of 1700 jail and prison beds for women.³⁴ This estimate was staggeringly off-base. As of November 30, 2020, there were fewer than 13,300

³² Finegold Alexander Architects had applied for and was among the firms initially selected for DSB List# 19-40, the Bay State project, before it was withdrawn, as well as being among the House Doctors consulted for the House Doctor RFP. *See, e.g.,* Jeanette Hinkle, *3 firms picked to vie for Norfolk prison rehab in preparation for MCI-Framingham inmates*, METROWEST DAILY NEWS (Jan. 23, 2020), <https://www.metrowestdailynews.com/news/20200123/3-firms-picked-to-vie-for-norfolk-prison-rehab-in-preparation-for-mci-framingham-inmates>.

³³ DIVISION OF CAPITAL ASSET MANAGEMENT & MAINTENANCE, A SYSTEM MASTER PLAN FOR MASSACHUSETTS CORRECTIONS, THE CORRECTIONS MASTER PLAN, THE FINAL REPORT 4 (2011), <https://www.mass.gov/doc/corrections-master-planpdf/download>.

³⁴ *Id.* at 10 (“1,700 beds are estimated to be needed by 2020.”).

people incarcerated across the Commonwealth, just 531 of them women³⁵—half as many as the projected beds overall and a third of the projected beds for women specifically.

IV. Any Contract Must Be Voided and the RFP Must Be Withdrawn.

The required remedy here is to void any contract entered pursuant to the House Doctor RFP, or if no contract has been entered, retract the RFP. “[E]ven if a statute does not expressly provide that a contract made in violation of its terms is invalid, the contract will be deemed void if doing so is necessary to accomplish the statute’s objectives.” *Baltazar Contractors, Inc. v. Town of Lunenburg*, 65 Mass. App. Ct. 718, 721 (2006) (collecting cases). As the Supreme Judicial Court has explained in similar contexts, “[s]tatutory bidding procedures are designed to prevent favoritism, to secure honest methods of letting contracts in the public interest, to obtain the most favorable price, and to treat all persons equally.” *Phipps Prods. Corp. v. Massachusetts Bay Transp. Authy.*, 387 Mass. 687, 691–92 (1982). “Because the failure to give proper public notice of a project subject to the public bidding laws frustrates these legislative objectives, a contract made in violation of such requirements generally will be held unenforceable.” *Baltazar Contractors, Inc.*, 65 Mass. App. Ct. at 721–22 (citing *Phipps Prods. Corp.*, 387 Mass. at 692). The failure to give proper public notice of this contract frustrated the legislative objective of the Designer Selection Law, requiring the RFP to be withdrawn and any contract to be voided. Further, the Protestors would ask this Office to formally acknowledge in a written decision the repeated violations of the Designer Selection Law by DCAMM and DOC with respect to this project, Mass. State Project No. DOC2002.

³⁵ MASS. DEP’T OF CORR., WEEKLY COUNT SHEET (Nov. 30, 2020), <https://www.mass.gov/doc/weekly-inmate-count-11302020/download>.

CONCLUSION

As then-DCAMM Commissioner Carole Cornelison recognized in the cover letter enclosed with the 2011 Corrections Master Plan, “Building our way out of our challenges is not an option.” The Commonwealth’s repeated efforts to find a solution to women’s incarceration through building projects is deeply misguided and destined to fail. We urge this Office to act immediately to halt this process, void any contract entered with respect to the House Doctor RFPs issued in August 2020, and require DCAMM to withdraw the August House Doctor RFPs because they violated the Designer Selection Law. We further request an investigation into DCAMM and DOC’s inappropriate and unlawful use of these House Doctor contracts to evade public notice requirements for its revival of Mass. State Project No. DOC2002, a development that is unfortunately in keeping with a long history of obfuscation around DOC’s plans to incarcerate women in the Commonwealth.

Respectfully submitted ,

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APPENDIX

Existing reports and recommendations on women's incarceration in the Commonwealth are too numerous to list. We have compiled this appendix with a sample from the last fifteen years, including both official reports commissioned by the Commonwealth and reports by external experts.

- MASS. GOVERNOR'S COMM'N ON CORRECTIONS REFORM, STRENGTHENING PUBLIC SAFETY, INCREASING ACCOUNTABILITY, AND INSTITUTING FISCAL RESPONSIBILITY IN THE DEPARTMENT OF CORRECTION (2004), <https://static.prisonpolicy.org/scans/gccr2004.pdf>.
- MASS. EXEC. OFFICE OF PUBLIC SAFETY & SECURITY, DEP'T OF CORR., GOVERNOR'S COMM'N ON CORRECTIONS REFORM, MAJOR RECOMMENDATION #13: DEDICATED EXTERNAL FEMALE OFFENDER REVIEW (2005), <https://www.mass.gov/doc/gccr-recommendation-13-dedicated-external-female-offender-review/download>.
- MASS. DEP'T OF CORR. ADVISORY COUNCIL, FINAL REPORT (2005), <https://archives.lib.state.ma.us/bitstream/handle/2452/114003/ocm74718966.pdf>.
- ERIKA KATES & PAIGE RANSFORD WITH CAROL CARDOZO, WOMEN IN PRISON IN MASSACHUSETTS: MAINTAINING FAMILY CONNECTIONS (2005), https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1032&context=cwppp_pubs.
- ERIKA KATES, SYLVIA MIGNON, & PAIGE RANSFORD, PARENTING FROM PRISON: FAMILY RELATIONSHIPS OF INCARCERATED WOMEN IN MASSACHUSETTS (2007), https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1002&context=cwppp_pubs.
- ERIKA KATES, WELLESLEY CENTERS FOR RESEARCH ON WOMEN, MAKING WOMEN COUNT: WOMEN OFFENDERS IN MASSACHUSETTS (2009), <https://www.wcwonline.org/pdf/ekates/MakingWomenCount.pdf>.
- BENJAMIN FORMAN & JOHN LARIVÉE, MASSINC & COMMUNITY RESOURCES FOR JUSTICE, CRIME, COST, AND CONSEQUENCES: IS IT TIME TO GET SMART ON CRIME? (2013), https://massinc.org/wp-content/uploads/2013/03/Crime_Cost_Consequences_MassINC_Final1.pdf.
- ERIKA KATES, WELLESLEY CTRS. FOR RESEARCH ON WOMEN, MOVING BEYOND PRISON: CREATING ALTERNATIVE PATHWAYS FOR WOMEN, BRIEFING NOTE #2: PRETRIAL DETENTION AND ACCESS TO BAIL FOR WOMEN (2013), <https://www.wcwonline.org/pdf/ekates/PretrialDetentionAccessToBailForWomen.pdf>.
- SUSAN STARR SERED & MAUREEN NORTON-HAWK, CAN'T CATCH A BREAK: GENDER, JAIL, DRUGS, AND THE LIMITS OF PERSONAL RESPONSIBILITY (2014).
- PRISON BIRTH PROJECT & PRISONERS' LEGAL SERVS. OF MASS., BREAKING PROMISES: VIOLATIONS OF THE MASSACHUSETTS PREGNANCY STANDARDS & ANTI-SHACKLING LAW (2016), http://www.plsma.org/wp-content/uploads/2016/05/Breaking-Promises_May2016.pdf.
- Rachel Roth, *Incarceration as a Threat to Reproductive Justice in Massachusetts and the United States*, 39 W. NEW ENG. L. REV. 381 (2017), <http://digitalcommons.law.wne.edu/lawreview/vol39/iss3/3>.
- HUMAN IMPACT PARTNERS & FAMILIES FOR JUSTICE AS HEALING, KEEPING KIDS AND PARENTS TOGETHER: A HEALTHIER APPROACH TO SENTENCING IN MASSACHUSETTS (2017), https://humanimpact.org/wp-content/uploads/2018/10/KeepingMAKidsParentsTogetherHealthier_2017.09.pdf.

- JAILEEN A. HOPKINS, PROGRAM SERVS. DIVISION, MASS. DEP'T OF CORR., AN INNOVATIVE TREATMENT APPROACH FOR FEMALE OFFENDERS (2018), <https://www.mass.gov/doc/female-pathways/download>.
- KIMBERLY SUE, GETTING WRECKED: WOMEN, INCARCERATION, AND THE AMERICAN OPIOID CRISIS (2019).
- Susan Starr Sered & Maureen Norton-Hawk, *Women on the Institutional Circuit: A 9-Year Qualitative Study*, 25 J. CORR. HEALTH CARE 25 (2019), <https://journals.sagepub.com/doi/pdf/10.1177/1078345818819811>.
- LEAH WANG, MASS. DEP'T OF CORR., FEMALE INMATES AGES 18 TO 24: YEARLY TRENDS AND CURRENT POPULATION OVERVIEW (2019), <https://www.mass.gov/doc/female-inmates-ages-18-to-24-yearly-trends-and-current-population-overview/download>.
- Wendy Sawyer, *Massachusetts women do not need a new jail*, PRISON POLICY INITIATIVE (Mar. 29, 2019), <https://www.prisonpolicy.org/blog/2019/03/29/newjail>.
- FAMILIES FOR JUSTICE AS HEALING, LISTENING TOUR (2020), <https://justiceashealing.org/listening-tour>.
- Tamar Sarai Davis, *Overmedicated and caged—what's happening in women's prisons*, PRISM (Sept. 2, 2020), <https://www.prismreports.org/article/2020/9/2/overmedicated-and-cagedwhats-happening-in-womens-prisons>.