



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: December 19, 2019

CBCA 2953, 2954, 2955, 3596, 4175, 4377, 5006

SUFFOLK CONSTRUCTION COMPANY, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

James R. Newland, Jr., and Anthony J. LaPlaca of Seyfarth Shaw, LLP, Washington, DC, counsel for Appellant.

James F.H. Scott and Justin S. Hawkins, Office of General Counsel, General Services Administration, Washington, DC; and Nancy E. O'Connell and Meaghan Q. LeClerc, Office of Regional Counsel, General Services Administration, Boston, MA, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **DRUMMOND**, and **ZISCHKAU**.

ZISCHKAU, Board Judge.

These consolidated appeals involve claims by appellant, Suffolk Construction Company, Inc. (Suffolk), amounting to \$22,766,290 plus interest and claims by respondent, General Services Administration (GSA), of \$3,196,437, arising from the renovation of the John W. McCormack Building located in Boston, Massachusetts. After protracted discovery and a lengthy hearing and briefing by the parties, these consolidated appeals are ready for decision. We conclude that Suffolk is entitled to recover a net amount of \$12,583,546 plus interest pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012).

Background

On September 25, 2006, Suffolk and GSA entered into contract no. GS01P05BZC3010 (the contract) for the renovation of the McCormack Building, a twenty-two story “historic art deco structure” located in Boston, Massachusetts. This firm-fixed-price contract was awarded for \$136,153,445, and notice to proceed was issued on October 6, 2006, with a completion date of April 16, 2009.

Under the contract, Suffolk was to renovate the building with an emphasis on “environmental sustainability and historic preservation.” Suffolk and its subcontractors were to perform the renovation work according to plans and specifications prepared by GSA and its design team headed by the designer of record, Goody Clancy & Associates, Inc. (Goody), with Cosentini Associates serving as the mechanical, electrical, and plumbing design engineer, and Weidlinger Associates, Inc., retained as the structural design engineer. Goody hired Tishman Construction Corporation of Massachusetts to serve as GSA’s construction manager. Suffolk renovated the building’s existing entrances, lobbies, stairways, fixtures, libraries, and courtrooms. Suffolk also abated hazardous materials, modernized elevator systems, refurbished finishes, accommodated new tenant spaces, removed existing mechanical and electrical systems, and installed new mechanical and electrical systems.

Suffolk was engaged to restore the post-office areas to their original condition and to renovate the office space for new building tenants, including the Environmental Protection Agency (EPA), the Department of Education, the U.S. Bankruptcy Courts, the U.S. Trustees, and divisions of GSA, using Goody’s design documents. Given the building was constructed in 1933, a large proportion of the interstitial spaces (those spaces above ceilings, between walls, and in the building shafts and chases) were concealed, and thus portions of these spaces were not fully and accurately detailed in the plans and specifications. Although GSA argues now that the design was substantially complete, the record as a whole shows that GSA, due to serious time constraints for obligating the funds for this project, had to obtain bids on a design package that frequently did not adequately define the work within the concealed spaces.

Progress of Construction

Suffolk began construction work in October 2006. From the start, there were many unknown and concealed conditions, not addressed in the contract documents, that required numerous design clarifications and changes. During 2007, GSA and Suffolk executed contract modifications PS-02 (\$387,702), PS-03 (\$16,737), PS-04 (\$1272), PS-05 (\$463,769), PS-06 (\$64,276), PS-07 (\$44,368), PS-08 (\$38,000), PS-09 (\$380,056), PS-10 (\$114,200), PS-13 (\$671,664), and PS-15 (\$728,440) for change order work amounting to

almost \$3 million. From February through November 2008, GSA and Suffolk executed contract modifications PS-16 through PS-21, PS-24, PS-25, PS-27, PS-31, PS-34, PS-38, and PS-40 for change order work amounting to over \$4.5 million. There were other changes to the contract during 2007 and 2008 for which GSA issued unilateral modifications (PC-12, PC-14, PC-22, PC 26, PC-36, and PC-41) with not-to-exceed (NTE) amounts totaling almost \$2 million.

The most substantial of these changes, however, arose from the need to redesign the system for supporting the mechanical systems pipes (multiple sizes up to sixteen inches in diameter) that were running vertically in this twenty-two-story building whose shaft walls were constructed mainly of terra cotta and brick. In early June 2007, Suffolk submitted a pipe stress analysis regarding seismic, expansion, and vibration control for all pipe being installed in the riser shafts 1-2-3, 4-5-6, CH-1, B, and C. Suffolk submitted a request for information (RFI) 503 along with the analysis, requesting direction from the design team regarding what actions should be taken given that the design depicted in the contract drawings for the pipe guides, anchors, and joints were inadequate for the pipe stress loads that would be exerted on the structure. The design team recognized that it needed to prepare a new structural design for supporting the pipes in the shafts. This was a difficult and complex effort and took many months to complete. On October 29, 2007, the design team issued a partial response to RFI 503-01, attaching an initial seven new structural sketches that reflected a significantly changed riser shaft support design. The design team's response stated that structural supports would be issued in a future supplement and that the structural designer was designing support framing for riser supports at each of the shafts and that support structures for the shafts would be designed and forwarded when available. More design drawings and sketches were issued between November 2007 and February 2008.

In March 2008, Mr. Michael Santos, GSA's contracting officer, advised the design team that it was responsible for this pipe support redesign due to the design team's failure to evaluate (in its original design) the forces generated by these very large mechanical pipes on the existing structure in the shafts. He noted that Suffolk was contending that the project would be delayed 217 days and that the cost of this additional pipe riser support work would include mitigating recognized time delays through overtime and second shift work with additional contractor supervision.

GSA later described the problem as follows:

Early June 2007 it was discovered that sanitary riser bracing/seismic supports were inadequate in riser chases. The project team reviewed, documented and scheduled team meetings to resolve the issue. The A-E [architect-engineer] prepared requested design documents changes from October 30, 2007 through

February 15, 2008. RFP's [requests for proposals] were provided the GC [general contractor] for pricing. It took seven months from the date of discovery until design was complete and an acceptable negotiated price could be reached with the contractor and the work started. This unforeseen condition in itself affected the critical path of the project schedule, as a result subsequent work had to be rescheduled and worked around while the corrections were made.

As a result of these riser shaft changes, Suffolk and NB Kenney, the mechanical subcontractor, had to furnish and install additional structural steel in the shafts, additional pipe guides and anchors, and flexible braided hose connections at increments of sixty feet from each pipe anchor. These changes fundamentally altered NB Kenney's planned work. The design changes altered the layout of mechanical, electrical, and plumbing (MEP) access openings up and down each shaft and required additional demolition and reconstruction, disrupting branch piping operations. Other trades were also impacted, including the electrical subcontractor, City Lights. The record also shows that piping originally planned for the C1 shaft had to be moved into the already congested C2 shaft and that additional staging had to be used in light of the re-design.

Suffolk submitted proposed change orders (PCOs) relating to the costs incurred for the shaft redesign starting in early 2008. In March 2008, Suffolk submitted PCO 212B, PCO 212C, and PCO 212D, proposing costs of \$498,323 for the pipe riser support system in shafts 1-3 and 4-6, \$54,054 for steel supports in the C shaft, and \$114,289 for added supervisory costs by Suffolk in the shafts. Also submitted was PCO 155 for the B1 and C2 shaft seismic braces, amounting to \$77,868. The design team urged GSA to wait on negotiating these change orders until all of the shaft-related proposals were received. In April 2008, Suffolk submitted PCO 212E and PCO 212G, proposing costs of \$236,632 for the B shaft work including premium time and \$570,641 for the C shaft work. GSA asked NB Kenney/Suffolk to reduce their prices, and negotiations ensued among the parties. So as not to delay the project while negotiations continued, work on the shafts began on a time and materials basis and GSA represented that contract modifications would be issued to address the costs for the shaft-related work. Some unilateral modifications were issued between March 2008 and March 2009 to partially cover added shaft work in proposed PCOs (e.g., PC-22 (\$117,121), PC-26 (\$54,504 for 212C), PC-36 (\$163,137), and PC-46 (\$294,289)), but many of the PCO 212 series were never addressed by GSA in modifications and were left to be resolved at the end of the project.

NB Kenney was incurring significant costs from this shaft riser support work, including overtime and premium time. In August 2008, Suffolk advised GSA that it and its subcontractors had performed \$2.7 million in additional work in the shafts, including

premium time, which had not been paid, causing an adverse financial impact to the contractor team. By early October 2008, the additional work exceeded \$3 million.

In mid-October 2008, GSA presented Suffolk with a revised completion date of May 29, 2009, that it needed the contractor team to achieve so that GSA's tenants could be moved into the building in the fall of 2009. This revised completion date was subsequently incorporated into the revised schedule ACL8 and modification PS-37. The May 29, 2009, revised completion date, only forty-three days beyond the original completion date of April 12, 2009, meant that the contractor team would have to accelerate performance to recover all of the critical path delays caused by the redesign of the shaft riser support system. Suffolk had submitted a time impact analysis to GSA in May 2008 and GSA recognized that NB Kenney had been incurring and would continue to incur overtime and premium time costs in order to mitigate the critical path delays caused by the major design changes to the shafts. GSA also recognized that these changes would require other members of the contractor team, including follow-on trades, to incur overtime and premium time costs to accelerate their performance in order to meet the May 29, 2009, revised completion date.

We find that, based on the record before us, GSA was responsible for a critical path delay to the project from October 2007 through September 2008. Although the shaft redesign was the primary and overriding delaying cause, there were numerous other changes, including the redesigns to the ceiling spaces due to the deficient design coordination, together with the additional demolition and abatement, that impacted the work of the contractor team, particularly the mechanical and electrical trades. We do not agree with GSA that the contractor team was responsible for critical path delays from deficient demolition work and inadequacies in construction coordination and vertical transportation. We find that while the Suffolk team had its share of demolition, coordination, and vertical transportation problems, these never became critical delaying events to the overall project because the changes for which GSA is responsible were the primary and overriding causes of delay. We find no persuasive support in the record for GSA's argument that the contractor team caused concurrent critical path delay related to the shaft riser support redesign.

GSA and Suffolk continued their negotiations of the shaft PCOs into the fall of 2008 and Suffolk submitted various proposals with different completion dates and costs to meet those dates. Based on agreements with its tenants, GSA wanted a bilateral modification that would incorporate the revised completion date of May 29, 2009, and resolve all time and time impact issues arising from the shaft redesign. Modification PS-37 became the modification to resolve the schedule and time impacts to achieve the revised completion date, while other modifications, such as PS-35, captured direct costs associated with some of the most significant outstanding PCOs and definitized prior unilateral modifications.

Although modification PS-37 was signed by the parties in April 2009, the parties agreed on an effective date of December 23, 2008, for the modification, which is important because time impacts and time impact costs prior to that date were agreed to be fully resolved by PS-37, whereas any changes causing time impacts after December 23, 2008, were not covered by PS-37. Line 0101 of the modification states: “Extend the project completion date from April 16, 2009 to May 29, 2009, and resolve, settle, and close-out all time impacts, and time impacts costs, associated with all work described in this contract modification pages 1 through 6.” The unit price was a lump sum of \$1,840,461. Attachment A of the PS-37 identifies that the costs were comprised of (1) trade overtime, premium time, general conditions, and overhead, profit, and commissions for fourteen named subcontractors, totaling \$1,129,546, (2) Suffolk general conditions of \$671,914, and (3) insurance and bond of \$39,001. Attachment A-1 identifies for each subcontractor the overtime and premium costs in one column and the general conditions costs in a second column. Attachment A-1 identifies for City Lights (electrical) trade overtime and premium costs of \$177,314 and general conditions costs of \$76,000. The attachment identifies for NB Kenney trade overtime and premium costs of \$23,604 and general conditions costs of \$91,500.

Paragraph A of the modification narrative states that the modification was issued to provide full and final settlement and agreement between GSA and Suffolk to extend the completion date by forty-three calendar days. Paragraph B states that the modification resolves

all time impacts, and time impacts costs associated with the entire shafts and mechanical risers issues . . . , demolition and steel support for piping in Shaft C2, the steam station support issues, the stile and rail doors issues in the A and B1 stairways, and all other time impacts issues, inefficiencies, re-sequencing, and consequential effects caused by acceleration, recovery, RFIs, Bulletins, Contract Modifications, RFPs, PCOs, Notices, AVOs [Avoid Verbal Orders], Shop Drawings and Submittal Reviews from the beginning of the Contract through the Effective Date of this Contract Modification which is December 23, 2008.

Paragraph E states that the modification finalizes and closes-out unilateral modification PC-22 line item 0062 as to all costs, unilateral modification PC-26 line item 0069 (for PCOs 212C and 407) as to all costs, unilateral modification PC-36 for premium time for shaft C2 labor, unilateral modification PC-12 for ceiling paint encapsulation, unilateral modification PC-41 for courtroom ceilings 1 through 5 as related to time impacts and time impact costs, and bilateral modification PS-35 for mechanical pipe riser supports as related to time impacts and time impact costs. Paragraph F states that the contractor “bears certain responsibilities with regard to the scope of revisions and delays associated with the mechanical risers design and said work being an element” of Suffolk’s original scope of

work. Paragraph I indicates that the building tenants and tenants' contractors would be moving into the building during the thirty-day punchlist period after May 29, 2009.

Paragraph M states that the contractor and its subcontractors release GSA

from any and all manner of claims for the Work described in this Contract Modification (including claims for increases in the Contract Price and/or Contract Time, acceleration, re-sequencing of work, inefficiencies, ripple effects, impacts, cumulative impacts, lost productivity, disruption, interruption, interference, escalation and extended field and home office overheads), counterclaims, cross-claims, disputes . . . and liability of every kind . . . against the Government for the work described in this Contract Modification . . . from the beginning of the Contract up to and including the Effective Date of this Contract Modification arising out of, resulting from or in any way related, directly or indirectly, to delays to the Project as a result of delays from the Work of the mechanical risers in all shafts . . . except to the limited extent that future delays are caused directly and exclusively by a change to the Work that may be requested by the Government after the Effective Date.

Paragraph M further states:

Notwithstanding the preceding and Contract Modifications PS-35, PC-36 and PC-46, the Contractor has requested and the GSA has accepted that the Contractor's subcontractor, NB Kenney Co., may attempt to claim time impacts due to the mechanical risers issues beyond those for which compensation is provided for in Paragraph D and for which time extension to the Project schedule is provided for in Paragraph A, all of which have been provided for in this Contract Modification. Such claim, as any other claims, must be certified . . . and shall be expressly conditioned upon receipt of a substantiated Contract Compliant Time Impact Analysis (TIA) as required by Contract Specification Section 01321. . . . Contractor agrees and acknowledges that this is intended to be a GENERAL, TOTAL and COMPLETE RELEASE OF THE Released Delay Claims as described herewith in this Contract Modification, except as limited to and specifically noted above for NB Kenney Co.

Paragraph N states that this modification's references to settlement and release of the contractor's claims shall apply to all claims of the subcontractors of any tier "arising from, or related to, any and all causes, events or circumstances as related to time impacts and time impacts costs for the work described in this Contract Modification." During the negotiation phase of PS-37, Suffolk had requested GSA to indemnify Suffolk from lost productivity

claims from NB Kenney and City Lights. GSA declined to provide a reservation of rights for both subcontractors and instead agreed it would provide a reservation for only one of them. NB Kenney was chosen.

We will address the effect of PS-37 and other modifications in our discussion of the specific claims, but in general terms, PS-37 provided a revised completion date of May 29, 2009, and paid Suffolk and the subcontractors listed in Attachment A-1 for overtime and premium time (to achieve the accelerated revised completion date), and general conditions costs, with associated markups, for completing the project work by May 29, 2009, and released GSA from liability for all delay and impact claims arising from GSA-caused changes (most notably the riser piping support redesign) from the beginning of the contract through December 23, 2008. Outstanding direct cost change orders not listed in the modification as being resolved (see those listed in Paragraph E) and costs arising from changes to the work after December 23, 2008, were not resolved by PS-37.

The contractor team as of December 2008 had mitigated substantial amounts of the prior critical path delays through re-sequencing activities to run in parallel and through overtime and second shift work by the trades. Thus, a completion date of May 29, 2009, was certainly feasible given the contractor's progress. Unfortunately, substantial GSA tenant improvement changes were issued after December 23, 2008, that had direct and indirect impacts on the remaining base contract work. Other changes to the base contract work resulting from redesigns and unforeseen conditions continued to arise as well. Thus, while the contractor team was continuing its accelerated performance of the base contract work as changed through December 23, 2008, these significant new changes and the added extra work also had to be performed in an accelerated fashion, at least until GSA realized that the scope of the new changes would necessitate further extensions to the project completion date. Meanwhile, GSA and Suffolk were continuing to finalize modifications of outstanding PCOs, and where changes were disputed, the parties deferred resolution of these "issues in controversy."

Effective February 2, 2009, GSA and Suffolk entered into modification PS-43 in the amount of \$447,271 for work on behalf of the U.S. Bankruptcy Courts and the U.S. Marshals Service under PCO 546B for IT/AV electrical infrastructure work. Effective February 6, 2009, GSA and Suffolk entered into modification PS-44 in the amount of \$660,339 for numerous specified PCOs, including EPA PCOs.

Effective February 9, 2009, GSA and Suffolk entered into modification PS-35 in the amount of \$726,295, for HB Kenney's proposal for HVAC work for the riser shafts, but excluding \$348,724 for disputed reimbursement for work regarding the guides, platforms and shoring, and premium time for shaft C2, as well as costs for demolition and restoration work for access openings at shafts 1-3, 4-6, B, CH-1, and C2, and pipe support design fees, all of

which were labeled as “issues in controversy” to be resolved later. PS-37 was signed after PS-35 and refers to PS-35 as noted above in paragraphs E and M of PS-37.

Effective March 5, 2009, GSA and Suffolk entered into modification PS-45 in the amount of \$541,410 for numerous specified PCOs, including EPA PCOs. Effective March 19, 2009, GSA and Suffolk entered into modification PS-48 in the amount of \$630,382 for numerous specified PCOs, including EPA PCOs. Effective May 22, 2009, GSA and Suffolk entered into modification PS-49 in the amount of \$441,697 for numerous specified PCOs, including EPA and Department of Education PCOs.

Throughout the period of January through May 2009, additional changes were being made to the project which had the effect of further delaying later scheduled work activities, including finish trade work, testing, commissioning, and punchlist items, which ultimately required the parties to agree on a new completion date. By May 29, 2009, the contractor team had completed approximately 97% of the base contract work, including settled changes. Effective May 29, 2009, GSA and Suffolk entered into modification PS-50, which extended the contract completion date from May 29 to June 18, 2009. However, while processing this modification, GSA knew that further significant changes to the contract work were forthcoming.

Effective June 19, 2009, GSA and Suffolk entered into modification PS-52, which extended the contract completion date from June 18 to August 21, 2009, and increased the contract price by \$1,389,786. The primary work (described in PCO 852A, RFP 166, and bulletin 116) involved installing an uninterruptible power supply system for the EPA along with an automatic transfer switch, heat pump, cable trays, and associated demolition and restoration work, with the work to be completed by August 21, 2009. The modification includes a release barring Suffolk from claiming additional time or costs related to the work specified in the modification line item.

Effective June 23, 2009, GSA and Suffolk entered into modification PS-54 which extended the contract completion date from August 21 to November 19, 2009. The modification added \$2,357,513 to the contract price. The work related to various EPA tenant improvements as described in PCO 778 and associated demolition, restoration, and reconstruction work. The modification states that it covers Suffolk’s and its subcontractors’ general conditions and provides a release “from any and all manner of claims for the Work described in this Contract Modification (including claims for . . . acceleration, re-sequencing of work, inefficiencies, . . .) . . . arising out of, resulting from or in any way related, directly or indirectly, to delays to the Project as a result of the Work incorporated under this Contract Modification.” NB Kenney’s reservation in PS-37 is preserved in PS-54’s release language.

On July 1, 2009, GSA issued a temporary certificate of occupancy covering the entire building effective July 6, 2009. In a letter of July 2, 2009, GSA stated that effective July 6, 2009, GSA considered the building's base contract work to be substantially complete and was granting the temporary certificate of occupancy for the building in order to facilitate turn-over of spaces to building tenants and other federal agencies. GSA took control of access and security of the building and authorized use of the building by GSA, the GSA tenants such as EPA and the Bankruptcy Courts, and contractors, including the tenants' own contractors who would perform tenant improvement work in their tenant spaces in addition to the work by the Suffolk team. In the letter, GSA indicates that the building management system, building pressurization system, perimeter security system, elevator numbers 12 and 13, and portions of start-up, testing, and commissioning remain to be completed.

Effective July 8, 2009, GSA and Suffolk entered into modification PS-51 totaling \$294,901 for approximately thirty-five PCOs, including EPA PCOs. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items. Effective September 25, 2009, GSA and Suffolk entered into modification PS-53, increasing the contract price by \$454,934 and involving a number of PCOs relating to stair A, demolition RFIs, a first floor corridor, exterior signage, windows, door operators, elevators, and shaftwalls. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items.

Effective November 2, 2009, GSA and Suffolk entered into modification PS-57, increasing the contract price by \$789,105 and involving a large number of PCOs, including PCOs for EPA, Department of Education, and the Courts. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items. Effective November 19, 2009, GSA and Suffolk entered into modification PS-60, which extended the contract completion date to January 31, 2010. Effective November 20, 2009, GSA and Suffolk entered into modification PS-59, increasing the contract price by \$230,800 and resolving additional PCOs, including PCOs for GSA tenants. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items. Effective January 1, 2010, GSA and Suffolk entered into modification PS-61, increasing the contract price by a net amount of \$67,453 (additions of \$622,100 and reductions of \$554,647) and resolving additional PCOs. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items.

Effective March 11, 2010, GSA and Suffolk entered into modification PS-65, which added a net amount of \$859,295 to the contract price and extended the contract completion date to March 31, 2010. The modification resolved a number of PCOs and includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the

modification line items. Effective May 7, 2010, GSA and Suffolk entered into modification PS-67, increasing the contract price by a net amount of \$513,956 and resolving additional PCOs, including tenant PCOs. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items. Effective June 25, 2010, GSA and Suffolk entered into modification PS-68, increasing the contract price by a net amount of \$423,101 and resolving additional PCOs, including tenant PCOs. The modification includes a release barring Suffolk from claiming additional time or costs related to the PCOs specified in the modification line items.

Suffolk's Appeals to the Board

Following the completion of the contract, Suffolk submitted a number of claims to GSA's contracting officer and appealed six of the final decisions to the Board.

On January 25, 2012, Suffolk submitted its first claim to the contracting officer. The claim sought to recover \$3,167,997 for general conditions from May 29, 2009, through March 31, 2010. The contracting officer issued a final decision rejecting Suffolk's claim in full. Suffolk appealed the final decision to the Board, and the appeal was docketed as CBCA 2954 (general conditions claim). Suffolk currently seeks \$2,265,986 for the general conditions claim.

Suffolk submitted a second claim on April 23, 2012. This claim requested \$1,050,957 for additional costs incurred by Suffolk on account of GSA's directive to perform post-completion remedial and reconstruction work on the building to repair damage caused by a leak in the cistern system for the green roof. The contracting officer's final decision denied Suffolk's claim, and Suffolk's appeal to the Board was docketed as CBCA 2955 (cistern leak claim). Suffolk currently seeks \$994,614 for the cistern leak claim.

On May 31, 2012, Suffolk submitted a claim to the contracting officer requesting \$5,724,126 in additional compensation for Suffolk's mechanical subcontractor, NB Kenney. This claim was denied in full by the contracting officer. Suffolk appealed the final decision, and the appeal was docketed as CBCA 2953. Suffolk subsequently submitted a revised claim, reducing the amount it was seeking to \$5,128,960. The contracting officer issued a final decision rejecting the revised claim in full, and Suffolk's appeal of the final decision was docketed as CBCA 5006 (revised NB Kenney claim). Suffolk currently seeks \$3,757,151 for the revised NB Kenny claim.

On April 30, 2013, Suffolk submitted a claim for additional compensation of \$8,214,471 on behalf of its electrical subcontractor, City Lights Electric Company, Inc. The contracting officer issued a final decision denying this claim, and Suffolk's appeal of the

final decision was docketed as CBCA 3596 (City Lights claim). Suffolk currently seeks \$7,260,058 for the City Lights claim.

Suffolk submitted claims on February 13, 2013 (first PCO claim), and May 7, 2014 (second PCO claim), seeking to recover \$6,084,554 for disputed PCOs. The contracting officer's final decisions for the most part rejected Suffolk's claims. Suffolk appealed the final decisions, and ultimately they were docketed at the Board as CBCA 4175 and 4377 (the first PCO claim was filed at the Court of Federal Claims and later transferred to us).

Discussion

PCO Claims

We address here both the first and second PCO claims. GSA revives in its post-hearing brief various arguments it made in a 2016 motion to dismiss the first PCO claim (CBCA 4377) on the basis that the Court of Federal Claims did not have the power to transfer the claim to the Board pursuant to 41 U.S.C. § 7107(d). For the reasons discussed in our decision of August 26, 2016, denying GSA's motion, we see no basis to disturb our prior conclusion that we properly exercise jurisdiction over the first PCO claim. *See Suffolk Construction Co. v. General Services Administration*, CBCA 4377, 16-1 BCA ¶ 36,476. The PCO claims are discussed below generally in numerical order.

PCO 13

Suffolk seeks an equitable adjustment of \$64,158 for improvements to an electrical vault (handling the building's power distribution) installed for GSA's utility company tenant, which at the time operated under the name of NStar Electric Company. Suffolk had proposed the re-location of the NStar vault primarily for safety reasons as it allowed the contractor to avoid working around live equipment during the transition from temporary power to permanent power. The old vault would become the temporary power system for use during construction and the new vault would become the permanent power location when construction was completed. A new design was prepared for the new NStar vault and those requirements were issued in bulletin 23. We find that the record shows that the parties agreed that the costs for Suffolk to relocate the NStar vault would be borne by Suffolk and if there were changes to the NStar vault that were required by NStar or GSA regardless of the vault relocation, those costs would be borne by GSA. Suffolk claims that the following changes were imposed regardless of the vault relocation and constituted additional work for Suffolk beyond the original contract requirements: (1) engineering costs paid by Suffolk to an independent engineering firm because GSA's design team refused to review and approve the new drawings for the NStar vault; (2) material and labor costs of trench drains added by NStar; (3) material and labor costs for additional doors, frames, and hardware omitted from

the original contract documents; (4) costs of encasing service conduits that were not part of the original design; and (5) credits for masonry and fire protection for items deleted by NStar in the bulletin 23 drawings.

GSA agrees that some additional items were required by NStar, but GSA does not believe that all the items listed by Suffolk were NStar requirements. For example, GSA states that the asphalt removal for work related to the bus duct support was not extra work because the presence of asphalt was similar at both the old and new location. GSA also claims that Suffolk saved significant construction costs by using the old vault for temporary power. The record does show additions required by NStar to the original design, some of which were motivated for safety reasons after the death of an NStar employee. We agree with GSA that the Delphi Associates costs are not recoverable and some of the asphalt related costs should be borne by Suffolk. Suffolk is entitled to \$42,000 for improvements to the electrical vault.

PCO 50A – Bulletin 20A: Revised Connection Details

Suffolk seeks \$61,513 for additional wall demolition and reconstruction work performed on floors 16 through 21 as a result of GSA's change directives in bulletin 20A. GSA's design team issued bulletin 20 on February 27, 2007, which included new structural sketches specifying structural connection details and openings for ductwork. A week later, the design team issued bulletin 20A, which replaced sketch SSK-26 in order to provide clear openings for related ductwork. Wall removal was not indicated in the original contract drawings. GSA argues that this PCO duplicates costs and has the same scope as PCO 54 for which GSA already provided compensation in bilateral modification PS-25. Suffolk replies that PCO 54 related to a different area of the building and involved work depicted in sketches SKA-061 and SKA-062 (bulletin 20B) and SKA 078088 (bulletin 22B), whereas bulletin 20A contains the relevant sketch SSK-26 relating to PCO 50A. Based on our review of the sketches, we find that the PCOs involve the same areas (I/J and 3.3/4). Suffolk has not adequately demonstrated that the work claimed here was in a different area. Therefore, we deny the claim.

PCOs 52A and 52B

Suffolk seeks \$207,681 for lead paint abatement performed at existing structural steel encased within concrete throughout the building. GSA argues that in response to a bidder's question, bidders were told to assume that all surface coatings contain lead and to treat them accordingly. But in response to another bidder's question, asking GSA to clarify all locations where lead paint exists which is currently concealed from view, GSA responded only that "GSA, GCA [Goody Clancy] need to discuss this." We conclude that no contractor could have estimated how much paint might exist under the encased concrete so as to adequately

bid the work, and that the abatement work was extra work for which GSA is liable. The record adequately supports Suffolk's claim in the adjusted amount of \$208,575, reflecting adjustments made by GSA's consultants.¹

PCO 59A – Bulletin 21 Northstar Costs

Suffolk seeks \$22,987 for modifying and relocating sprinkler piping through a newly added stair A partition to connect the sprinkler piping in the B and C wings. GSA's design team issued bulletin 21 on March 5, 2007, revising the structural detail for the west wall of stair A, adding a partition to the west wall, adding gypsum ceiling to the floor landing on levels 2 through 19, and adding a soffit and ceiling at the floor 20 landing. GSA issued RFP 24 on March 6, 2007, for the added work in bulletin 21. We find that the record shows that the parties agreed to relocate the sprinkler piping behind the new partition so that it would be concealed rather than have the piping cross straight over the stairwell. The claim is granted in the adjusted amount of \$23,301.

PCO 99A – Bulletin 38: Keyspan Bill

Suffolk seeks an equitable adjustment of \$107,690 for increased costs of temporary heating arising from directed changes in bulletin 38. Prior to the temporary heating changes stated in the bulletin, Suffolk had increased a four-inch gas line to a six-inch line and had paid the utility contractor, Keyspan, \$89,000 for this work. GSA recognized the need to increase the gas line size to six inches in the bulletin but did so after the work was already completed by Keyspan. The need to change the gas line size was the result of an admitted design deficiency by GSA's design team. There is no reasonable dispute as to the amount. We find that Suffolk did not waive its claim for this change and conclude that GSA is liable for the adjusted amount of \$109,163.

PCO 118A – Frame/GWB/Plaster

Suffolk claims \$18,779 for framing and drywall work performed at stairs B and C on floors 1 through 3. On February 1, 2007, GSA's design team issued bulletin 14, directing Suffolk to build a fire-rated partition around the ductwork in the area of stairs B and C. Suffolk performed the work and was partially compensated in modification PS-27, but GSA refused to pay these new shaftwall costs on the basis that the work was within the original

¹ In the PCO claims, Suffolk's claimed amount does not include certain Suffolk markups for insurance and bond. GSA's consultants calculated these markups on an individual PCO basis and included those amounts in adjustments to the PCOs. Other adjustments were made by Suffolk's consultants, which were also incorporated into the GSA consultant's final adjusted amounts.

contract scope of work. We have reviewed the record and agree with Suffolk that this work was added work beyond the original scope. The claim is granted in the adjusted amount of \$19,036.

PCO 167A – Hydro-blasting in Subbasement

Suffolk seeks \$3185 for Fleet Industrial Services' demonstration using hydro-blasting techniques for paint removal in the subbasement. Suffolk states that this demonstration was directed by GSA, GCA, and Tishman. GSA states that it was proposed by Suffolk. PCO 167A appears to be identical with PCO 167, which was settled in PS-10. Accordingly, we deny this claim.

PCO 177B – Brick and Mortar Reconciliation

Suffolk seeks \$39,359 for unpaid costs of removing fractured or unsupported brick and mortar discovered at exterior window heads and jambs in new window locations. The existence of this brick and mortar was a concealed condition discovered by Suffolk upon removal of existing plaster finishes at the head of the existing windows in August 2007 and detailed in RFI 585. The design team issued bulletin 74 and included sketches detailing the masonry removal to be performed by Suffolk. The parties agreed in PS-20 to an adjustment of \$47,286 for such work under PCO 177 through December 7, 2007. In response to PCO 177A for additional window locations addressed between December 7, 2007, and May 23, 2008, GSA stated that removal of the brick and mortar from window heads was compensable, but removal of mortar from jambs and sills was considered base contract work. PCO 177B collects the costs from the unpaid PCO 177A and all remaining removal work. GSA's current position is that the PCO has merit in the amount of \$3433 for removal at the window heads only. The basis for recovery in PS-20 applies here as well because the unsound or unsupported brick and mortar were concealed conditions both at the window heads and the window jams and sills, and thus this is compensable additional work. The amount claimed is supported by the record and we grant the claim in the adjusted amount of \$39,676.

PCO 212 Series

Suffolk seeks an equitable adjustment under fourteen of the PCO 212 series arising from the major redesign in the mechanical shafts of the building based on the notices given in RFI 503 and its revisions and in RFP 84. The record demonstrates that GSA's design team agreed with Suffolk and NB Kenney that the existing shaft structures could not handle the loads of the piping systems to be installed and that the costs for the contractor to build according to GSA's redesign was beyond the scope of the original contract. GSA has already paid substantial sums to Suffolk through modifications on account of the changes caused by

the re-design of the shafts. The PCO 212 series at issue here covers the Suffolk team's additional demolition, drywall, and hauling effort necessary to create new access openings for connecting the vertical riser piping to the branch piping on each floor. We address various general arguments raised by GSA challenging entitlement to all of the PCO 212 series.

First, GSA argues that Suffolk "misused" the RFI process and seemingly passed through RFIs from subcontractors such as NB Kenney. This allegation is not supported in the record, and testimony from GSA's contracting personnel contradicts the allegation. Next, GSA argues that Suffolk was responsible for the design of the support systems in the shafts. This position is also unsupported by the record. GSA and its designer of record properly accepted from the beginning that the shaft pipe support redesign was GSA's responsibility, not Suffolk's. GSA made these findings in connection with modification PC-22:

Following receipt of the pipe support submittal, the Structural engineer recognized that the dead and dynamic loads imparted on the existing structure by the mechanical piping in the riser shafts exceeded the structural capacity of the existing structure. The solution was a redesign of the pipe support system as well as the addition of structural steel at several elevations in each of the 5 riser shafts (123, 456, C & CH-1 shafts). Since work was ongoing[,] completed[,] or partially completed, the impact to installed work as well as work in progress is significant and requires additional evaluation to determine the final scope as well as the best methodology of installing the sizeable structural beams required to support the imparted loads.

GSA paid for the costs of numerous changes associated with the redesign, found in modifications such as PS-35 and PS-37 (time impact costs). The work and amounts in the PCOs below are not covered by the work and amounts negotiated and settled in PS-35, PS-37, or any other modification. GSA's other general arguments have been considered but have no merit. The changes discussed below remain in dispute.

(i) PCO 212P – Dumpsters

Suffolk claims \$17,037 in unpaid costs of fifteen-yard dumpster rentals used to haul debris from the additional demolition work necessitated by the shaft redesign changes. GSA argues that this work was base contract work. The record shows that this was extra work and the amount is reasonably supported in the record. The claim is granted in the adjusted amount of \$17,270.

(ii) PCO 212X – Slab Separations in Shafts

Suffolk claims \$2357 in unpaid costs for installation of slab deck in the 1-2-3 and 4-5-6 shafts on floor 10 to provide a safety barrier for workers in the confined space of the vertical shafts. GSA argues that this work was base contract work. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$2389.

(iii) PCO 212ZB – Demo in Shafts 1-6 Floors 9-20

Suffolk claims \$51,967 in unpaid costs for time and materials demolition work in shafts 1-2-3 and 4-5-6 on floors 9 through 20. The work was tracked on extra work tickets created daily by the demolition subcontractor, and the tickets were separated by shaft at the request of GSA and Tishman. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$52,678.

(iv) PCO 212ZC – Demo in Shafts 1-6 Below Floor 9

Suffolk claims \$46,187 in unpaid costs for time and materials demolition work in shafts 1-2-3 and 4-5-6 on floors 8 and below and floor 21. The work was tracked on extra work tickets created daily by the demolition subcontractor, and the tickets were separated by shaft at the request of GSA and Tishman. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$46,819.

(v) PCO 212ZD – Demo in B Shaft

Suffolk claims \$14,639 in unpaid costs for time and materials demolition work in the B shaft. The work was tracked on extra work tickets created on a daily basis by the demolition subcontractor. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$14,839.

(vi) PCO 212ZE – Demo in C Shaft

Suffolk claims \$95,798 in unpaid costs for time and materials demolition work in the C shaft. The work was tracked on extra work tickets created on a daily basis by the demolition subcontractor. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$97,108.

(vii) PCO 212ZF – Demo in CH-1 Shaft

Suffolk claims \$16,712 in unpaid costs for time and materials demolition work in the CH-1 shaft on floors 2, 12, and 13. The work was tracked on extra work tickets created on a daily basis by the demolition subcontractor. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$16,941.

(viii) PCO 212ZG – Work in Shafts 1-6

Suffolk claims \$465,128 in unpaid costs for time and materials work in the 1-2-3 and 4-5-6 shafts for lead paint abatement, masonry reconstruction, plaster patching, temporary access, safety and protection, and routing and relocating select in-place MEP systems. The largest components are for invoices from the subcontractors, Phoenix (\$141,674) and Cape Cod (\$222,511). The work was tracked on extra work tickets created on a daily basis by the superintendents' foremen. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$468,463.

(ix) PCO 212ZG.1 – Work in Shafts 1-6

Suffolk claims \$15,330 in unpaid costs for time and materials shaft wall work behind shafts 1-2-3 and 4-5-6, involving the addition of a shaft wall on 3 Mezzanine behind elevators 1 through 6 by Component Assembly Systems. The work was tracked on extra work tickets created on a daily basis by the superintendents' foremen. The record shows that this was extra work and the amount is supported by the record. The claim is granted in the adjusted amount of \$15,540.

(x) PCO 212ZH – Work in B Shaft

Suffolk claims \$57,076 in unpaid costs for time and materials work in the B shaft for lead paint abatement, masonry reconstruction, plaster patching, temporary access, safety and protection, and routing and relocating select in-place MEP systems. The largest components are for invoices from the subcontractors, Phoenix (\$31,428) and Cape Cod (\$12,344). The work was tracked on extra work tickets created on a daily basis by the superintendents' foremen. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$57,449.

(xi) PCO 212ZH.1 – Work in B Shaft

Suffolk claims \$2653 in unpaid costs for time and materials work for additional spray fireproofing in the B shaft in support of reconstruction activities. The labor and material amounts are detailed in invoices from Component Spray Fireproofing. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$2689.

(xii) PCO 212ZI – Work in C Shaft

Suffolk claims \$105,485 in unpaid costs for time and materials work in the C shaft for lead paint abatement, masonry reconstruction, plaster patching, temporary access, safety and protection, and routing and relocating select in-place MEP systems. The largest components are for invoices from the subcontractors, Phoenix (\$29,998), Cape Cod (\$38,793), and Liberty (\$22,802). The work was tracked on extra work tickets created on a daily basis by the superintendents' foremen. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$104,487.

(xiii) PCO 212ZI.1 – Work in C Shaft

Suffolk claims \$7962 in unpaid costs for time and materials work for additional spray fireproofing in the C shaft in support of reconstruction activities. The labor and material amounts are detailed in invoices from Component Spray Fireproofing. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$8071.

(xiv) PCO 212ZJ – Work in CH-1 Shaft

Suffolk claims \$35,176 in unpaid costs for time and materials work in the CH-1 shaft for lead paint abatement, masonry reconstruction, plaster patching, temporary access, safety and protection, and routing and relocating select in-place MEP systems. The largest components are for invoices from the subcontractors, Component (\$21,731) and Cape Cod (\$5107). The work was tracked on extra work tickets created on a daily basis by the superintendents' foremen. The record shows that this was extra work and the amounts claimed are supported by the record. The claim is granted in the adjusted amount of \$35,657.

(xv) PCO 220L – Bulletin 63 Fire Protection

Suffolk claims \$23,730 in unpaid costs for additional fire protection (sprinkler heads) work at the EPA tenant spaces on floors 5 through 7, 15, and 16 pursuant to bulletin 63.

Northstar Fire Protection was paid \$21,573 for adding forty-two new sprinkler heads, relocating twenty-four other sprinkler heads, and added coordination work. We find this PCO supported by the record and grant it in the adjusted amount of \$24,055.

The Coordination PCOs

The contract required Suffolk to demolish and replace the existing MEP systems located in overhead ceiling spaces of the building according to the drawings and design specifications provided by GSA. The GSA design team prepared the MEP drawings using original building blueprints from the 1930s, photographs, and some as-build drawings generated during renovations in the 1960s and 1990s. Because the building was occupied during the design phase, the design team did not conduct any demolition to view and measure the dimensions of the concealed areas above the ceilings, though some measurements were taken on the mezzanine floors. The record shows that there were many dimensional discrepancies in the drawings such that MEP systems could not fit in the actual ceiling/wall spaces once a ceiling had been opened through demolition. Suffolk brought space and coordination conflicts to the attention of GSA and its design team. There is significant evidence that the design team frequently did not respond in a timely manner to Suffolk's RFIs and notices of conflicts. In the early phases of construction, GSA negotiated equitable adjustments for coordination problems arising from defects in the design documents.

GSA argues that Suffolk and its subcontractors contributed to the problems by failing to properly perform their own MEP coordination tasks. While Suffolk and its subcontractors had missteps in their construction coordination efforts, we cannot find from the record any instance where Suffolk coordination issues aggravated from a discernable cost standpoint the coordination re-work necessitated by the major design coordination deficiencies in the original design created by GSA's design team. We have not found any situations of Suffolk/subcontractor coordination deficiencies meriting the denial of the specific subcontractor costs sought in the PCOs discussed below. In addition, except as noted in specific PCOs where we have found a PCO was already included within a bilateral modification, the PCOs below that we grant are not covered by any prior bilateral contract modification.

(i) PCO 236 and PCO 236A – Floor 11 Coordination

Suffolk seeks \$16,932 for extra coordination and installation of the MEP systems due to design changes on floor 11 in PCO 236. The record adequately supports the basis for this extra work and we see no coordination problems by Suffolk and its subcontractors relating to this change. The claim is granted in the adjusted amount of \$17,164. In PCO 236A, Suffolk seeks \$2025 for costs incurred by Component Assembly Systems for architectural

changes required due to the floor 11 coordination. We find the record supports an equitable adjustment and grant the claim in the adjusted amount of \$2053.

(ii) PCO 237 and PCO 237A – Floor 10 Coordination

Suffolk seeks \$26,021 in PCO 237 for additional coordination and installation of the MEP systems due to design changes on floor 10. The record adequately supports the basis for this extra work and we see no coordination problems by Suffolk and its subcontractors relating to this change. The claim is granted in the adjusted amount of \$26,198. In PCO 237A, Suffolk seeks \$5656 for reconstruction costs incurred by Component Assembly Systems, Cheviot, and Liberty for architectural changes required due to the floor 11 coordination. We find the record supports an equitable adjustment and grant the claim in the adjusted amount of \$5657.

(iii) PCO 240A – Robing Room HVAC

Suffolk seeks \$3933 for costs to redesign the robing room HVAC pursuant to the revised sketches from the design team. NB Kenney provided added duct and fittings to accommodate the changed HVAC configuration. We find the record supports an equitable adjustment and grant the claim in the adjusted amount of \$3895.

(iv) PCO 366A – Floors 10 and 11 Soffit and MEP systems

Suffolk seeks \$18,205 for costs associated with the additional demolition of existing soffits and relocation of MEP systems due to design changes on floors 10 and 11. After reviewing the record documentation, we find an equitable adjustment appropriate and grant the claim in the adjusted amount of \$18,281.

(v) PCO 386 and PCO 386A – Floor 9 Coordination

In PCO 386, Suffolk seeks \$30,766 to cover additional costs and credits associated with changes to the overhead mechanical systems, gypsum board soffit and acoustical ceiling, and framing installation on floor 9 arising from the design team's responses to RFI 609-02-S4 and RFI 609-02-S13, including sketches SKA-232, 233, and 234. Although, as GSA notes, two documents in the PCO package have titles listing this work as relating to floor 10, those are typographical errors, and the sketches and other documents in the package show this work was for floor 9. We find the claim supported by the record and thus grant it in the adjusted amount of \$31,115. In PCO 386A, Suffolk seeks \$2456 for reconstruction costs incurred by Component Assembly Systems for architectural changes required due to the floor 9 coordination. We find the record supports an equitable adjustment and grant the claim in the adjusted amount of \$2490.

(vi) PCO 390 – Floor 8 Coordination

Suffolk seeks \$1944 for additional coordination-related costs incurred by the MEP trades and credit for deleted electrical work associated with changes to the overhead mechanical systems, gypsum board soffits and acoustical ceilings, and framing installation due to design changes on floor 8 arising out of RFI 609R1. We find that the revised ceiling plan changes found in sketches SKA-247, 248, and 249 were the cause of the additional work. We find the claim supported by the record and thus grant it in the adjusted amount of \$1916.

(vii) PCO 391 – Floor 7 Coordination

Suffolk identifies a credit of \$18,985 for a deductive change arising from the ceiling and wall revisions on floor 7 made by GSA's design team in ceiling plan sketches SKA-241, 242, 243, 250, 251, and 252. The record supports GSA's entitlement to a credit in the adjusted amount of \$19,317.

(viii) PCO 392 – Floor 6 Coordination

Suffolk identifies a credit of \$7934 for a deductive change arising from the ceiling revisions on floor 6 made by GSA's design team in ceiling plan sketches SKA-241, 244, 245, 246, 271, and 272. The record supports GSA's entitlement to a credit in the adjusted amount of \$8105.

(ix) PCO 396A – Floor Opening Reconciliation

Suffolk seeks \$335,552 for additional labor costs incurred for changes to ductwork layout and configuration in the RFI 416 series and a floor opening reconciliation. This extra work has been referred to as the Worcester Air come-back costs because NB Kenney's ductwork subcontractor, Worcester Air Conditioning, had to make numerous return trips to multiple locations on multiple floors to complete riser duct installations, as well as riser connections to horizontal ducts previously installed, due to design deficiencies. The GSA design team had to make changes in the size and location of floor penetrations to minimize the structural compromising of the concrete ribbed floor members. The exercise was to attempt to fit the ductwork between the concrete ribs, and if ribs were cut, then the design team had to approve reinforcing detail for the floor sections. Although GSA attempts to cast the problem as the Suffolk team's failure to coordinate the trades and field verify conditions, we do not agree. These were clearly design problems for which the design team was responsible and the project and building integrity clearly benefitted from the extra effort made to avoid wherever possible compromising the concrete floor structure and by redesigning the duct floor penetration locations and duct sizes.

Worcester Air documented additional hours it incurred in the come-back operations for over 300 out-of sequence openings, captured in NB Kenney's change orders 24 (\$199,284) and 44 (\$103,046). The additional work incurred by Worcester Air is well detailed in the record, including measuring the new openings, new ductwork drawings, hand fabricating of the duct, remobilizing the duct installers, equipment and materials, and installing the riser ductwork and connections to the previously installed horizontal ductwork. We find the claim fully supported and grant it in the adjusted amount of \$337,378.

(x) PCO 403

Suffolk seeks \$3788 for PCO 403 relating to costs for building new partitions around exposed supply ducts for two rooms on floor 14 arising from RFI 751. We find this request supported by the record and accordingly grant it in the adjusted amount of \$3795.

(xi) PCO 416 – Floor 4 Coordination

Suffolk seeks \$27,082 for coordination of MEP trades due to design changes on floor 4 arising from RFI 609R1. Ceiling, soffit, and wall changes were made to accommodate the overhead mechanical systems installation, as documented in sketches SKA-273, 273A, 274, and 275, and SKM-079, 080, and 081. EM Duggan, Northstar Fire Protection, and City Lights had to perform additional work to create new backgrounds, and to modify piping and cabletray routing. The additional costs and credits are supported by the record and we accordingly grant PCO 416 in the amount of \$27,452.

(xii) PCO 416C – Floor 4 HVAC Coordination

Suffolk seeks \$32,208 for additional work on floor 4 arising from RFI-609-02-S10 and RFI-702 relating to ceiling changes. The work involved added coordination effort for the relocation of VAV-1 (variable air volume box) and reworking of related ductwork and piping, relocation of seven ceiling diffusers, relocation of two sidewall diffusers, and modifying ductwork and installing new sidewall supply grilles and associated ductwork. This PCO covers the additional labor, equipment, and material for NB Kenney and Worcester Air to perform additional coordination, install added piping and fittings, install added ductwork, and provide additional insulation of piping and ductwork. The additional costs are supported by the record and we accordingly grant PCO 416C in the adjusted amount of \$31,894.

(xiii) PCO 417A – Floor 3 Coordination

Suffolk seeks \$10,294 for coordination costs for architectural changes due to design changes on floor 3. The record shows \$4388 in costs paid to Component Assembly, \$4180

paid to Cheviot, \$790 paid to HW Ellis, and Suffolk's markup on those costs. GSA neither contests that there were design changes nor that these costs were incurred for coordination revisions for those design changes. We find the added coordination costs for the architectural changes on floor 3 supported and grant PCO 417A in the adjusted amount of \$10,435.

(xiv) PCO 418 and 418A – Floor 5 Coordination

For PCO 418, Suffolk seeks \$15,095 for added coordination costs of the MEP trades due to design changes on floor 5 arising from RFI 609R1 and RFI 722. Ceiling and wall changes were made to accommodate the overhead mechanical systems installation, as documented in sketches SKA-253 through 257. EM Duggan, Northstar Fire Protection, City Lights, NB Kenney, and Worcester Air had to perform additional work to create new backgrounds, and modify piping, ductwork, and cable tray routing. The additional labor and material costs and credits are supported by the record and we accordingly grant PCO 418 in the adjusted amount of \$15,301. PCO 418A relates to costs of Worcester Air and NB Kenney that are already included in PCO 418, so we deny PCO 418A.

(xv) PCO 476 and PCO 476A – Floor 2 Coordination

For PCO 476, Suffolk seeks \$79,756 for additional coordination-related costs incurred by City Lights and EM Duggan for electrical and plumbing labor and materials associated with changes to the ceiling height on floor 2. City Lights has costs of \$72,506 for added cable tray, credits for deleted cable tray, installation of pull boxes, and labor for offsets into the new custom-made deep junction boxes shown on drawing A-1-56. EM Duggan has costs totaling \$2286 for additional coordination costs for the floor 2 recoordination arising from the floor 2 design changes in RFI 609R1. We find that the revised ceiling plan changes were the cause of the additional work. The claim and associated costs are supported by the record and we grant PCO 476 in the adjusted amount of \$80,847. Suffolk seeks \$2465 for PCO 476A for NB Kenney and Worcester Air HVAC costs totaling \$2242 that arise out of the same design changes and are collected in NB Kenny change order 065. We find the \$2465 claim (which includes Suffolk markups) supported by the record and grant it.

(xvi) PCO 477 – Floor 1 Coordination

Suffolk seeks \$19,181 for additional coordination-related costs incurred by City Lights and EM Duggan for electrical and plumbing labor and materials associated with changes to the ceiling height on floor 1 to provide adequate clearance to the DC-1 light fixture in corridor R01C050 according to sketch SKA-270. City Lights has costs for added coordination, cable tray and conduit, and credits for deleted cable tray. EM Duggan incurred costs for additional coordination required for the floor 1 re-coordination. We find that the

revised ceiling plan changes were the cause of the additional work. The claim and associated costs are supported by the record and we grant the claim in the adjusted amount of \$19,443.

(xvii) PCO 493 – Floor 15 Coordination

Suffolk seeks \$1471 for additional coordination-related costs incurred by City Lights for electrical labor associated with changes to the ceiling height and light fixtures on floor 15 according to sketch SKA-286. City Lights has costs for disconnecting and relocating the newly deleted DC-1 and WC-1 light fixtures. We find that the revised ceiling plan changes were the cause of the additional work. The deleted light fixtures were delivered to the site prior to the design team changes and the fixtures were provided to GSA for its inventory. The claim and associated costs are supported by the record and we grant the claim in the adjusted amount of \$1491.

(xviii) PCO 589A – Floor 13 HVAC

Suffolk seeks \$6867 in additional labor and material costs for NB Kenney rerouting piping to address conflicts with the duct chase on floor 13 arising from RFI 564 as shown on sketches SKM-62 and SKM-63. Re-work included demolition of existing installed pipe and insulation and installation of new piping for a VAV unit in the new location, re-insulation, and testing. The record supports the claim and associated costs and we grant the claim in the adjusted amount of \$7269.

(xix) PCO 1002 – Floor 21 Coordination

Suffolk seeks \$3422 for additional planning and re-layout work on floor 21 by Worcester Air arising from RFI 159 and relating to the reconfigured duct layout according to sketches SKM-11, 12, and 13 to avoid conflict with crane rails. The additional costs are supported by the record and we accordingly grant PCO 1002 in the amount of \$3440.

Other PCOs

PCO 255

Suffolk seeks \$60,317 for additional costs of floor leveling in courtrooms 1 through 6 and the library. This change resulted from a condition that was admittedly a concealed condition, raised marble borders that were not revealed until the old carpeting was removed during demolition. The design team agreed that Suffolk would provide a sloping transition in floor elevation from the marble borders to the concrete floor. The work was primarily performed by a subcontractor, Merrimac Tile (\$53,481); Suffolk had direct costs of \$1230, and the remainder was Suffolk's markup. GSA argues that the work should be covered by

a flash patching allowance set forth in Suffolk's bid "Qualifications and Clarifications," which provides for 82,000 square feet of flash patching. Suffolk witnesses stated that the flash patching allowance related to correcting minor imperfections in a floor where a worker would use a trowel to fill in holes in a concrete floor. In this case, a subcontractor engineered a six-foot perimeter slope from the raised marble border toward the center of the floor. GSA also argues that Suffolk violated notice provisions by waiting months to submit the PCO to GSA. We do not agree with GSA's arguments, finding that the sloped floor leveling work here was different from the work contemplated by the flash patching allowance and that the PCO was submitted within a reasonable time. We grant PCO 255 in the adjusted amount of \$60,810.

PCO 281 – CH-1 Riser Locations

Suffolk seeks \$8698 for additional costs for demolition and structural steel work arising out of design conflicts between floor joists and CH-1 riser piping on floor 13 addressed in RFI 605. The demolition subcontractor, NASDI, was paid \$6076 for the demolition work and Ryan Iron was paid \$1324 for the structural steel work. It appears that GSA agreed to accept this PCO at a cost of \$9000. In any event, we grant the request for \$8818, which includes adjustments made by Suffolk's and GSA's experts.

PCO 304 – Kitchen Openings and Access Panels

Suffolk seeks \$8856 for additional costs of installing openings and access panels for a kitchen exhaust system, arising out of RFI 634, which advised GSA that the contract documents omitted access to the kitchen exhaust duct cleanout so that technicians and maintenance personnel could work on the exhaust ductwork. The design team directed Suffolk to install various access doors for the kitchen exhaust duct cleanout according to three new sketches, SKA-201, SKA-202, and SKM-073. These changes involved work on floors 4, 5, and 16. GSA issued RFP 87, requesting that Suffolk provide an itemized proposal for the kitchen exhaust access. Suffolk engaged Phoenix Bay State to price the additional work and install lintels, masonry infills, and masonry openings in three locations as indicated on the sketches provided by the design team. The record supports entitlement and quantum. Accordingly, we grant PCO 304 in the adjusted amount of \$8977.

PCO 315A – Basement Spalling Concrete

Suffolk seeks \$47,553 for additional costs of shoring in connection with repairs to the deteriorated concrete slab in the garage floor level. GSA has paid Suffolk for the direct costs relating to repairs to the spalling concrete except for shoring specified by the GSA design team. The costs consist of \$39,300 for engineering and slab shoring paid to Isaac Blair & Co., plus Suffolk's markup. GSA now claims that Suffolk was responsible for the damaged

concrete by overloading the slab with construction equipment. We find that the record supports Suffolk's entitlement and the costs are not disputed. PCO 315A is granted in the adjusted amount of \$48,203.

PCO 321 – Ground Floor Duct Riser Change

Suffolk seeks \$4546 for additional demolition and masonry work required to re-build a two-hour fire rated wall located at column line K/7 on the ground floor which conflicted with the proposed location of the vertical ductwork. The design team's actions regarding RFI 690R1 and the record as a whole supports entitlement. The costs of NASDI (\$1511) and Phoenix Bay State (\$2622), plus Suffolk's markup, are supported by the record. We grant PCO 321 in the adjusted amount of \$4608.

PCO 345 and 345A – CMU Wall in Subbasement

Suffolk seeks \$5378 for PCO 345 and \$8370 for PCO 345A for costs to rebuild two concrete masonry unit (CMU) walls in the subbasement that were badly deteriorated, not structurally sound, and posed a safety hazard to the workers. Suffolk does not seek demolition costs for the walls but rather the costs of its subcontractor, Phoenix Bay State, for rebuilding the two walls. We have reviewed the record and conclude that Suffolk is entitled to recover \$12,337.

PCO 373

Suffolk seeks \$22,488 for the additional costs of removing existing thresholds and installing new marble and aluminum thresholds in stairwells B and C, performed by subcontractors Merimac Tile and Northeast Interior Supply. Although GSA argues that the contract clearly indicated demolition of the doors and thresholds, we find the contractor's interpretation reasonable in that the contract did not require demolition and replacement of the doors and thresholds at stairwells B and C. Suffolk's PCO is granted in the adjusted amount of \$22,422.

PCO 399

Suffolk seeks \$60,219 for added construction and engineering work related to a new support system for an electrical collector bus located below a deteriorated ground floor concrete slab near the NStar vault. Suffolk specifies the following breakdown, which totals \$68,100: (1) \$2476 for forming, placing, and finishing fifty feet of concrete curbing; (2) \$23,985 in engineering and testing costs incurred by City Lights as a result of the concrete conditions; (3) \$27,964 in additional demolition work by NASDI to clear asphalt for the thru-bolting in the garage slab; and (4) \$13,675 for waterproofing. The record shows that the

deteriorated slab was a differing site condition and that the re-design of the collector bus support system was a valid change to the contract. GSA's argument that Suffolk should bear the cost of this change as part of the "no-cost" relocation of the NStar vault is not sound. There is no persuasive evidence that this extra work was unnecessary. We sustain the claim but remove most of the costs claimed for the asphalt clearing, and grant an amount of \$48,100.

PCO 408

Suffolk seeks an equitable adjustment of \$47,662 for additional framing and drywall performed around exposed terra cotta at the direction of GSA in its response to RFI 772 on floors 5 through 10 and 12 through 15. The design team approved Suffolk's proposal in its RFI response dated February 15, 2008, instructing Suffolk to proceed with framing and drywall on all floors between 5 and 15, except floor 11. GSA's refusal to pay for this additional work is without merit. For the ten floors at issue, Cape Cod's costs were \$13,126 and Component Assembly Services had costs of \$18,933. Adding Suffolk's direct costs of \$1640 plus markups, we grant PCO 408 in the amount of \$37,743.

PCO 422

Suffolk seeks \$1834 for installing masonry wall infills to reconstruct interior walls in the historic areas of floors 9 and 16, due to the discovery of embedded door frames. Phoenix Bay State incurred costs of \$1667. The doors were "false doors" which were not represented on the contract documents and had been abandoned and embedded into the corridor walls. On February 8, 2008, Suffolk submitted RFI 691R1, informing GSA that on floor 16 there was a historic door frame embedded in the corridor wall and the opening had been filled with plaster in a past renovation. Drawing A-122 shows the corridor wall to be a historic partition to remain in place. SCCI recommended removing the existing frame and plaster infill, and rebuilding the corridor wall with CMU to receive a new plaster finish to match the existing wall. The design team instructed Suffolk to do the following: "Apply either salvaged historic door casing (painted to match other frames) to wall at original location (joint between similar materials will be covered) or mill paint grade wood to match original profile and size. . . . Do not replace door opening infill; repair wall surface as required due to any damage having occurred during construction." Suffolk discovered a similar condition on floor 9 and submitted RFI 691R2. The design team replied that "infill should be retained and repaired as required, at no cost to owner." Suffolk seems to indicate that it followed its own recommendations (demolished the GWB and replaced it with masonry infill), which is not what the design team stated. We deny PCO 422.

PCO 427

Suffolk seeks \$6306 for the added costs of installing manual override switch push buttons, suitable for handicapped use, on the building's garage doors. The original contract included a requirement to install manually-operated doors at the two new overhead vehicle doors located at the garage. GSA issued bulletin 104, directing Suffolk to delete the doors and "provide manual override switch push button doors, suitable for handicapped use, and accompanying circuitry which will raise each of the doors to open position when depressed." GSA issued RFP 101, requesting a proposal for the changes to the exterior garage doors. Suffolk submitted RFI 820 requesting the "necessary information for all required power and conduit runs to operate the aforementioned equipment," and later submitted RFI 820R1 for additional layout information. The record supports entitlement and quantum. We grant PCO 427 in the adjusted amount of \$6392.

PCO 452

Suffolk seeks \$6819 for added masonry costs associated with infilling masonry wall openings for wall types that were not designated in the contract documents. Suffolk submitted RFI 794, notifying GSA that the standard wall type 33A was inadequate to address wall openings in historic corridors and stairways having terra cotta or plaster walls. Suffolk submitted PCO 452, which detailed the costs of performing infill services for five openings on the floor 15 for which there was no designation of wall type on the relevant drawings. We find the record supports entitlement to recover the added costs of this work paid to Phoenix Bay State, less a credit amount of \$1298 for what it would have cost to infill a standard type 33A wall. Accordingly, we grant PCO 452 in the adjusted amount of \$6912.

PCO 453

Suffolk seeks \$6168 for additional masonry performed to re-construct a CMU wall on the ground floor. We find that the record supports that the existing CMU wall on the ground floor conflicted with the specified demolition for new ductwork and that Suffolk and its subcontractors are entitled to be reimbursed for the work to demolish and rebuild portions of the wall. Accordingly, we grant PCO 453 in the adjusted amount of \$6252.

PCO 475

Suffolk seeks \$1146 for providing masonry wall infill at door 11-029, arising out of RFI 809 where Suffolk advised GSA that on AD-116, door 11-029 is shown as "frame and transom to remain." However, the existing frame in place was a non-historic frame without a transom. Suffolk asked whether this non-historic frame should be replaced with a historic-type frame. The design team, referencing drawing A-784, replied: "This work is in contract;

this door gets filled in, and the wall restored.” Suffolk engaged Phoenix to furnish and install concrete masonry unit infill at door #11-029. Phoenix explained that “[drawing] A784 does not have a wall type indicated. This infill was not designated as masonry, but type 33A per detail 6 on A100.” We agree that this was extra work by Phoenix and grant PCO 475 in the adjusted amount of \$1162.

PCO 487B and 487B.1 – MEP Access and Reconstruction

Suffolk seeks \$386,874 for additional cutting and patching services in the courtroom, library, and corridor ceilings on floors 12, 13, and 15. PCO 487B replaces PCO 199. Contract drawings A-786 through A-792 provided specific locations and quantities of access openings through which Suffolk could install new overhead MEP systems in these historic areas. During construction coordination, Suffolk discovered that the number and size of MEP openings specified by GSA’s design team in the contract drawings were insufficient to accommodate the ductwork, piping, and electrical conduit in the areas above ceilings. Suffolk raised this issue during several coordination meetings, during which it requested authorization to do additional cutting and patching necessary to accommodate the work. The design team approved the additional cutting and patching submittals. GSA argues that the specifications required Suffolk to cut and patch all necessary access openings beyond those shown in the contract drawings. We agree with Suffolk that it was reasonable for a bidder to bid the number of access openings based on the openings indicated in the drawings. The record supports the additional costs of NASDI (\$62,927), Phoenix Bay State (\$44,529), Cape Cod Plastering (\$204,160), Suffolk’s direct costs (\$29,719), and markup; and the direct costs of PCO 487B.1 (\$7433) and associated markup. Accordingly, we grant these PCOs in the adjusted amount of \$384,059.

PCO 487C.1 – Courtroom Resupport Reconciliation

Suffolk seeks \$55,653 for added work associated with repairs of the existing plaster support framing. The existing courtroom plaster ceilings were supported from the concrete floor joists located about three feet above the elevation of the finished courtroom plaster ceilings. The prior existing ceilings were primarily vertically connected to the concrete floor joists above by using heavy gauge ceiling/tie wires that spanned the distance between the ceilings and the supports above. The tie wires were looped around black iron secondary horizontal framing support bars that were the skeleton framework for the continuous metal lath substrate and three layers of plaster, including scratch coat, brown coat, and finish coat. When the existing ceilings were removed, Suffolk discovered that the primary and secondary plaster ceiling support framing had been modified, cut, and in some cases completely removed, presumably during prior renovations of the building over the years. Suffolk submitted RFI 815 highlighting the various problems in the areas above ceilings in courtrooms 1 through 5 and the library. The design team ultimately issued bulletin 119,

which provided for the repair of the plaster ceiling suspension system in courtrooms 1 through 5 as indicated in sketches SKA-311 through SKA-314. GSA acknowledged that the re-support work to be performed at the ceilings was an addition to Suffolk's base scope of work. Suffolk tracked the actual costs of additional ceiling support work primarily incurred by Cape Cod. GSA issued unilateral contract modification PC-41, providing Suffolk an adjustment of \$22,277 for resupport and clean-up services. From late December 2008 through late April 2009, Cape Cod performed the re-support work. We find the costs claimed in PCO 487C.1 to be properly associated with the extra re-support work, not base contract work, and grant the claim in the adjusted amount of \$55,641.

PCO 487D.1 – Courtroom Glue Daub Reconciliation

Suffolk seeks \$87,536 for additional plaster repairs caused by the need to remove glue daub adhesive embedded on the plaster as though it were an asbestos-containing material (ACM). In courtrooms 1 through 5, Suffolk discovered that the glue daubs were embedded deeply into plaster ceiling tiles. ATC, GSA's third-party industrial hygienist, directed Fleet (Suffolk's abatement subcontractor) to gouge and chip out the adhesive material embedded within the layers of plaster, resulting in "craters" in the ceiling plaster which required additional repair work by Cape Cod. Suffolk notified GSA that the extra work resulting from a change to its planned means and methods warranted an equitable adjustment. The record shows that GSA knew of the method required by ATC for Fleet to remediate the tiles and this method was reasonable in light of this previously unknown condition. We find the costs incurred by Cape Cod totaling \$75,880 in filling in the scalloped areas of the plaster from February through the end of April 2009 to be fully supported by the record, and grant PCO 487D.1 in the adjusted amount of \$87,826.

PCO 520

Suffolk seeks \$229,675 (\$215,274 for the direct costs paid to NB Kenney, plus Suffolk's markup) to insulate indoor condenser water piping in the basement and subbasement levels. In preparing its subcontract bid, NB Kenney interpreted the contract specifications and drawings as not requiring it to insulate the indoor condenser water (CW) piping in the basement and sub-basement levels. The insulation schedule for interior piping is located at specification 15083-17, section 3.14. This section identifies twelve different types of interior piping that require insulation, including: domestic hot and recirculated hot water; domestic chilled drinking water and cold water; rainwater conductors (horizontal only); roof drain bodies; condensate drain piping from cooling equipment; exposed sanitary drains and domestic water supplies and stops for fixtures for the disabled; chilled-water (CHW) supply and return; heating water supply and return; steam (16 psi and above); steam (15 psi and below) and steam condensate; hot service vents; and diesel-or-natural-gas-fueled engine exhaust. The indoor insulation schedule did not require insulation for indoor

condenser water lines. The contract drawings depict the piping at issue as condenser water piping lines. Condenser water piping is used to transport water that is “used as a medium to transfer unwanted heat from a refrigerant or chemical cycle to a disposal point.” Chilled water piping, however, is a piping “medium to cool between a remote refrigerant or chemical cycle and the air conditioner.” As is common industry practice, condenser water was denoted in the contract drawings with a “CW” notation, while chilled water was denoted with a “CHW” notation. As shown in the cooling plant flow diagram, drawing MP 6 07, the basement water lines were condenser water lines. GSA denied PCO 520 on the grounds that these condenser water lines had the capability of operating in “free cooling” mode, and thus were effectively a part of the chilled water system during the occasions when the piping was operating in “free cooling” mode. We conclude that NB Kenney’s interpretation was a reasonable interpretation of the contract documents. The design team could have removed any ambiguity by clearly indicating in the contract documents that these condenser water pipes were to be insulated but failed to do so. We grant PCO 520 in the adjusted amount of \$229,491.

PCO 522

Suffolk seeks \$20,999 for the costs of furnishing and installing aluminum angles to fill gaps between new window frames and the existing structure. This change arose due to a discrepancy between existing wall finishes and the dimensions of windows in historic areas. Suffolk submitted the additional fabrication, painting, field measuring, and installation costs in PCO 522. On April 18, 2008, Suffolk submitted RFI 879, memorializing a conflict between four windows on the ground floor and existing marble side post jambs and sills where these windows were installed. The design team advised Suffolk to submit plans to install an aluminum L-shaped profile to fill the gaps at each of the locations in question. Suffolk ordered, measured, and installed the window profiles. We reject GSA’s arguments that it had no notice of the change and that this was base contract work. The contract does not indicate trim and closures for the four windows at issue here, but rather that the existing wall finishes were to remain in place. We grant PCO 522 in the adjusted amount of \$21,131.

PCO 528

Suffolk seeks \$17,214 for the costs of demolition of existing crossbeam pipe supports in shafts 4, 5, and 6 from the basement to floor 15 that conflicted with mechanical systems to be installed in the shafts. We conclude that this work was included in the base contract work and therefore deny PCO 528.

PCO 609 – GSA FPE Field Report 08-14-2008

Suffolk seeks \$42,987 for installing additional fire alarm devices on various floors. On January 8, 2009, the design team issued bulletin 153, detailing several additional fire alarm devices (strobes and speakers) to be installed on floors 9, 11, 12, 15, 16, 17, and 20. At the time bulletin 153 was issued, City Lights was working in other areas of the building. City Lights proposed to install the added fire alarm strobes and visual devices at a price of \$39,079.04, which included work performed using overtime rates so that it could complete all of its contract work by the then-current completion date of April 16, 2009. GSA only objects to the portion of the costs for overtime rates. We find that the record supports City Lights' use of overtime to achieve timely completion. Accordingly, we grant PCO 609 in the adjusted amount of \$43,575.

PCO 617 – Stairwell Pressurization

Suffolk seeks \$11,737 for additional demolition and masonry wall reconstruction that was necessary to provide stairwell pressurization. Suffolk submitted RFI 200 and revisions for clarification of locations and quantities of mechanical openings in stairwells A and B on various floors due to conflicts that were encountered in the stairwells. Stairwell pressurization is necessary because stairs are the primary means of escaping a building during a fire; stairwells are therefore required to be designed with higher pressure than the rest of the building in order to create a barrier which helps to control smoke movement in the case of an emergency. In response to the RFI 200 series, the design team issued sketches which revised the location and sizes of the openings and grills which tied into the plenum and stair pressurization duct. Suffolk's demolition subcontractor, NASDI, performed demolition to create wall openings and Phoenix Bay State reconstructed the masonry walls to allow installation of new HVAC registers and grills. We have reviewed the record and find the work beyond the original contract scope, and also find that the costs are supported by the record. Accordingly, we grant PCO 617 in the adjusted amount of \$11,809.

PCO 651 – Slab Infills in Garage

Suffolk seeks \$298 for the added costs of elevator operators used to perform concrete infill in the concrete floor slabs at the ground level. Suffolk submitted an RFI advising GSA that, upon demolition of existing walls in surveillance rooms on the ground floor, Suffolk discovered three locations where there were floor slab depressions of approximately four to five inches. The design team directed Suffolk to infill "these depressed areas . . . so that they are level with the adjacent floor slab." The design team designated its response as an "addition to contract." The contracting officer rejected PCO 651 on the grounds that the work fell within the scope of Suffolk's allowance for "floor patching." We agree with

Suffolk that the depressed floor slabs were a concealed condition and not covered by the floor patching allowance. Accordingly, we grant PCO 651 in the adjusted amount of \$236.

PCO 663 – Bulletin 141 Security Desk Changes

Suffolk seeks \$66,177 for the costs of installing a security screen wall in the security desk area, and other security upgrades, done in response to bulletin 141 and RFP 151. The design team issued bulletin 141 which, among other things, included new sketches relocating an x-ray machine, magnometer, turnstiles, floor boxes, and other equipment at the security desk. Bulletin 141 also modified the requirements for bullet-resistant steel windows in specification section 08515. In PCO 663, Suffolk identifies subcontractor/supplier costs for Tower Glass, City Lights, Taunion Forms, DePaoli Mosaic, Component Assembly Systems, and Liberty. We have reviewed the record and find the claim fully supported. Accordingly, we grant PCO 663 in the adjusted amount of \$66,415.

PCO 684 – Demo Doors SG1-002A & C

Suffolk seeks \$2853 for added costs of demolishing two exterior doors on the ground floor which were not originally designated to be demolished in the demolition drawings. GSA instructed Suffolk to demolish and remove two entry doors at the Congress Street entrance. We have reviewed the drawings and agree that it was a reasonable interpretation by the contractor that these two doors were not to be demolished. Accordingly, we grant PCO 684 in the adjusted amount of \$2869.

PCO 693 – Door Frame Issues

Suffolk seeks \$70,249 for added demolition and framing costs arising from changes that GSA made to the location, layout, frames, hardware, and materials used to construct the interior doors on a number of floors. Suffolk issued RFI 593 and a series of revisions (593R1 through 593R11) noting certain discrepancies between the drawings and the existing doors on floors 10 through 16. The design team responded with changes including installing new door frames, replacing marble thresholds, installing new door hardware, demolishing transoms, resizing doors, and reversing door swing direction. We have reviewed the record and find the costs for the subcontractors, including Liberty (demolition), to be supported and reasonable in amount. We grant PCO 693 in the adjusted amount of \$67,280.

PCO 702 – Ground Floor HVAC Conflict

Suffolk seeks \$7214 for the costs of revising and re-routing ductwork on the ground floor that conflicted with a fire door motor. PCO 702 arises from RFI 1048, which informed GSA that the ground floor fire door motor and associated housing at the base of stair C

conflicted with the HVAC corridor riser and 10x10 supply duct specified in the same area. GSA issued RFP 153, requesting an itemized proposal from Suffolk for revising and reworking some of the duct. NB Kenney performed the additional duct work. We grant PCO 702 in the adjusted amount of \$7244.

PCO 717 – Premium Time for Scaffolding Removal

Suffolk seeks \$7084 for the premium time differential cost for removing overhead protection scaffolding during a weekend pursuant to a city directive that removal of exterior scaffolding take place on weekends for safety reasons. Although GSA argues that Suffolk was required to comply with local regulations and ordinances, there is no evidence in the record that any such written regulation or ordinance required this work to be performed on weekends. The record suggests that the weekend work resulted from a city directive given during project performance which could not have been anticipated by bidders. Based on our review of the record, we grant the claim in the amount of \$6304.

PCO 725A – Floor 3 Stair C Vestibule

Suffolk seeks \$1698 for City Lights' wiring and installing an owner-provided light fixture in vestibule S03-017 on floor 3 in January 2009 which was not required by the contract. We find an amount of \$672 for PCO 725A to be reasonable based on the record.

PCO 730 and 730A – Bulletin 151 Transfer Ducts

Suffolk seeks \$191,645, consisting of \$71,896 for PCO 730 and \$119,749 for PCO 730A, for added demolition, masonry, drywall, and mechanical costs necessitated by changes regarding transfer ducts, grilles, and smoke dampers required by the applicable code. On November 26, 2008, the design team issued bulletin 151, increasing the requirements for transfer ducts, grilles, and dampers throughout the building based on a series of attached sketches. GSA's project manager recognized that these sketches were introducing significant changes to the contract documents. On December 11, 2008, GSA issued RFP 156, seeking itemized pricing for bulletin 151. On December 18, 2008, the design team issued bulletin 151-S1, which provided supplemental information regarding the size and location of openings. Notwithstanding GSA's argument that Suffolk failed to coordinate its subcontractors' work, we find that GSA made changes to the work. After reviewing the record, we grant PCO 730 in the amount of \$64,000 and PCO 730A in the amount of \$84,000.

PCO 742 – Stairs A, B, and C Deteriorated Plaster

Suffolk seeks \$23,277 for additional plaster patching and masonry wall demolition and reconstruction work in stairwells A, B, and C. The extra work was required after Suffolk discovered that plaster in stairwells A, B, and C on various floors was significantly deteriorated and unsupported. Suffolk engaged Cape Cod Plastering to perform the necessary repair work, based on a proposal of December 15, 2008, in the amount of \$15,707. The record is not clear whether Tishman had notice of the need for the repair work prior to its being performed by Suffolk and Cape Cod, presumably between December 15, 2008, and January 9, 2009. On January 9, 2009, Suffolk submitted PCO 742, seeking an equitable adjustment for the costs incurred. GSA denied PCO 742, claiming that Suffolk failed to provide it with adequate notice of the deteriorated conditions, that GSA needed more information on the cause of the deteriorated plaster, and that GSA needed confirmation that the claimed plaster repairs did not overlap with base contract plaster patching also required in the stairwells. We reject GSA's allegations and find that based on the record part of Cape Cod's direct costs are recoverable, and with Suffolk's markup, we grant PCO 742 in the amount of \$12,000.

PCO 754A – Light/Soffit Conflicts

Suffolk seeks \$12,080 in electrical labor and materials arising out of changes to light fixtures on floors 5 through 9 as identified in RFI 1114 and RFI 1078R3. We have reviewed the record and conclude that these were primarily design changes, not contractor coordination problems, except we reduce the amount of the adjustment to \$9500 as some of the re-work may have been avoided if Suffolk had sought earlier direction from the design team for the design conflicts. We grant PCO 754A in the amount of \$9500.

PCO 759 – Floor 3 Kitchen Duct Insulation

Suffolk seeks \$1909 for installing fire-wrap insulation on duct above the ceiling on floor 3 after it had been enclosed with drywall. Although Suffolk argues that the design team initially told Suffolk that a two-hour fire wrap insulation of the ductwork was not needed in response to RFI 561, actually the design team simply advised Suffolk that a two-hour rated "enclosure" was not needed and the specification cited by Suffolk in the RFI was for an enclosure, not for fire wrap insulation, which is governed by another specification section that required the two-hour fire wrap insulation. We deny this PCO.

PCO 773 – Bulletin 147: Half Walls in Courtrooms

Suffolk seeks \$17,367 for the costs of additional steel framing performed in Bankruptcy courtrooms 1, 2, and 3. On January 20, 2009, the design team issued bulletin

147, including structural sketch SSK-145, which governed the structural steel for the half-walls in courtrooms 1, 2, and 3. Based on our review of the record, we agree with Suffolk that bulletin 147 and the structural sketch required this added steel framing work. We grant PCO 773 in the adjusted amount of \$17,516.

PCO 777 – Hardware Power-EP Drawing

Suffolk seeks \$4406 for the additional costs of providing card reader conduit and rough-ins which were omitted from the contract documents. On January 21, 2009, Suffolk submitted RFI 1103R1, noting that there were six doors on floors 1 through 3 for which the drawings did not show a requirement for card readers. We have reviewed the drawing and specification and find that this was extra work. We grant PCO 777 in the adjusted amount of \$4466.

PCO 781 – FCC/Smoke Control Panel

Suffolk seeks \$41,792 to procure and install new sail switches and additional smoke control panels. On January 22, 2009, Suffolk submitted RFI 1126, which sought clarification of several issues related to the new fire command center and smoke control panels designed by Goody. The response to the RFI added the switches and required Suffolk to provide additional smoke control panels. We have reviewed GSA's objections to premium time on JM#493, entitlement on JM#492, and elevator costs. We find all of the work was beyond the base scope, but we reduce some of the premium time. We grant PCO 781 in the amount of \$38,000.

PCO 783 – PCR Three-way Valve

Suffolk seeks \$4426 for furnishing and installing temperature sensors and associated power and controls to modulate the three-way valves for the domestic water heater discharge, which were not required by the contract. On January 26, 2009, Suffolk submitted RFI 1131, advising the design team that the drawings omitted pertinent information for a three-way valve located within the domestic hot water system. On February 3, 2009, the design team issued a response identifying various requirements and a new sketch SKM-118. City Lights's costs totaled \$3815 and NB Kenney's costs totaled \$16,215. All of these costs are supported by the record. Only City Lights' costs and Suffolk's markup are included in the amount requested by Suffolk under PCO 783. We grant PCO 783 in the adjusted amount of \$4466.

PCO 784 – HP-3 in SG1-030

Suffolk seeks \$2215 for upgrading the size of the heat pump located in room SG1-030. PCO 784 arises out of a design omission. On January 22, 2009, Suffolk submitted RFI 1127, informing GSA that there was a design conflict, namely that the mechanical and electrical drawings showed the heat pump in this area as a type HP-1, whereas the duct drawings referred to a type HP-3. Suffolk explained that the contract documents did not include the proper piping, equipment, or electrical services to support an HP-3 type pump. On February 3, 2009, the design team agreed. Suffolk performed the work and requested its costs of \$2215, but GSA refused to pay for electrical premium time. We grant PCO 784 in the adjusted amount of \$2245.

PCO 787 – Floor Infill in R01-027

Suffolk seeks \$351 for the added costs of concrete flooring infill in room R01-027. PCO 787 is attributable to a concealed condition whereby, upon demolition, the existing floor slab in this room was found to require added concrete infill. The design team directed Suffolk to infill the floors as indicated in sketches provided by Goody. GSA rejected PCO 787 as being within the scope of the allowance for “floor patching.” Based on the record, we agree that this was not floor patching and grant the PCO in the amount of \$351.

PCO 794 – Shaft at 4/B on Floors 2-3

Suffolk seeks \$6568 for additional framing and drywall labor arising out of GSA’s change directive in RFI 1099. On December 12, 2008, Suffolk submitted RFI 1099, which documented design conflicts in the electrical shaft on floors 2 and 3. To alleviate these conflicts, Suffolk proposed to relocate certain doors in the area. The design team later approved the proposal. Suffolk submitted PCO 794 for added cost associated with reworking walls to accommodate the existing electrical shaft. Component Assembly Systems had costs totaling \$5700. We find entitlement and quantum supported by the record and grant PCO 794 in the adjusted amount of \$6591.

PCO 797 – Lights at Toilet Room (FL 4-11)

Suffolk seeks \$47,674 for installing alternate light fixtures in bathrooms on floors 4 through 11. On March 30, 2007, in response to Suffolk’s inquiries regarding the location and length of fixtures in the toilet rooms, the design team issued bulletin 022b, with attached sketches SKA 078-088 and SKA-081, regarding the addition, location, and sizes of various fixtures. Suffolk noted additional conflicts with the newly specified light fixtures which resulted in further discussions. Ultimately the design team issued bulletin 173 on June 5, 2009, to resolve the conflicts. Based on our review of the correspondence, bulletins, and

sketches, we find this change supported by the record and grant PCO 797 in the adjusted amount of \$48,189.

PCO 805 – Bulletin 160: Courtroom 4 Judge’s Bench Infill

Suffolk seeks \$10,481 for furnishing and installing walnut wood paneling and a stone base at the judge’s bench in historic courtroom 4. On December 12, 2006, Suffolk submitted RFI 110, advising GSA that the contract documents did not provide elevations for courtroom 4. On December 26, 2006, Suffolk submitted RFI 110R2 requesting direction on what to do with the judge’s bench. The design team directed Suffolk to relocate the courtroom 4 judge’s bench to courtroom 2. On June 4, 2007, Suffolk submitted another RFI requesting further direction on the removal of the judge’s bench. On February 24, 2009, the design team issued bulletin 160 further directing Suffolk as follows: “At the west wall of courtroom four, provide a new wood in-fill base below the existing Judge’s wall millwork to cover the void left by the contractor’s demolition of courtroom four’s Judge’s bench.” On March 16, 2009, Suffolk notified GSA that the additional millwork and marble work was the result of a concealed condition. Suffolk performed the work on April 6, 2009, and submitted PCO 805 for the costs associated with the added wood plinth block, the fabrication of wood paneling, and the fabrication and installation of the marble base in the location where the judge’s bench was removed. Based on our review of the record, we grant PCO 805 in the adjusted amount of \$10,398.

PCO 807A – Bulletin 152 Ratings at S02C001

Suffolk seeks \$7763 for the cost of glazing doors on floor 2, to achieve a ninety-minute fire rating that was inadequately designed by Goody in the design phase. On February 9, 2009, Goody issued bulletin 152 to modify door frames, door hardware, and wall construction at the door frames required to meet the fire resistive rating for certain door locations. On March 3, 2009, GSA issued RFP 160 which, among other things, requested itemized pricing for bulletin 152. Due to the changes issued in bulletin 152, Suffolk’s glazing subcontractor, Tower Glass, was required to provide additional glazing services for four historic doors and ten rated doors in the building. Suffolk submitted these costs to GSA in PCO 807A, which also included credits for full glass doors that were deleted from the contract. We find the amounts incurred by Tower Glass supported by the record and thus we grant PCO 807A in the adjusted amount of \$7869.

PCO 849 – Fin Tube/Outlet Conflicts

Suffolk seeks \$30,461 for modifying electrical outlets to avoid conflicts with the fin tube radiation covers. On April 8, 2009, Suffolk notified GSA that there was a conflict between the locations for the fin tube radiation heaters and the electrical outlets on floors 1

through 3. The design team agreed that baseboard heaters should be lowered, but GSA refused to acknowledge the design conflict. Suffolk advised GSA that it would be “submitting a proposal for all of the related costs to lower the cover, including the costs associated with revising the fin-tube piping, via 45 degree offsets, so as to align with the lowered cover.” On April 14, 2009, Suffolk reiterated that the drawings displayed the baseboard fin tube covers in conflict with the height of the electrical receptacles. GSA refused to provide the requested direction for resolving the conflict, claiming that it was a contractor coordination problem. On April 27, 2009, City Lights moved the previously installed electrical receptacles and telephone/data boxes in fifty-seven locations by roughly 6 1/2” to resolve this design conflict. On July 27, 2009, Suffolk submitted PCO 849 for the costs associated with relocating the electrical outlets and telecom/data boxes, and repairing and painting locations where the outlets and boxes were originally installed. The record shows that this work arose from a design conflict, not a contractor coordination conflict. We grant PCO 849 in the adjusted amount of \$30,879.

PCO 852C – Bulletin 116: UPS - EPA Tenant Improvements

Suffolk seeks \$2943 for the unpaid costs of floor power distribution cabling necessary to accommodate the installation of the EPA’s UPS system. On April 9, 2009, GSA issued RFP 166, requesting itemized pricing for the equipment and labor costs associated with installing the new UPS system for EPA. RFP 166 sought pricing based on the design team’s plans and drawings for the UPS change, as set forth in bulletin 116. On April 24, 2009, Suffolk submitted its original proposal to procure the UPS equipment only (excluding labor), at a price of \$198,237. Modification PS-49 provided Suffolk with an equitable adjustment of \$198,237 for the UPS equipment. On May 28, 2009, City Lights discovered that its proposal omitted \$2675 for power distribution cabling necessary to run the new UPS system. We have reviewed the record and agree that it is reasonable for the contractor to receive compensation for the costs of power cabling inadvertently omitted from its proposal. We grant PCO 852C in the amount of \$2675.

PCO 854 – Elevator Fuse Requirements

Suffolk seeks \$5706 for furnishing and installing modified fuses for the building’s elevators, including \$2870 for fuse materials and electrical labor of \$1393. When installing the electrical requirements for the elevators, Suffolk discovered that the contractually specified fuses and electrical power were insufficient to properly run the elevators. Drawing E-5-02 included an equipment legend for the elevators. In 2009, the elevator subcontractor, Kone, advised that due to the size of the elevator cars, motors, and equipment specified on the drawings, the electrical requirements associated with the elevators would need to be upgraded. Kone provided Suffolk with a report with its suggested approach for the power requirements. City Lights procured and installed twenty-seven 600V 90A fuses, three 600V

60A fuses, six 600V 80A fuses, twenty-seven 100-200A fuse reducers, and three 60-200A fuse reducers. We have reviewed the record and conclude that the material and work at issue here was performed due to a design omission, not a contractor coordination issue. We grant PCO 854 in the adjusted amount of \$5784.

PCO 858 – Ellison Door and Trim Changes

Suffolk seeks \$9703 for upgrades made by the design team to the finish and trim of the Ellison doors located at the entrances of the building. In April 2009, the design team provided comments on the contractor's shop drawings for Ellison doors and associated trim, which changed and upgraded the original door hardware to a fully concealed assembly and included larger door pull handles than specified by the contract. The design team also directed Suffolk to upgrade the contractually specified door finish to the "finest grain available to reduce collection of contaminants." Suffolk's door and trim subcontractor, Tower Glass, prepared a proposal in the amount \$8821 for these upgrades which were incorporated with markups in PCO 858 submitted on April 17, 2009. Based on our review of the record, Suffolk is entitled to an adjusted amount of \$9836.

PCO 864 – GSA Temporary Office

Suffolk seeks \$7517 for the costs of installing temporary telecommunications and data in GSA's third-floor office space, which was relocated from another floor per GSA's request. GSA provided Suffolk with a floor plan layout and directed Suffolk to install telecommunications and data in the new office as indicated. Suffolk engaged City Lights and its subcontractor, Intelligent Systems & Controls Contractors (iSYS), to perform such work as running cable from the basement, wiring, testing telecom/data locations, and relocating and reinstalling network and telephone equipment from GSA's other office. On May 28, 2009, Suffolk submitted PCO 864 for the added costs of performing the work, containing City Lights' costs of \$6834 which includes iSYS costs of \$5617. We agree with Suffolk that specification section 01500 did not provide GSA a right under the contract to have Suffolk move GSA offices cost-free. Accordingly, we grant PCO 864 in the adjusted amount of \$7620.

PCO 873E – Cleaning/Repairs for GSA

Suffolk seeks \$56,403 for repairs, hauling, and clean-up services that were necessary to address damages caused by GSA's tenant contractors who moved into the building on July 1, 2009. At the direction of GSA, Suffolk performed a significant amount of cleaning of debris and repair of some damage to Suffolk's work caused by third-party contractors hired by GSA's building tenants. Suffolk tracked the additional cleaning and repair work in signed time-and-materials tickets submitted with the PCO 873 series. GSA agreed to pay

Suffolk for any additional clean-up or repair work performed by Suffolk attributable to tenant vendors. GSA paid Suffolk for the added costs in modification PS-68, described in a price negotiation memorandum as follows: “PCO 873-Cleaning & Damage by GSA Tenant: This change is at the request of Agency/Tenant EPA. This change compensates [Suffolk] for work performed as a result of other work performed under a concurrent contract within the building, in an effort to achieve Certificate of Occupancy, and which had adversely affected [Suffolk’s] previously installed work in several locations. Because of this other work, [Suffolk] had to perform additional cleaning and repair some damage.” Suffolk submitted PCOs 873A through 873D between September 24, 2009, and January 5, 2010. On May 27, 2010, Suffolk submitted PCO 873E, which reconciled the remaining unpaid costs. In his final decision, the contracting officer rejected PCO 873E on the grounds that: “GSA believes that the majority of this work was performed to repair or final clean elements of the work for which SCCI and its subcontractors are responsible.” The contracting officer acknowledged that Suffolk was due at least \$28,920, which GSA would only pay in exchange for “full and final settlement of this PCO.” GSA offers no persuasive evidence that Suffolk’s contract required it to perform these additional clean-up and repair activities. We find that the time-and-material tickets submitted with PCO 873E support Suffolk’s entitlement to the adjusted amount of \$56,967.

PCO 874 and 874A – Move GSA Office to Floor 3

Suffolk seeks \$19,093 for PCOs 874 and 874A arising out of GSA’s May 2009 directive to relocate GSA’s office space from floor 1 to floor 3. Suffolk hired a moving company (Spry Movers) and employed an elevator operator (Kone Elevator) to relocate GSA’s office, including furniture, files, and equipment. Suffolk also claims \$10,137 for customizing the relocated office space, which included constructing temporary walls in the space and demolishing and cleaning the office space on the first floor. GSA directed Suffolk to build out GSA’s temporary office on the third floor, which included framing walls, installing insulation and drywall, and relocating doors from the first floor. Suffolk had to demolish the office on the first floor to accomplish this work. Suffolk engaged Liberty and Component to perform the demolition and construction work, respectively. All of the subcontractors tracked their costs. On May 29, 2009, Suffolk submitted PCO 874, which included the costs for Spry Movers, Kone Elevator, Liberty, and Component. GSA directed Suffolk to remove Liberty and Component’s costs from PCO 874. On June 14, 2010, Suffolk resubmitted PCO 874 with only Spry and Kone’s costs and then submitted PCO 874A as a separate PCO with Liberty and Component’s costs. GSA denied both PCOs. As stated earlier for PCO 864, this move was extra work. We grant these PCOs in the adjusted amount of \$19,080.

PCO 877 – Elliptical Food Guard

Suffolk seeks \$18,135 for the costs of adding an elliptical food guard in the third-floor cafeteria. The food service specifications (section 11400-74) states that the food guard “is not included in the scope of work for section 11400” and “is shown on the drawing for informational purposes only and generally represents the size/capacity of unit to be specified by other design team members and provided by others.” There is a reference to division 8, for glass and glazing, which also does not specify the food shield for the contract. We conclude that Suffolk reasonably interpreted the language of the specification as indicating that the food guard would be provided by others and that the drawings were for informational purposes only. We grant PCO 877 in the adjusted amount of \$18,383.

PCO 887 – Replate Bathroom Hardware

Suffolk is no longer pursuing this claim for \$3862.

PCO 896 – Ground Floor Plaster

Suffolk seeks \$97,087 for plaster wall repairs performed in certain tenant areas on the ground floor in rooms RG1-001 through RG1-012. Drawings A-813 and A-100 depicted existing walls, floors, ceilings, doors, and structural columns located on the street level of the building, segregated by tenant area and shell area. The specifications included schedules for the finishes applicable to all floors, walls, trim, and ceilings in these areas. Although Suffolk argues that the contract documents did not specify a finish schedule for these rooms, we agree with GSA that solicitation amendment 3 provided that all existing plaster walls noted to remain and those walls that were exposed to view in the finish construction should be patched to match surrounding construction with similar materials. We deny PCO 896.

PCO 898 – Mounting Details for BF-1

Suffolk seeks \$5500 for changes to the mounting details and requirements for the BF-1 light fixtures located at the ground floor lobby. On May 11, 2009, the design team issued architectural field report 117, and later issued a new mounting sketch detail for the BF-1 light fixtures at the ground floor lobby, showing an aluminum bar arm for mounting on top of the light fixture and 2” x 4” continuous aluminum rectangular tubing at the base. GSA responded that it considered the mounting detail part of the base contract scope of work. We agree with GSA that the contract provided for “custom mounting arms,” but we also agree with Suffolk that the design team’s new mounting detail entitles Suffolk to an adjustment for its added costs of the aluminum tubing at the base and the fabricating and finishing of the wood base for the BF-1 light fixtures at the ground floor. We grant PCO 898 in the adjusted amount of \$5177.

PCO 900 – Unforeseen Elevator Patching

Suffolk seeks \$17,546 for added costs of placing masonry infill in areas within concealed elevator hoistways. Suffolk states that it noticed the wall penetrations during elevator inspections. Elevator shafts by code are required to achieve a two-hour fire rating in order to pass inspection. The costs claimed consist of five Phoenix Bay State Construction invoices for infilling the wall penetrations and one invoice from Kone for elevator operations in connection with the work, totaling \$15,951, and Suffolk's markup of \$1595 on the subcontractor work. GSA's contracting officer granted the claim in part, offering \$9396 for the Phoenix invoices and Suffolk's markup, but not for the Kone invoice. Based on our review of the record, we find that Suffolk is entitled to an adjusted amount of \$17,786.

PCO 908 – Wire Flow and Tamper

Suffolk claims \$14,014 for the added costs to City Lights and its subcontractor for installing monitor and signal modules and associated programming/testing, and wiring for the tamper switches for three sprinkler system valves, at the B-2 level at column lines E/11.5 and N/11.5, and at the B-1 level at column line J/4. In response to the RFI, the design team stated that the valves were shown on F-102 (B-1 level), but the three valves noted are not at column line J/4 and do not reference the B-2 level valves. Later, GSA referenced drawing F-501 in support of its contention that the contract required this work. However, based on our review of the record, we could not find any indication of the valves identified in RFI 1176. We conclude that this electrical work was not reasonably depicted in the contract documents and thus grant the claim in the adjusted amount of \$14,206.

PCO 911 – Signs at Elevator Pit Doors

Suffolk seeks \$334 for purchasing and installing signage at the elevator pit access and machine room doors. GSA cites specification 14210. We have reviewed the specification provisions and conclude that the signage was included in the contract. We deny PCO 911.

PCO 915 – Domestic Hot Water Pump Wiring

Suffolk seeks \$1970 for additional costs of wiring and start-up work related to domestic hot water circulating pumps that were not disclosed in the contract drawings. Suffolk states that a review of electrical drawing EP-103 indicates four hot water circulating pumps were documented on the drawing, but in fact there were eight pumps in the building. These pumps are necessary for a functioning hot water system. K&H Electrical performed the wiring and start-up work for the additional four pumps not shown in the contract documents. We find the record supports this claim and we grant PCO 915 in the adjusted amount of \$1997.

PCO 927 – Additional Scope at Courtroom 3 Mural

Suffolk seeks \$3228 for work required as part of the restoration of a historic mural in courtroom 3 that was covered by wood paneling. On May 22, 2009, Suffolk notified GSA that it was prepared to “remove the non-historic paneling covering the mural on the east wall in Courtroom 3” pursuant to GSA’s requirement that GSA be present to witness the removal. On May 27, 2009, Suffolk removed the paneling with GSA personnel present. Upon removing the paneling, Suffolk discovered that there was plastic and tape covering the mural, held on by strapping which was nailed and glued to the perimeter of the mural. Suffolk advised that in order to complete its plaster/painting work on the walls surrounding the mural, the plastic covering, wood strips, and nails would need to be removed, which GSA directed on June 3, 2009. Suffolk performed the removal work. On June 12, 2009, GSA directed Suffolk to remove glue residue and fill nail holes that had held the strapping, and to prime and paint up to nine inches from the top and sides of the historic frame and five inches from the bottom. We have reviewed the record and conclude that Suffolk is entitled to recover the adjusted amount of \$3179 for its additional work.

PCO 930 – Dry Compressors on Levels M1 and M3

Suffolk seeks \$8218 for the added costs of installing power to the air compressors for the fire sprinkler system on level M3 of the building. On June 1, 2009, Suffolk submitted RFI 1179, advising GSA that dry pipe sprinkler air compressors on levels M1 and M3 did not include circuits and requesting information on how the compressors should be powered. On June 4, 2009, the design team directed Suffolk to connect the M3 dry pipe sprinkler air compressors to certain circuits. City Lights priced the work and installed conduit, wire, and manual switch disconnects for the dry compressors. We conclude that this was extra work and accordingly grant PCO 930 in the adjusted amount of \$8330.

PCO 933 – Concrete Beam Repair in Garage

Suffolk seeks \$6246 for repairing loose and spalling concrete encased beams in the building’s garage, raised in RFI 1184, in 2009. GSA claims that Suffolk damaged overhead concrete beams in the garage level during its construction operations and directed Suffolk to remove loose and spalling concrete and then protect all exposed structural steel and reinforcement with new fire proofing material. Suffolk proceeded with the extra fire proofing work, tracked its costs, and submitted PCO 933. Suffolk argues that the loose and spalling concrete was a systemic issue throughout the building, and was likely due to the building’s age and lack of consistent maintenance. We agree with Suffolk’s assessment for the cause of the loose and spalling concrete conditions. Suffolk’s costs are supported. Accordingly, we grant PCO 933 in the adjustment of \$6331.

PCO 936 – Elevator Relief Dampers

Suffolk seeks \$2841 for modifying the elevator relief dampers to open upon activation of the elevator machine room smoke detector. On June 10, 2009, GSA directed Suffolk to modify the control of the elevator relief dampers to open only upon the activation of the smoke detector in the elevator machine room. Upon receiving this direction, Suffolk notified NB Kenney and City Lights to proceed with this work on a time-and-materials basis so as to not delay the testing being completed in these areas. Suffolk's subcontractors complied with GSA's request under protest, but notified Suffolk that there would be added costs for programming, controls, and rewiring to achieve GSA's desired result. Specification 15930.1.4 provides that the dampers are to open "upon smoke being detected in an elevator machine room." Thus, this work was required under the contract. We deny PCO 936.

PCO 937 – Power Requirements for Courtroom

Suffolk seeks \$16,102 for the costs of additional electrical power requirements to the Bankruptcy courtroom spaces on floors 10 through 12. This work was described by GSA's tenant, the Bankruptcy Court, in a memorandum dated May 26, 2009, and directed verbally as urgent and critical work through the tenant and GSA's construction manager (Tishman). We find that, through its actions, GSA ratified this verbal change to the contract by accepting the benefit of this work and cannot now refuse to pay for it. We grant PCO 937 in the amount of \$16,165.

PCO 939 – Level 3 Mezzanine Hot Water Circulating Pump

Suffolk seeks \$11,696 for installing electrical power to a hot water circulating pump on the level 3 mezzanine. On May 9, 2009, Suffolk submitted RFI 1175 requesting electrical requirements and controls for this pump on drawing P-108. The corresponding electrical drawing, EP-108, does not reflect the electrical layout or controls for this pump. The design team replied to RFI 1175, directing Suffolk to extend a circuit from a local receptacle and wire it through a manual starter to the pump. We have reviewed the contract documents, including the specifications, and conclude that most of this was extra work for which Suffolk and K&H Electrical should be compensated. K&H's work included installing conduit, fittings, wiring, and other associated materials. We grant PCO 939 in the amount of \$10,200.

PCO 943 – Terrazzo Infill at Milk Street

Suffolk seeks \$3099 for removing terrazzo infill at the vestibule located on the first floor. The demolition drawings required Suffolk to remove an existing vestibule at the top of stair G on the first floor. Upon removing the vestibule, there was a large void in the existing terrazzo floor. Suffolk examined the void and discovered that the terrazzo was

poured-in-place around the vestibule instead of the vestibule sitting on top of the terrazzo. The design team directed Suffolk to provide a sample and infill the area. A mockup was completed and approved, and Suffolk submitted PCO 943 for the “selective demolition, associated clean-up, installation of missing divider strip, and infilling area with matching terrazzo.” Suffolk’s subcontractor, DePaoli, patched and matched existing terrazzo in vestibule S01C001 where the wall was removed, and installed sand, cement, brass, and strips. We find this work to be caused by a concealed condition that only became apparent upon removal of the vestibule. We grant PCO 943 in the adjusted amount of \$3113.

PCO 945 – Life Safety Emergency Generator Testing

Suffolk seeks \$5445 for the costs of diagnosing and modifying an undersized breaker that was specified by GSA for a panel servicing one of the generators. On June 17, 2009, GSA, Suffolk, and GSA’s consultants conducted a life safety generator test to ensure that the generators would power the building in the event of an emergency. During the test, a breaker serving the automatic transfer switch controlling the generator tripped, causing a loss of power to the elevators. GSA directed Suffolk to review and diagnose the system problem, and on June 18, 2009, GSA directed Suffolk to replace the undersized 400A breaker with an 800A breaker in the panel. City Lights performed the work, which included hiring United Power Group to provide power quality meter recordings and document the test results. We grant PCO 945 in the adjusted amount of \$5519.

PCO 946 – Historic Door Reconciliation

Suffolk seeks \$40,210 to reconcile the added costs of GSA’s directive to move historic doors and add doors in certain areas. Suffolk captured the additional costs of fabricating and installing new doors in PCO 946. During several surveys of the existing doors in 2009, there were locations where there was a replacement door where drawings showed a historic door. Due to this conflict with the drawings and actual conditions, there was a shortage of salvaged historic doors needed to complete the project as designed, requiring new doors to be fabricated. Furthermore, some of the existing historic doors required major repair work to bring them to an acceptable appearance. Notwithstanding GSA’s claimed lack of notice of the changed conditions, we find that the record supports the existence of the door problems and that GSA was on constructive notice of the need for Suffolk to fabricate and repair the doors at issue here. We grant PCO 946 in the adjusted amount of \$40,633.

PCO 953 – AVO 1046 Repairs due to Steam Infiltration

Suffolk seeks \$4312 for repairing various finishes at the ground floor that were damaged by an existing steam pipe leak. On June 18, 2009, via AVO 1046, Suffolk advised

GSA that steam was infiltrating the building from a steam pipe located under Devonshire Street, causing damage to surrounding finishes. There were several spots in the plaster and drywall that were staining and/or bleeding. Suffolk requested that GSA provide guidance as to what GSA wanted Suffolk to do about this damage. On August 5, 2009, Suffolk again informed GSA that there was a considerable amount of steam infiltrating the ground floor through the access door to the steam tunnel in room RG1-010. Suffolk proceeded to cover the access door with insulation to stop steam from infiltrating the building. During this time, Suffolk learned that GSA had contacted Trigen Boston Energy, the owner and operator of Boston's steam heating network, to install "two manholes with venting covers which will allow heat to be vented off and reduce the temperature in the pipe tunnel under the sidewalk on Devonshire Street," thereby reducing the steam that was entering into the building. The steam that infiltrated the building from the existing steam pipe caused damage to the interior, which Suffolk had to repair. Component Assembly Systems performed the repair work and Suffolk submitted PCO 953 on January 27, 2010. We grant PCO 953 in the amount of \$4312, the cost of the repair work.

PCO 961 – Automatic Door Operators

Suffolk seeks \$24,089 for changing the hardware sets and adding automatic door operators and actuators for seven doors not shown on the contract documents. On January 14, 2009, Suffolk submitted RFI 1118, noting that the electrical power drawings for certain door operators did not correspond to the hardware sets at these locations. Suffolk inquired whether it was authorized to add automatic door operators and power requirements at these locations. On February 3, 2009, the design team directed Suffolk to proceed with the automatic door operators as a modification to the contract. On April 3, 2009, GSA issued RFP 163, requesting pricing for the added costs of automatic door operators. On July 15, 2009, Suffolk submitted PCO 961. The design team recognized that these items had been mistakenly omitted. We grant PCO 961 in the adjusted amount of \$24,419.

PCO 967 – Owner Security/Access Control

Suffolk seeks \$6151 for the additional costs incurred by K&H Electrical to work with GSA and its tenants to troubleshoot issues experienced at electrified/security hardware doors. In December 2009, GSA directed Suffolk to inspect and troubleshoot various doors on various floors in tenant spaces that had previously been installed, tested, and accepted. Tenants had begun moving into the building following the issuance of the July 2009 temporary certificate of occupancy. GSA subsequently claimed that some of the doors were not operating properly. Suffolk complied with GSA's request to investigate and engaged K&H Electrical to review the doors and take any necessary corrective action. Suffolk and K&H discovered that GSA, its tenants, and/or GSA's tenant contractors had tampered with and modified the doors at issue. On floors 8 and 9, Suffolk discovered that someone had shut

off power or disconnected previously installed power wiring to the doors. Likewise, on the third floor, GSA tenant contractors disconnected power to the doors and modified the door strikes, causing the doors not to operate properly. Suffolk proceeded with door repairs, which were confirmed and approved by GSA during two separate inspections. We find the record supports Suffolk's contention that the damage and tampering with the doors was done by persons other than the Suffolk team, likely the tenant contractors. Although the contracting officer stated that he would consider approving a revised PCO excluding Suffolk's own direct costs, we see no basis for that exclusion. We grant PCO 967 in the adjusted amount of \$6236.

PCO 972 – Kitchen Fan Coil Unit

Suffolk seeks \$3024 for furnishing and installing an electrical disconnect and associated power wiring necessary for the kitchen fan coil unit. On May 9, 2009, Suffolk submitted RFI 1174 requesting additional information necessary to provide power to the fan coil unit in the third floor kitchen. On May 18, 2009, the design team replied to RFI 1174 with specific direction on providing a new branch circuit from a designated panel and installing an electrical disconnect for the unit. Suffolk engaged K&H Electrical to perform this added work. Based on our review of the record, we find most of this to be extra work and grant PCO 972 in the adjusted amount of \$2750.

PCO 975 – Bulletin 189 Sprinklers

Suffolk seeks \$42,550 for costs incurred installing an extended sprinkler protection system in the area of high-density storage units in the EPA space. The record is clear that PCO 975 arose because the design team neglected to properly specify sprinkler piping in areas where EPA was storing large quantities of paper files. On September 8, 2009, GSA requested that Suffolk provide an expedited proposal from its plumbing subcontractor to perform the modifications to sprinkler systems at these high-density storage areas. On September 11, 2009, the design team issued bulletin 189, which modified the contract and detailed the various new layouts for sprinkler locations on floors 2, 4, 5, 6, 7, 8, 11, and 16. On the same day, GSA directed Suffolk to proceed with the work under bulletin 189. The design team issued two further modifications to the sprinkler layout in late September 2009. The design team acknowledged that the changes to the sprinkler drawings were a tenant change for which SCCI should be compensated. GSA's project manager said it was a design omission. Based on the record, we grant PCO 975 in the adjusted amount of \$43,009.

PCO 977 and 977A – Security Office Window

Suffolk seeks \$11,136 for demolition of the wall opening for a new security office window, labor to move electrical rough-in work, cleanup, providing a temporary window,

and then furnishing and installing the permanent window. We have reviewed drawings AD-104, A-154, and A-630 and find that the SG1-033 work was not reasonably defined in the contract documents to allow a contractor to price it in its bid. We grant PCO 977 and 977A in the adjusted amount of \$11,147.

PCO 979 – Wiring for Kitchen Heat Pump

Suffolk seeks \$2104 for additional costs incurred to wire a heat pump, including adding a combination magnetic starter disconnect unit, in the building's kitchen. The electrical drawings did not show wiring or the starter disconnect unit for the heat pump located in the kitchen area. GSA argues that when considering the specifications with the drawings, Suffolk is responsible for furnishing electrical connections for equipment even if not depicted in the electrical drawings. We have reviewed the division 15 and 16 specifications and conclude that there is a partial design omission here with Suffolk responsible for providing customary power for this type of equipment, but GSA responsible for omitting electrical design elements on the drawings. We grant PCO 979 in the amount of \$1800 for the additional work to meet the added design elements.

PCO 983 – Floors 12 and 20 Acoustic Ceiling Revisions

Suffolk seeks \$3793 for acoustical ceiling modifications on floors 12 and 20. On June 26, 2007, GSA issued RFP 64, directing Suffolk to install primer sealer to all unpainted ceilings above acoustical ceiling areas, which Suffolk states required it to (1) remove all of the acoustical ceiling tiles in the mock-up room and reinstall them at a later date, and (2) infill the framed soffits with acoustical ceiling tile. Suffolk engaged Cheviot to perform the additional ceiling tile work. We find that Suffolk is entitled to recover for the infill work and the labor to remove and install the ceiling tiles required by the extra painting work. We grant PCO 983 in the reduced amount of \$2800.

PCO 987 and 987A – Overhead Garage Doors

Suffolk seeks \$6569 for installing high/low sensors and associated wiring on the overhead garage doors. While the contractor was working on an overhead door, a Tishman representative stated that high/low sensors were required. Suffolk states that the overhead garage door is a sectional overhead door covered by specification section 08360 (sectional overhead doors) and not a coiling door covered by section 08330 (coiling doors and grilles). In the final decision, the contracting officer cites section 08360. The email exchanges suggest that the overhead door met all of the requirements of the motor operation functions of section 08360 without the high/low sensors. We have reviewed section 08360 and the pertinent drawings and see no reference to high/low sensors. Tishman directed Suffolk to install the high/low sensors, and K&H Electrical installed them and the associated wiring.

Based on the record presented to us, we grant PCO 987 in the adjusted amount of \$6659. Although the contracting officer states that Suffolk owes GSA a credit for failing to install the electric eye sensing devices for the coiling doors, the record indicates that Baron Industries did install such devices.

PCO 993 – GCA Field Report 132

Suffolk seeks \$3365 for: (a) installing additional carpet that was not shown on the contract documents, and (b) installing brush seals at a fire shutter door. On September 22, 2009, the design team issued architect's field report 132, noting in item 3 that Suffolk had failed to install carpet at a landing on floor 13, and in item 9 that Suffolk needed to conceal exposed metal studs from view with trim at the opening of the fire-shutter on the ground floor. Suffolk states that the contract does not require carpet at the landing and GSA does not dispute that. Regarding the trim (brush seal), we agree with GSA that this was part of a complete installation. We grant PCO 993 in the amount of \$1332 for the carpet installation.

PCO 994 – Move Field Office from Conference Center

Suffolk seeks \$4464 for relocating its field office from the shared conference room to the ground floor. On September 23, 2009, GSA ordered Suffolk to vacate the shared conference room (R01-027), which Suffolk was using as its field office, by October 21, 2009. Suffolk urged GSA to reconsider its request to vacate the conference center, to avoid added costs to Suffolk. On November 9, 2009, GSA denied Suffolk's request to remain in the conference room but did extend the date by another month and directed Suffolk to move to another room. Suffolk relocated its field office and seeks the costs of the move. GSA's direction for Suffolk to relocate its office to the ground floor was for the purpose of allowing EPA system furniture to be brought into the conference center. Because a project-related rationale for this direction is supported by the record, we deny PCO 994.

PCO 1005 – Ansul with Common Duct

Suffolk appears to have withdrawn its claim for \$4721 for work by two of its subcontractors, TriMark and K&H Electrical, regarding the ansul system and the required mechanical and electrical activations for common duct to kitchen exhaust hoods. Even assuming that this claim has not been withdrawn, we agree with GSA that this was work within the scope of the contract, and thus deny the claim.

PCO 1006 – Enclosure for Elevator Relief Vent

Suffolk seeks \$4699 for installing two-hour rated pipe insulation for the elevator relief vent on floor 21 as opposed to the contractually specified two-hour rated drywall enclosure. On or about February 23, 2009, Suffolk discovered that there was inadequate space between the hot water service return piping/valves and the elevator relief vent on floor 21 to construct the specified two-hour drywall enclosure around the relief vent. Suffolk proposed that in lieu of installing the drywall enclosure, NB Kenney could install two-hour insulation around the vent. NB Kenney performed the work and tracked its additional costs, which are included in PCO 1006. PCO 1006 includes a credit for the drywall enclosure work that was replaced by the insulation work. The contracting officer denied PCO 1006, claiming that Suffolk failed to coordinate its work and this was the result of a contractor “means and methods” issue. Based on the record, we find that PCO 1006 was the result of a needed design change due to the elevator relief vent being too close to the hot water service return piping. We find the costs and credit supported by the record and grant PCO 1006 in the adjusted amount of \$4697.

PCO 1007AR – Cleaning Due to EPA Movers

Suffolk seeks \$7532 for cleaning trash and debris from EPA tenant spaces on the first floor, which was left behind by EPA’s subcontractors. Suffolk used its internal change management number 947 to track miscellaneous added costs incurred in cleanup of the first floor EPA space. The costs consist of contemporaneous time slips for Liberty Construction workers (\$4448 for laborers and \$1148 for a foreman), invoices from SOS Corporation (totaling \$1251), and Suffolk markup. The contracting officer offered to reimburse only the SOS invoices plus Suffolk markups. We have reviewed each slip and invoice and find the record adequately supports the costs claimed. We grant PCO 1007AR in the adjusted amount of \$7036.

PCO 1007K – Floor 1 Fire Alarm Trunk Lines

Suffolk seeks \$3841 for relocating previously installed fire alarm trunk lines that had to be moved due to the addition of new wall partitions in the first floor EPA tenant space. On January 30, 2009, GSA deleted certain EPA tenant improvement work on the first floor, and advised Suffolk that installed soffits, overhead rough-in MEP, and any in-wall electrical, HVAC, and plumbing work shall remain as installed, and that no installed work shall be demolished or removed. On April 15, 2009, the design team stated in bulletin 157-S2 that base tenant improvement work “installed to date, which is no longer required, will need to be demolished” and that lighting, power demolition, and fire alarm demolition was shown in revised drawings. On May 22, 2009, GSA issued RFP 162 for an itemized proposal for

the add/deduct items in bulletins 157, 157-S1, 123-S3, 123-S4, and 157-S2. On August 13, 2009, Suffolk submitted RFI 1192, which stated:

After demolition of the existing partitions on the 1st floor (RFP #162) it was discovered that City Lights Electrical's fire alarm trunk lines were located inside the framed walls per the original contract documents and were not visible until the drywall was removed. As the partition layout on the 1st floor has now changed, this unforeseen condition will now require that the piping and wiring be re-routed.

On August 28, 2009, Suffolk advised GSA that the relocation of mechanical and electrical installations are "part of the overall cost to RFP #162." The effective date of modification PS-54 is June 23, 2009, and covers PCO 778 (all revisions) based on RFP 162. Based on the sequence of actions discussed above, we conclude that the relocation of the fire alarm lines requested here was covered by PS-54. We deny PCO 1007K.

PCO 1013A – Bulletin 192 Stair A Retesting

Suffolk seeks \$1883 for rebalancing and retesting the stair pressurization systems due to GSA-directed changes in the stairwells that occurred after Suffolk had already conducted and passed the stair pressurization tests. GSA does not contest this PCO. We grant PCO 1013A in the adjusted amount of \$1741.

PCO 1014 – Reverse Mirrors on Floor 15

Suffolk seeks \$1040 for rotating and reinstalling one-way mirrors in the B and C wings on the fifteenth floor. The B and C wings contained certain one-way mirrors that would allow tenants to see into the corridors from their space. Suffolk states that it installed the mirrors correctly. GSA claimed that the one-way mirrors needed to be reversed. On October 7, 2009, the GSA program manager directed Suffolk to remove, rotate, and reinstall the one way mirrors. Suffolk performed the work and took before and after pictures to support its position. Based on the record presented by the parties, we grant the PCO in the amount of \$750.

PCO 1025 – Added Belt Pulley at Fan SF 3A

Suffolk seeks \$1041 for NB Kenney's having to install an additional belt pulley on stair fan SF-3A. On December 26, 2006, Suffolk transmitted NB Kenney's product data submittal for the centrifugal fans located in the stairways. The submittal enclosed product data for Cook Centrifugal Filtered Supply Roof Mounted fans that included a single pulley belt. On January 10, 2007, GSA approved the submitted fans with only one comment:

“SF-2, 3, 3a, 5, & 7 shall be equipped with inverter duty motors for VFD compatible operation.” The design team did not take issue with the single pulley belt. Towards the end of the project, however, GSA’s consultant (RJA) issued a non-compliance report stating: “Stair Fan SF-3a is only provided with 1 belt. A minimum of 2 is required.” NB Kenney added the dual belts as directed. Although GSA incorrectly argues that specification 15837 requires two belts, the record contains a copy of IBC code section 909.10.5 which provides that “belt-driven fans shall have 1.5 times the number of belts required for design duty, with the minimum number of belts being two.” NB Kenney does not persuasively argue why this code provision does not apply. Accordingly, we deny PCO 1025.

PCO 1026 – Restore Historic Clock

Suffolk seeks \$3108 for restoring the historic clock in the main elevator lobby. On October 26, 2009, the contracting officer emailed Suffolk: “[Suffolk] is to proceed with the restoration work on the Clock in the Main Elevator Lobby on the Ground floor. This work is to be completed on off hours so as not to interfere with Tenant and Public access. Quoted Price during normal hours is \$5,200. Federal Acquisition Regulation (FAR) Clause 52.243-4.” Suffolk directed its subcontractor, SOS Corp., to perform the restoration work, which it did. While SOS was onsite, GSA also directed the restoration of the bronze fixtures on the first floor of the main lobby, which SOS also performed. Suffolk submitted SOS’s costs of \$2825 on January 13, 2010, and its own markup, bringing the total to \$3175. The contracting officer denied PCO 1026 on the basis that SOS only performed “cleaning” of the clock, which he considered base contract work. Although GSA now says that there is partial merit and believes the value of the work is \$1500, we see no basis in the record to support that valuation. We grant PCO 1026 in the adjusted amount of \$3151.

PCO 1034 – Added Shaftwall

Suffolk seeks \$29,114 for enclosing sprinkler standpipes within rated enclosures that were relocated from stairways. On December 27, 2006, Suffolk submitted RFI 146, informing GSA that the City of Boston’s Fire Department had concerns with the locations of the sprinkler standpipes and proposed relocating them from an enclosure outside of the stairway in a general office area to a locataion within the stairway enclosure. However, when performing the work, Suffolk’s fire protection subcontractor encountered structural issues with existing steel, which prohibited it from installing the sprinkler standpipe in the locations agreed upon. The sprinkler standpipe ultimately had to be relocated outside of the stairways and back to the original contract location. Although Suffolk suggests that the fire hose valve configurations necessitated enclosures and shaftwalls that were larger than those specified in the contract, the supporting documentation from Component Assembly Systems appears to be priced for installing the shaftwalls as if it were all additional work. There is no allocation between what the original shaftwall work required by the contract would have cost

and any change to the shaftwall sizing due to the fire hose valves. Accordingly, we deny PCO 1034.

PCO 1035 – NB Kenney Escalation

Suffolk seeks \$637,406 for NB Kenney labor and material escalation costs during the pre-award period of April 1, 2006, through the award date of August 31, 2006. As part of the negotiated agreement whereby Suffolk repeatedly extended its bid of July 19, 2005, Suffolk and GSA acknowledged that the price of labor and materials was likely to fluctuate substantially due to then current market conditions, and agreed that the contractor would be entitled to the actual increase in such costs to the extent that the contractor could demonstrate that the price of labor and materials had escalated after the original proposal date of July 19, 2005, and that the contractor's reasonable expectation for profits had been affected by the delay in award. NB Kenney's original subcontract with Suffolk was priced at \$21,606,941. Each category of increased labor and material costs is discussed below.

NB Kenney seeks \$15,600 for escalation of labor rates paid by NB Kenney due to mandatory wage increases under applicable union bargaining agreements.

NB Kenney seeks a total of \$205,150 for escalation of pipe and fittings consisting of: copper tubing (\$145,700), copper fittings (\$5545), steel pipe (\$28,625), malleable iron fittings (\$101), carbon steel butt welded fittings (\$885), Victaulic grooved fittings (\$9350), Victaulic grooved butterfly valves (\$400), Milwaukee valves (\$10,570), and Carpenter and Paterson pipe hangers (\$3974), as well as \$114,000 in escalation for a stainless steel cooling tower (\$92,000), heat pumps (\$13,000), and exhaust fans (\$9000).

NB Kenney seeks a total of \$224,532 for its subcontractors' labor and material escalation as follows: sheetmetal labor (\$13,018), raw galvanized sheetmetal coil stock (\$101,843), insulation labor (\$36,307), insulation material (\$7389), and automatic temperature controls (\$65,975).

GSA argues that the claim should have been filed in 2006 or 2007, not as part of NB Kenney's project end claim. GSA also argues that to recover under the escalation clause added in the qualifications addendum in Suffolk's prime contract, Suffolk would have to show that these labor and material escalation costs affected Suffolk's (not NB Kenney's) expectation of profit. We find that Suffolk gave reasonable notice of the escalation claim and GSA has not shown it suffered prejudice. We also conclude that Suffolk and NB Kenney have shown that each of their reasonable expectations of profit have been affected by the delay in the award from April to August 2006. We find adequate support for the escalation costs of \$15,600, \$205,150, \$13,018, \$101,843, and \$7389, totaling \$343,000. We find inadequate support for the NB Kenney subcontractor escalation costs for the cooling

tower, heat pumps, exhaust fans, insulation labor, and automatic temperature controls. Accordingly, we grant \$343,000 for labor and material escalation costs.

PCO 1045 – Traffic Signage

Suffolk seeks \$1448 for furnishing and installing new traffic signage along Devonshire Street. Towards the end of the project, Suffolk requested that the Boston Transportation Department close out and terminate the street and sidewalk permits for Devonshire Street. The transportation department informed Suffolk that in order to close out the permits, Suffolk would need to install three “Tow Zone- No Stopping at Any Time” street signs along Devonshire Street. GSA does not dispute that the contract, and specifically site plan A-101, did not identify or show this signage. Suffolk informed GSA of these extra requirements and engaged Northeast Traffic Control Services, Inc., to fabricate and supply, and the Welch Corp. to install, the street signs. The signs were installed. Suffolk tracked its costs and submitted PCO 1045. GSA denied an equitable adjustment but offers no reason for the denial. We see none, and grant PCO 1045 in the adjusted amount of \$1468.

PCO 1047 – Heaters

Suffolk seeks \$2951 for providing power to several heaters and a heat pump that were not depicted on the electrical drawings. We have reviewed the record and agree that this work was not adequately shown in the contract documents and the costs sought are reasonably supported. PCO 1047 is granted in the adjusted amount of \$2991.

PCO 1048 – Sixth Floor Valve Leak Claim

Suffolk seeks \$314,302 in compensation for work performed to repair water damage caused by a leaking valve on the sixth floor of the building. The parties agree that the leak occurred because a Milwaukee BA-150H ball valve at a high-point vent in a chilled water line was left slightly open. The valve and water line supported the building’s HVAC system and were located in the ceiling of the sixth floor in the EPA tenant area. Third-party contractors working for the GSA tenant were installing IT equipment in the vicinity of the valve in the days before the leak was discovered. We agree with GSA’s senior project manager who believed it was probable that the valve was bumped open in the course of the IT installation. Building management personnel located and closed the partially open valve on December 30, 2009, though only after water had caused significant damage to carpeting, ceilings, walls, and tenant furniture on the sixth through first floors. GSA issued RFP 188 on January 5, 2010, to remedy damages caused by the leak. Suffolk estimated that repairs would cost \$333,012, and its proposal in PCO 1048, was submitted to GSA along with its plan of work. After negotiations with Suffolk, GSA issued modification PC-63 on February 11, 2010, directing Suffolk to complete the work described in PCO 1048 at a price

of \$314,302. However, after concluding that the BA-150H valve installed by Suffolk did not comply with the specifications, GSA informed Suffolk that it would hold it responsible for all costs associated with the water leak.

Suffolk had subcontracted with NB Kenney to install piping for the building's HVAC system according to division 15 of the specifications. The GSA design team had approved NB Kenney's two submittals for valves, one relating to the Nexus series of ball valves and another relating to the Milwaukee BA-150 series ball valves. The latter submittal indicated that the valves were for use on hot/chilled/condenser water piping. NB Kenney subsequently installed BA-150H valves at manual high-point vents and low-point drains along chilled water lines throughout the building. The BA-150H was a ball valve with a lever handle rated for 600 psi, but it differed from other models in that it had a threaded hose connection and plastic cap rather than a soldered end (which could not function as a vent). The record shows that the cap for the BA-150's hose connection was designed to protect the threading of the hose connection and was not intended to withstand water pressure if the valve were opened. GSA contends that the installed BA-150H valve failed to comply with the project's specifications, namely that a manual high-point vent valve should have the vent "operated with screwdriver or thumbscrew" rather than a lever, which would have prevented someone from inadvertently turning the lever of the valve with one's hand. GSA also argues that the plastic cap for the threaded hose connection was rated less than 300 psi. We do not agree with GSA's arguments.

The BA-150H valve had a rating of 600 psi and that rating was not affected by the threaded cap because the cap was not part of the valve rating as confirmed by the manufacturer. We agree that GSA knew and approved of the use of the BA-150H valves for use on the chilled water lines for both high point vents and low point drains. The BA-150 valves, with their bright yellow handle levers, were visible during inspections by GSA's team. In fact, six months prior to the leak, GSA's representative certified that "all Mechanical, Electrical, Plumbing and general construction has been installed per plans and specifications, [and] that all Tishman punch list items and [Suffolk] work list items have been complete."

Here, the valves had been accepted by GSA and the damage was caused by a third party in an area under GSA's control. If the damage did not result from a latent defect or a breach of warranty, prior acceptance will bar the Government from recovering against the contractor. *See* 48 CFR 52.246-12(i). Latent defects are those existing at the time of acceptance that could not have been "discovered by observation or inspection made with ordinary care." *Kaminer Construction Corp. v. United States*, 488 F.2d 980, 984 (Ct. Cl. 1973). To show a breach of warranty of construction, the Government must prove three elements. First, the Government must show that the contractor was responsible for the defective materials or workmanship at issue. Second, the Government must show that it

provided the required notice to the contractor within the time period prescribed by the warranty clause. Third, the Government must show that it did not cause or contribute to the alleged defects or damage. *Geiler Co.*, VABCA 5137, 98-1 BCA ¶ 29,379, at 146,034 (1997); *ABM/Ansley Business Materials v. General Services Administration*, GSBCA 9367, 93-1 BCA ¶ 25,246, at 125,748-49 (1992); *Joseph Penner*, GSBCA 4647, 80-2 BCA ¶ 14,604, at 72,019. In this case, a GSA tenant or tenant contractor caused the damage at issue by partially opening the valve while the area was in the possession of GSA and its tenant. GSA has not overcome the presumption that the damage occurred incident to its occupation. The record does not demonstrate that the installed valve contained a latent defect or that Suffolk violated the contract's warranty. Even if we were to find (we cannot do so here) that installing a Milwaukee BA-150H valve instead of a Nexus valve with a thumb screw operated air vent accessory was a defect in the HVAC system, use of the Milwaukee valve with a hand lever was patent and discoverable by ordinary care in the course of inspection, as the two products were physically distinct and the valves were visible on the chilled water line. See *ABM/Ansley*, 93-1 BCA at 125,749 (finding an affirmative responsibility for the Government to offer proof that it did not contribute to the harm claimed); *Joseph Penner*, 80-2 BCA at 72,020 (noting that a prior government inspection finding no defect weighed against a determination that the material or workmanship itself was defective). Because the water leak damage at issue was incident to GSA's and its tenant's possession of the sixth floor area, and because GSA accepted the installed Milwaukee valves, we conclude that Suffolk is not liable for damages associated with this incident. Accordingly, we grant Suffolk's claim for reimbursement of its costs totaling \$314,302 under PCO 1048.

PCO 1048C – IAQ Testing for Floor 4

Suffolk seeks \$1945 for costs performing LEED air quality testing on floor 4 after the completion of the water damage repairs from the sixth floor valve leak. We grant the claim in the adjusted amount of \$1972.

PCO 1051 – Change in Tray Shim Insulation

Suffolk seeks \$3080 for installing tray shims/insulation on the building's green roof. On the green roof, plantings were specified to be installed on top of geofoam blocks/trays. On February 22, 2008, Suffolk submitted the product data and samples for the geofoam shims/trays that it intended to install. On March 10, 2008, the design team rejected the product submittals. On March 11, 2008, Suffolk forwarded GSA's rejection to its subcontractor, Valley Crest. On March 19, 2008, Suffolk requested additional information on why the geofoam shims were rejected. The design team responded in April 2008, and, based on this response, Suffolk directed Valley Crest to order new product data samples and information for the geofoam shims from its supplier, Branch River, which were submitted

at the end of April 2008. On May 8, 2008, the design team again rejected Suffolk's geof foam shim submittal, stating: "Re: 07521-014-001 Geof foam (shims) - Andropogon emphasizes that shims need to meet project PSI loading requirements (accounting for live and dead load, not just tray weight: includes snow and maintenance personnel) and create stable trays when walking on any portion of the tray. GCA can provide the contractor with the project loading requirements from GCA's structural engineer." Suffolk again resubmitted multiple product data and sample information for the geof foam shims. The design team rejected all but Geof foam EPS Shim #39. This product was furnished and installed. We agree with Suffolk that the design team's new loading requirement raised during the submittal process is beyond the contract specification requirements. We find that the original proposed product met the specification and GSA's decision to require a greater psi in the shim product to be a change. We grant PCO 1051 in the adjusted amount of \$3122.

PCO 1054 – Courtroom 7 Shift Lights

Suffolk seeks \$1481 for relocating five DF-1 light fixtures in courtroom 7 relating to RFI 107R5. On May 27, 2008, in a walk-through of courtroom 7, a design team representative agreed with Suffolk representatives that the DP-1 light fixtures could be shifted eight to twelve inches away from the diffusers in the ceiling area to allow sufficient space between the flexible duct feeding the plenum/diffusers and the light fixtures. The flexible duct connecting into the courtroom ceiling diffusers was used to avoid plaster ceiling anchors. Although the contracting officer argued that this was a contractor coordination issue, we find from the record that relocating the light fixtures was primarily due to a design problem. We grant PCO 1054 in the adjusted amount of \$1501.

GSA Credit Claims

GSA initially claimed credit items 1 through 50 in a spreadsheet found at attachment 2 of the contracting officer's final decision of June 15, 2012. GSA has since withdrawn credit items 24, 27, 28, 30, 34, and 35 from consideration. The following are the credit items and amounts sought by GSA, some of which, as noted below, have been resolved by agreement of the parties.

GSA Credit Item 1 – Disposal of Transformers

GSA seeks a credit of \$65,876 related to the presence of polychlorinated biphenyls (PCBs) in transformers, and the cost associated with the disposal of PCB-contaminated transformers. Article 1.2.B in specification section 02075 required the disposal of forty transformers located in specific areas of the building. Article 1.2.B also outlines the steps for inspecting the type of transformers and testing any fluids found for PCB content. If PCB content was found, the transformer was to be drained and properly disposed of. GSA notes

that there could have been a significant cost variance in bids from potential bidders as the quantity of transformers actually containing PCBs was not an item identified in the design documents. It costs significantly more to properly dispose of transformers containing PCBs than ones not containing PCBs. It turned out that none of the forty transformers in the building had PCBs requiring the more expensive disposal procedures. GSA's theory is that because it actually cost less for Suffolk to dispose of the transformers than Suffolk anticipated in formulating its bid, GSA is entitled to a credit for the presumed cost savings. This work was part of Suffolk's lump sum fixed price construction bid, and not based on unit pricing. We deny this credit claim.

GSA Credit Item 2 – Building Window Washing

Although its final decision sought \$40,884, GSA now seeks \$312,749 for the cost of washing the exterior and interior building windows. The contract included cleaning glass on the building after installation and until final acceptance, as outlined in specification 08800. The final cleaning (wash and polish both sides of the glass) was to be completed no more than four days prior to final acceptance according to article 3.4.C of the specification. There were 1780 exterior windows installed. GSA originally calculated an estimated window cleaning amount of \$20,442 for the entire building and assessed in its final decision two cleanings for a total of \$40,884. During the hearing, and in its posthearing brief, GSA argues that the unit cleaning price for interior and exterior window cleaning is \$11,790 (based on a 2014 window washing contract) but that the contract required twenty-seven interior and exterior window cleanings (i.e., monthly from installation to final acceptance), resulting in a total credit of \$312,749. This amount gives Suffolk credit for one final interior window cleaning, which GSA believes was done. We do not agree with GSA's analysis of the specification and conclude that Suffolk was to clean glass surfaces as needed to remove "build-up of dirt, scum, and other substances" primarily as a health and safety measure. GSA offers no evidence that at any time from window installation to final inspection, Suffolk failed to keep the glass surfaces sufficiently clean or that GSA complained of unacceptable dirt build-up on the window surfaces. Suffolk was required to clean the interior and exterior glass just prior to final acceptance, and there is no dispute that Suffolk did not perform the exterior window cleaning prior to final acceptance. Based on the record, we find GSA entitled to a credit of \$6209 for the exterior window cleaning.

GSA Credit Item 3 – Balance of Floor Patching Allowance

GSA seeks \$388,385 as a credit for what it terms as the balance of the floor patching allowance. The floor patching allowance was provided in one of the items listed in the Qualifications and Clarifications to Suffolk's bid, which reads: "Regarding Q.54 in Amendment 4, since it is impossible to determine the quantity of floor depressions that are greater than ¼" until the flooring is removed, we have included an allowance of 82,000

[square feet] of flash patching.” There is no unit pricing for this flash patching, but rather it is part of Suffolk’s lump sum bid price. Nowhere in this bid qualification provision, or in any other contract provision, does Suffolk agree to provide GSA a credit for “unused” quantities of flash patching. GSA argues that Suffolk only used 11,325 square feet of flash patching based on GSA’s records. Suffolk does not agree with that number and notes that floor patching in a subcontract was \$0.61 or \$1.50 depending on the floor covering type, but in any event argues that GSA is entitled to no credit because flash patching was not offered on a unit price per quantity basis and there was no agreement by Suffolk to give any sort of flash patching credit. We agree and deny credit item 3.

GSA Credit Item 4 (PCO 1058) – Reinforced Beam Penetrations

GSA seeks \$187,926 as a credit for twenty reinforced beam penetrations (creating a hole or opening in a beam) that were a required allowance under the general notes portion of drawing S-000, under a provision entitled “ADDITIONAL QUANTITIES” that read: “ADDITIONAL QUANTITIES PROVIDE ALLOWANCE FOR 20 REINFORCED BEAM PENETRATIONS IN EXISTING CONCRETE ENCASED STEEL BEAMS. (3/S-500 SIM).” The work involved removing the concrete encasement around where the hole would be created, fabricating and welding the angles around the opening prior to cutting the beam opening, providing equipment needed to reach and work on the beam, cutting the hole or opening, re-patching the concrete around the area, and spraying new fireproofing in the affected area. A Tishman representative testified that Suffolk did not install any of the twenty beam penetrations while Suffolk claims that its subcontractor, Ryan Iron Works, installed three of the twenty at the lobby ceiling area. Suffolk issued PCO 1058 which included a credit cost of \$19,486 for seventeen beam penetrations, containing a quotation from Ryan showing materials, fabrication labor (twenty-two hours), erection labor (160 hours), overhead, and profit, totaling \$17,340, which is \$1020 per reinforced beam penetration. GSA argues that the beam penetration should be valued at \$9000 each. GSA notes that Ryan’s estimate does not include the demolition of the concrete around the planned penetration site and does not include spray fireproofing. Based on our review of the record, we find a cost per beam penetration of \$2750, inclusive of all costs including markups, to be reasonable. There is some evidence in the record to support that three beam penetrations were performed in the lobby ceiling area, and thus we will use the quantity of seventeen for cost adjustment purposes. Accordingly, we conclude that GSA credit item 4 (PCO 1058) totals \$46,750.

GSA Credit Item 5 – Differential Pressure Sensors

GSA seeks \$40,680 for the cost of eliminating thirty-four differential pressure (DP) sensors from the contract scope. According to specification section 15930 (“Sequence of Operations”) article 1.4.F.15.a “Building pressurization control (lower levels)” and article

1.4.H.11.a “Building pressurization control (upper levels),” Suffolk was to install DP sensors from the ground floor to floor 20, or the last occupied floor. Tishman’s representative testified that seven DP sensors were to be installed on the lower levels, thirty were to be installed on the upper levels, totaling thirty-seven DP sensors in all, but that Suffolk only installed three DP sensors, equating to a difference of thirty-four. Regardless of the representative’s lack of personal knowledge of the facts, Suffolk does not dispute that only three of the thirty-seven sensors were installed. We have reviewed the record and find it supports a credit of \$34,300.

GSA Credit Item 6 – Additional Commissioning Services

GSA is seeking \$83,050 in fees it paid to the three consultants, RJA, RDK, and Cosentini, for re-testing and re-inspection services during the months following substantial completion. GSA contends that delays caused by Suffolk and its subcontractors and lack of coordination among them led to the need for an extended commissioning process that lasted from early 2009 through early 2010. GSA calculates the total cost of \$83,050 based on costs that were estimated in modification PS-67 between GSA and Goody Clancy dated October 1, 2009, namely \$70,500 for RJA, \$19,150 for RDK, and \$20,000 (a not-to-exceed figure) for Cosentini. RJA’s estimate was reduced to \$43,900 when GSA received a memorandum from RJA dated March 18, 2010, detailing the costs it specifically spent on re-testing. We have reviewed the record, including the logs and correspondence, and conclude that the delays to completion beyond the revised completion date of May 29, 2009, for which GSA provided compensable time extensions to Suffolk, were the result of critical path delays caused by GSA’s directed and constructive changes beginning in January 2009. GSA has not identified billed costs or hours from these consultants which we could tie to any improper actions by Suffolk or its subcontractors causing re-testing or re-inspection. We deny credit item 6.

GSA Credit Item 7 (PCO 814) – Re-lamping

GSA seeks \$217,393 for the deletion of scope to re-lamp all 11,000 light fixtures prior to building turnover. GSA believes it is entitled to a credit for re-lamping costs (material and labor) that were not completed and, therefore, never incurred. The contract required that all electric lamps be replaced before completion of work, unless a lamp had no more than 100 hours of use prior to turnover of the building. GSA submitted RFP 165 to Suffolk on April 8, 2009, requesting a credit for the re-lamping that did not take place before the building turnover. City Lights in March 2009 had stated that it would re-lamp prior to substantial completion the emergency fixtures which were being used as temporary lighting. It stated that the regular fixtures would be turned on for eight hours per day for ten days, equaling eighty hours total to allow for final inspections and commissioning. GSA states that based on its review of jobsite pictures, many of the regular lights were on in the building in excess of 100 hours. There are pictures that show permanent fixtures lit and there are

pictures showing temporary lights in use. Based on our review of the record, we find the credit amount should total \$101,440. This credit is based on our finding that City Lights' labor and material costs were reasonable and that roughly half of all the lamps exceeded 100 hours for the benefit of the Suffolk team and the remaining half either did not exceed 100 hours of usage or were used for the benefit of GSA, its tenants, and its tenants' contractors and thus the cost for these lamps should be borne by GSA.

GSA Credit Item 8 – Deletion of Exterior Gypsum Board

GSA seeks a credit of \$9777 for deletion of exterior gypsum board at either floor 22 or 23, per GSA letter of January 7, 2008. We have reviewed the record and do not find that GSA has met its burden of proof and thus this item is denied.

GSA Credit Item 9 – Deletion of Loading Dock Angles

We grant this credit item in the amount of \$600 pursuant to the parties' agreement.

GSA Credit Item 10

GSA has withdrawn this item.

GSA Credit Items 11, 12, 39, and 41 (PCO 11)

GSA seeks a net credit for the deletion and addition of work relating to seismic anchor plates and frames and seismic bracing totaling \$108,131 among credit items 11, 12, 39, and 41. Suffolk initially proposed a net credit amount of \$4251 (later reduced to \$3187) which included credit amounts for deleted work and additional work by Suffolk and its subcontractors. GSA has not adequately supported its claim, but from the materials provided by Suffolk relating to the anchor plate demolition, we conclude that GSA is entitled to a net credit of \$18,151.

GSA Credit Item 13 (PCO 1061) – Deletion of Edge Angles

GSA seeks a credit of \$600 for deletion of edge angles depicted in detail 7/S-503 where the wall is above the angle. We deny this credit item because it has already been resolved in modification PS-67.

GSA Credit Item 14 (PCO 669) – Deletion of Furniture Feeds

GSA currently seeks a credit of \$200,358 for the deletion of three forty-eight-inch furniture feeds ("whips") for each of 277 three-junction box clusters throughout the building,

excluding floors 15 and 16, which it says were credited to GSA in modification PS-48, as well as the deletion of 277 junction boxes and associated conduit for such boxes. The contract originally required Suffolk to provide and install forty-eight-inch-long conduit extender cables (“whips”) to furniture partition systems at a total of 336 junction box “cluster” locations in the building. Each cluster consisted of three junction boxes. The three junction boxes in each cluster were labeled “AA” for normal 120V power, “AB” for a 120V isolated ground system, and “AC” for a telephone/data system. Suffolk was to install a forty-eight-inch whip (four feet of flexible conduit/cable) from the AA and AB boxes, but an empty forty-eight-inch flexible conduit from the AC boxes, to the furniture systems to provide power and telephone/data. The design team issued bulletin 45 in June 2007 and a series of subsequent revisions that effectively eliminated in the latter half of 2008 all the furniture whips and consolidated the three-junction box clusters into two-junction box clusters. City Lights had already roughed in the electrical cable and conduit from the electric rooms to the junction box clusters. GSA states that it and Suffolk resolved fifty-nine of the junction box clusters on floors 15 and 16 through modification 48 based on PCO 144B, leaving the furniture whips for the other 277 junction box clusters to be addressed here. In the final decision, the contracting officer estimated a price of \$100,000, based on \$298 per furniture whip times 336 locations. GSA now agrees that its adjusted claim at the hearing for \$509,200 was incorrect but it nonetheless argues that the credit pricing in PCO 144B from floors 15 and 16 applies to the deletion of scope here. We find that the PCO 144B scope deletion included other elements of work well beyond that involved here. The costs for furnishing and installing the furniture whips must be offset by the less substantial in-box termination work which was performed as a result of the deletion of the furniture whips. We grant credit item 14 in the amount of \$42,125.

GSA Credit Item 15 (PCO 670) – Terrazzo

We deny this credit item of \$579 because it has already been resolved in modification PS-67.

GSA Credit Item 16 (PCO 753) – Reduced Glass Thickness

GSA seeks \$11,146 for Suffolk’s approved substitution of 5/16-inch glass sidelites for the contract specified 1/2-inch glass sidelites. GSA calculates the amount by multiplying the total number of door frames (242) by a unit price of \$33.87 for the sidelites. Suffolk contends that \$4840 is the proper credit amount which is supported by a quote in the amount of \$4400 from the glass and glazing contractor, Tower Glass. Suffolk has submitted proposal documents in PCO 753 supporting its amount. GSA does not provide a glass supplier quote or the source of its unit price. Considering the record before us, we determine the Tower Glass estimate to be reasonable and thus grant GSA’s credit item in the amount of \$4840 for the reduced glass thickness.

GSA Credit Item 17 – Reduced Bond Costs

GSA claims that it should not have been charged subcontractors' bond premiums on the theory that GSA paid the general contractor's bond premiums and did not request subcontractor bond on change orders. GSA and Suffolk negotiated PCOs throughout the project and those changes were incorporated into contract modifications. GSA does not identify what changes included subcontractor bond premiums and which contract provisions make subcontractor bond premiums unallowable expenses. We find this claim unsupported and accordingly deny it.

GSA Credit Item 18 – CCIP Insurance

GSA seeks a credit of \$400,000 because GSA states that Suffolk based its bid on standard insurance policy prices but then switched to the more economical contractor controlled insurance program (CCIP). The bid and awarded contract were based on a lump-sum price and GSA has not argued that Suffolk failed to provide the contractually required insurance. We deny the claim.

GSA Credit Item 19

GSA seeks a credit of \$2000 for allegedly incomplete work on a cornice in the former postmaster's office. The claim is based on the spreadsheet credit claims in attachment 2 of the June 15, 2012 final decision, which states that a "cornice which includes plaster soffit, ceiling and ornamental frieze not replicated or built per field report agreement to conform to contract requirements." We find the claim unsupported and thus we deny it.

GSA Credit Item 20 – Mock Ups

GSA seeks a credit of \$1000 for Suffolk allegedly not performing carpet mock-ups required by specification section 09680.1.7. The claim is based on the attachment 2 spreadsheet, which states that "mock ups required by specifications were not performed – credit requested bulletin 28." We find the claim unsupported and thus we deny it.

GSA Credit Item 21

GSA seeks a credit of \$800 for Suffolk allegedly installing an incorrect door at location number 150. The claim is based on the attachment 2 spreadsheet, which states that "incorrect door installed – credit difference between an XA and XB door types." We find the claim unsupported and thus we deny it.

GSA Credit Item 22 – Missing Curb in Garage

GSA seeks a credit of \$1000 for Suffolk allegedly failing to install a section of curb in the garage. The claim is based on the attachment 2 spreadsheet, which states there was “missing curb in garage” and references drawing A-104 (N-Q on the 4 line). We find the claim unsupported and thus we deny it.

GSA Credit Item 23 – Masonry Jambs at Garage Windows

GSA seeks a credit of \$2000 for Suffolk allegedly failing to re-do several masonry jambs at the north side garage windows. The claim is based on the attachment 2 spreadsheet, which states “re-do of several masonry jambs at garage windows (north side)” as indicated on some unidentified punch list. We find the claim unsupported and thus we deny it.

GSA Credit Item 25 – Ornamental Metal Restoration

GSA seeks a credit of \$45,620 for ornamental restoration not being performed. The claim is based on the attachment 2 spreadsheet, which states: “multiple credits as indicated in log, ornamental restoration was not performed.” We find the claim unsupported and thus we deny it.

GSA Credit Item 26 – Doors

GSA seeks a credit of \$1000 relating to doors. The claim is based on the attachment 2 spreadsheet, which states: “multiple credits as indicated in GCA’s logs.” We find the claim unsupported and thus we deny it.

GSA Credit Item 29 (PCO 1062) – Field Report 122.05

GSA seeks a credit of \$2000 for incomplete work consisting of no stain being applied to certain wood paneling. In PCO 1062, Suffolk offered a painting credit of \$400. Modification PS-68 already captures a credit amount of \$400 for PCO 1062. Thus, we deny the credit claim.

GSA Credit Item 31

We deny this credit item of \$354 because it has already been resolved in modification PS-67.

GSA Credit Item 32 – MEP Coordination Drawings

GSA seeks a credit of \$36,000 for MEP coordination drawing resubmittals that GSA says were never provided after a “revise and resubmit” notation. Suffolk contends that it submitted the coordination drawings. Because GSA has not identified which submittals needed resubmission, we find the claim unsupported and thus deny it.

GSA Credit Item 33 – Incorrect Paint Colors

GSA seeks a credit of \$4000 for “incorrect paint colors as indicated in GCA’s logs.” The attachment 2 spreadsheet also states: “Multiple credits for incorrect work (Stairs B and C) as indicated in GCA’s log. Owner agreed to accept wrong paint colors and leave as is in lieu of repainting.” We find the claim unsupported and thus deny it.

GSA Credit Item 36 (PCO 620)

We deny this credit item of \$1811 because it has already been resolved in modification PS-67.

GSA Credit Item 37 – Sidewalks

GSA seeks a credit of \$14,000 for alleged incomplete work of not replacing some existing sidewalks. The Attachment 2 spreadsheet adds: “Calculated based on total square feet installed vs. indicated on contract drawing.” GSA does not provide any support for this claim and thus we deny it.

GSA Item 38 (PCO 127I) – Bulletin 49 Sprinkler Heads

GSA currently seeks a credit of approximately \$38,000 for deleted fire protection work on floor 14. GSA argues that bulletin 49 deleted sixty concealed pendant sprinkler heads and changed 188 sprinkler heads to upright pendent type heads. Suffolk’s fire protection subcontractor, Northstar, in its credit proposal, indicates that ten pendant heads were deleted by the bulletin and 205 heads were changed to the upright type. In its PCO 127I corresponding to this credit item, Suffolk includes Northstar’s credit proposal of \$11,068. Neither party provides a breakdown-by-drawing for us to analyze. We will accept GSA’s count of sixty heads being deleted and 188 heads being changed to the upright type. Applying these quantities to the unit prices provided by Northstar, which we find to be reasonable, we conclude that the record supports a credit of \$26,402 for that deleted and changed scope. GSA also asserts that certain small-branch distribution piping should also be included in Northstar’s credit proposal. GSA does not indicate locations, quantities, or

pricing for any claimed scope reduction, and thus we find this portion unsupported. GSA is entitled to a total credit including Suffolk markup of \$26,973.

GSA Credit Item 40 – Acoustical Ceiling Trim

GSA seeks a credit of \$8000 for the installed acoustical ceiling trim at all windows not being compliant in some unspecified manner with specification 09810. We find this claim unsupported and thus we deny it.

GSA Credit Item 42

We deny this credit item of \$2557 because it previously was resolved in modification PS-67 for this same amount.

GSA Credit Item 43 – Finish Painting and Clean-up on Floor 3

GSA seeks a credit of \$15,000 for unfinished painting and clean-up on floor 3. The Attachment 2 spreadsheet refers to a “GCA punch list issued on 1/4/2010 with 29 items,” but no other supporting information is provided. We find this claim unsupported and thus we deny it.

GSA Credit Item 44 (PCO 646) – Door Leaf

GSA seeks a credit of \$5394 for the deletion of one active door leaf at the main entry doors at Congress Street. We deny this credit item because it was previously resolved in modification PS-67.

GSA Credit Item 45 (PCO 852E) – Deleted UPS Shaft Wall

GSA seeks a credit of \$43,267 for a UPS shaft wall that was deleted from Suffolk’s scope of work through RFP 166 and bulletin 116. Suffolk’s contemporaneous proposal from Component Assembly Systems in the amount of \$10,497 provides a reasonably detailed itemization of labor categories and hours, and materials, and Suffolk mark-up brings the credit amount to \$11,547. GSA offers no itemization of labor and materials. We grant this credit item in the amount of \$11,547.

GSA Credit Item 46 (PCO 1050) – Pass-through Door at Overhead Door

GSA seeks a credit of \$5000 for the deletion of the pass-through door at one of the overhead doors. Suffolk’s contemporaneous proposal from Arm-R-Lite shows a credit amount of \$900 for not supplying the door. Suffolk’s mark-up brings the credit amount to

\$1004. GSA offers no itemization of costs. We grant this credit item in the amount of \$1004.

GSA Credit Item 47 (PCO 1048B) – DF-1 Light Fixtures

The parties have essentially agreed on the credit due for this item as set forth in Suffolk’s PCO 1048B package. We grant it in the adjusted amount of \$5575.

GSA Credit Item 48 – Door Hardware System

GSA seeks a credit of \$26,000 for the labor to cross index the door hardware system (1500 keys according to GSA) and place the keys on markers and hooks in cabinets. The contracting officer’s attachment A spreadsheet lists 200 hours at \$50 per hour for the effort of cross indexing the door hardware system, and 320 hours at the same rate for placing keys on markers and hooks in cabinets. We find the claim to be unsupported and thus deny it.

GSA Credit Item 49 – As-Built Drawings

GSA seeks a credit of \$25,000 for costs to complete as-built drawings and other contract deliverables. Suffolk states that it submitted the as-built drawings via transmittals. GSA does not identify the contract deliverables it has not received. We find this claim unsupported and deny it.

GSA Credit Item 50 – Allocation of EPA Fine

GSA seeks a credit of \$15,000 for a share of the fine paid by GSA for a “EPA fine per allocation agreement dated November 4, 2010.” We find no supporting documentation for this claim beyond the statements in the attachment 2 spreadsheet and thus deny the claim.

NB Kenny Claims

In CBCA 2953 and 5006, Suffolk seeks on behalf of NB Kenney equitable adjustments on a number of claims for additional labor, materials, supervision, and loss of labor productivity incurred by NB Kenney. We address each of the claims below.

(i) PCO 212R – Flex Hoses and Guides

Suffolk seeks \$359,823 for the additional labor and material costs of installing flex hose connections in the 1-2-3 and 4-5-6 shafts, and additional guides and steel supports in the C shaft. The design team changes in the shafts arising from RFI 503 were the cause of the complex work to install the flexible hose connections and guides. NB Kenney submitted

itemized costs totaling \$114,147 under its change order 118, composed of labor to revise the piping outside of the shaft on floors 17 through 20, and labor and material for added offsets of piping in both the 1-2-3 and 4-5-6 shafts. NB Kenney submitted itemized costs totaling \$213,607 under its change order 148 for the added staging/scaffolding and the added guides and steel supports. This change order includes \$132,000 paid to a sub-vendor for scaffolding/staging rental, materials, and labor to erect and later remove the staging/scaffolding in the shaft, which allowed the work of installing the guides and steel supports to be done safely in the shaft spanning twenty floors. The installation of the guides and support steel totaled \$81,607. The costs are itemized in twenty-six line items. This work was necessary because it was determined that the shaft structure was unable to handle the stresses of the designed mechanical system within the C shaft. The resulting method of expansion control and stress management required redesign to add multiple additional pipe guides and structural steel supports. Although GSA appears to argue that this claim was covered by prior contract modifications, or was base contract work, we have reviewed modification PS-37 and the other related modifications and find that this work was not covered by any prior modification and was work required due to substantial design changes in the shaft. We find that the record supports granting PCO 212R in the amount of \$359,823.

(ii) PCO 212Q – Premium Time in Shafts

Suffolk seeks \$445,415 in premium time costs for mechanical labor, overtime and second shift mechanical labor, for the period November 2008 through May 2009. The premium time costs incurred by NB Kenney, primarily in the shafts, were recorded in contemporaneous work tickets. NB Kenney states that the premium time was incurred due to the major design changes which caused a spatially restricted work environment in the shafts, and a significant period of delay compressing the schedule, along with GSA's direction to accelerate the work and mitigate any delays to GSA tenants' being able to occupy the building. GSA argues that it has previously paid for NB Kenney premium time in prior modifications and that any additional amounts for premium time are barred by those modifications. NB Kenney has shown total premium time costs of \$714,671, and prior payments by GSA of \$310,000 for premium time under modifications, including PC-36 and PS-37. There is no question that during performance, GSA recognized that the critical path delays caused by the design changes had to be mitigated by having the Suffolk team accelerate performance. We conclude that the language of modification PS-37 expressly allows NB Kenney to make a subsequent claim for this type of time-related cost impact if properly supported. Based on our review of the record, we find supported premium time costs totaling \$375,000, and grant PCO 212Q in the amount of \$412,500 which includes mark up.

(iii) Loss of Labor Productivity in the Shafts

NB Kenney seeks \$720,389 for loss of labor productivity in the five mechanical shafts as result of the changes implemented in the RFI 503 series. The experts who testified for Suffolk and NB Kenney, Mr. Stevens and Mr. Stynchcomb, determined through analysis of labor records, the labor cost to perform the original scope of work, and the actual labor cost to perform the work as changed, that NB Kenney suffered a loss of productivity in the shafts of 8951 hours, equating to \$571,000. The remainder of the claimed amount is overhead, profit, and bond costs. Although GSA argues that NB Kenney did not show that these inefficiencies were caused by the shaft design changes, we do not agree. The record compellingly demonstrates that the inefficiencies in NB Kenney's work was caused primarily by the shaft redesign and the substantial impact on the mechanical work in the shafts as a result of the changes. GSA also argues that modification PS-37 bars NB Kenney from seeking loss of productivity costs. We conclude that the language of PS-37 is consistent with the testimony of the witnesses that the parties agreed to a reservation of the right of NB Kenney to pursue its delay and impact damages arising from the changes to the shafts. Nor do any other modifications bar recovery here. Based on our review of the record, we make some additional reductions to the labor productivity loss total due to inefficiencies not caused by GSA and grant this claim in the amount of \$620,000.

(iv) Loss of Labor Productivity in Overhead Ceiling Work

Suffolk and NB Kenney seek \$991,157 for additional mechanical and plumbing labor and loss of productivity arising from the design team's failure to properly coordinate overhead ceiling drawings and the numerous changes that were issued by GSA through RFI responses and other directives, including the RFI 609 series, the RFI 416 series, and the RFI 503 series. During the preaward period in the spring of 2005, GSA noted that the contract documents were let to bid "without a conscientious final review," which could eventually lead to "costly changes during the construction phase." We agree with Suffolk that this lack of a coordinated design impacted the trades working in the interstitial spaces. The record also documents numerous other significant changes, including the shaft changes, that disrupted the flow of work on the floors.

We find the measured mile analysis to be generally reasonable in using the average productivity of floors 5, 6, and 8 as the standard un-impacted measure of productivity for NB Kenney. The type of piping was similar on all the relevant floors, including the ratio of large to small bore piping. Mr. Stevens analyzed approximately 19% of NB Kenney's total manhours to establish baseline productivity and the average rate of 0.55 hours per lineal foot for installed pipe on the un-impacted floors is supported. Messrs. Stevens and Stynchcomb determined NB Kenney's lost labor productivity, by floor, for work performed on floors G through 3, 7, 9 through 13, 15 through 16, and 18 through 19, finding that NB Kenney

experienced a total of 11,714 lost hours in the overhead ceiling spaces. We reduce this total by 20% due to inefficiencies on the part of NB Kenney and the Suffolk team. Multiplying 9371 hours by the average straight-time burdened labor rate of \$69.27, we find NB Kenney incurred productivity losses totaling \$649,129. With markups, we grant this claim in the amount of \$778,955.

(v) Direct Cost Claims in the Basement and Subbasement

a. Additional Pipe Anchoring

Suffolk and NB Kenney seek \$151,155 for additional structural steel supports for pipe anchoring in the basement and subbasement. The subterranean levels of the building housed mechanical equipment and piping systems that fed horizontal branch piping on each level. The piping systems in the basement and subbasement were primarily four-inch and eight-inch pipes that were to be anchored to the concrete ceilings in that area. However, the existing concrete was deteriorated and otherwise inadequate to support the anchors, hangers, and piping. Where the ceilings were inadequate, NB Kenney instead had to design, fabricate, and install free-standing (floor-based) steel pipe support systems and steel support systems attaching to the walls in order to support the piping. GSA argued at the time, and now, that the installation of additional structural steel in the basement was a “means and methods” issue for which NB Kenney was responsible. We do not agree. The concrete ceiling conditions caused NB Kenney to design a new steel support system with steel structural members that a reasonable contractor could not have anticipated when bidding this work. We also do not agree with any suggestion by GSA that modification PS-37 settled this direct cost claim. We have reviewed the supporting labor and material costs and find that the record supports granting the claim in the amount of \$151,155.

b. Changes in Piping Size and Quantity

Suffolk and NB Kenney seek \$163,884 for furnishing and installing greater quantities and different sizes of pipes than originally specified by GSA as reflected in RFI 983. Suffolk/NBK memorialized the additional condensate piping needs in the basement in RFI 983R1, as follows:

As requested in RFI 983 answer there are two attached 36X48 colored coordinated drawings for the coordinated 4” condensate line from shafts 1-3, 4-6, B-1 and C-2. All four condensate drains are coordinated to the RFP 47 rain water leader relocation. Each new run of 4” pipe condensate piping has approximately 50’ to 120’ of extra piping. All extra piping is highlighted on the drawings attached. Please note that there will be additional costs associated with this change. Please advise.

Although it may be that NB Kenney installed additional condensate piping as a result of a relocation, the method of calculating its costs suggests that the additional piping being claimed goes beyond the condensate piping discussed in RFI 983. We agree with GSA that this claim does not clearly tie to changes made by GSA's design team and thus we deny the claim.

c. Heat Exchanger Piping

Suffolk and NB Kenney seek \$19,701 in connection with the design of steam piping in the basement. NB Kenney states that the original contract documents required it to install the steam piping such that it would be suspended from the ceiling, but there simply was not sufficient space available. As a result, NB Kenney was requested by GSA to identify an alternate way to install the piping and allow it to fit given the existing conditions. NB Kenney incurred field labor and engineering department labor redrawing and field measuring to make the system work in the limited space. The solution was to shift the heat exchangers through a ninety-degree turn, build stands to support the weight of the large steam piping, and build separate steam stations for each of the heat exchangers. We credit Mr. Nims' testimony that he received direction from GSA to solve the problem. The NB Kenney direct costs of \$16,176 are reasonable. We grant this claim, with markups, in the amount of \$19,701.

d. Radiant Heat Panels

Suffolk and NB Kenney seek \$209,687 for additional labor in preparing the radiant heat panels for final installation in ceiling grids. NB Kenney discovered that the spaces for installing radiant heat panels varied from one floor to the next, but was generally between four and nine inches. This was insufficient room to perform the normal anticipated installation and the drawings did not alert bidders to this condition until the contractor gained access to the space between overhead drywall or drop ceilings and the structural floors above. There are approximately 600 radiant heat panels that had to be installed. Radiant heat panels are made of sheet metal with hot water pipes running through them to heat up the panel and act as a draft-stop. As a result of this limited space within which to make the final connection from the supply pipes to the radiant heat panels, NB Kenney had to pre-solder a section of pipe to the radiant panel, pre-insulate that piping, fit pipes into the specified spaces for later final connections, and test the additional joints needed to make the system fit. NB Kenney does not seek compensation for the labor needed to make final connections to branch piping because that is part of the base contract scope. The record supports entitlement here, and NB Kenney determined its damages using its average hourly labor rate, multiplied by the number of panels installed and the estimated labor hours expended to perform additional activities for each panel. NB Kenney claims labor costs of \$172,171. We have reviewed the record and find costs supported in the amount of \$149,000 inclusive of markups.

(vi) Loss of Labor Productivity in the Basement and Subbasement

Suffolk and NB Kenney seek \$863,997 for the loss of labor productivity in its work in the basement and sub-basement mechanical areas. Mr. Nims testified that numerous design changes and concealed conditions caused NB Kenney a significant loss of labor productivity. He identified the following impacts: limitations on the use of a slab opening between the basement and sub-basement for transporting equipment and materials, changes arising from the inadequate steam station support structure and heat exchanger support structure, the change involving extra insulation of condenser water piping, and the redesign of the structural supports for the piping systems due to spalling/deteriorated concrete ceilings. Messrs. Stevens and Stynchcomb prepared an analysis of loss of labor productivity in the basement using the Mechanical Contractors Association of America (MCAA) factors of reassignment of manpower, crew size inefficiency, site access, dilution of supervision, and overtime. For each week of work in the basement, they applied an MCAA inefficiency percentage depending on severity and type of impacts. Mr. Stevens determined that NB Kenney expended a total of 29,194 hours in the basement through late April 2009. Mr. Stevens and Mr. Stynchcomb opined that NB Kenney suffered loss of productivity in the basement totaling 10,212 hours. We conclude that the record supports finding that the changes impacted the flow of NB Kenney's work in the basement and sub-basement and caused inefficiency. We find that the record supports a total of 7300 hours for labor inefficiency. With markups, we grant this claim in the amount of \$608,000.

(vii) Additional Construction Coordination

Suffolk and NB Kenney seek \$102,787 for additional coordination work done by NB Kenney to address issues at the request of GSA and the design team that was not already reimbursed in coordination PCOs. Because NB Kenney does not identify the specific requests nor the hours associated with such requests, we deny the claim as not supported by the record.

(viii) Additional Supervision

Suffolk and NB Kenney seek \$333,986 for additional costs paid to a general superintendent and two superintendents for the work in the basement and subbasement. NB Kenney originally planned to use Mr. O'Brien as a general superintendent, responsible for supervising the on-site work force and foremen. NB Kenney initially estimated that Mr. O'Brien would spend half of his time as a "working foreman" (responsible for actually working with tools and installing piping) and the other half as a foreman in a purely supervisory role. Due to the many directed and constructive changes, and the increased number of workers on the project, NB Kenney states that Mr. O'Brien became a purely supervisory foreman for the entirety of the project. The other supervisory personnel, Messrs.

Cartabona and Konde, were non-union employees who were dedicated full-time to the project. Mr. Cartabona was the project manager in charge of the commissioning process. Like Mr. O'Brien, NB Kenney initially planned on using half of Mr. Cartabona's time for non-working supervision and the other half for working supervision, but was required to commit him full-time to supervisory activities. Mr. Conde was an assistant project manager hired to assist Mr. Cartabona manage the close-out process. NB Kenney sent Mr. Conde to the site to assist with the commissioning and close-out process. NB Kenney seeks an equitable adjustment for the portion of the hours it had planned for these superintendents to be performing mechanical work rather than supervising. Although there might have been a basis for NB Kenney to recover additional supervision costs for extended performance arising from the changes discussed earlier, we find that the record does not adequately support the claim presented here.

(ix) Added General Costs

Suffolk and NB Kenney seek \$197,198 for unpaid general conditions costs of completing additional work. This claim includes added costs for line items like trash and hauling, tools, coring, hoists, and other incidentals of NB Kenney's increased labor effort. As stated above for the supervision claim, we have reviewed the record and do not find this claim supported with extended general conditions for the specified extended performance. We deny this claim.

(x) CDA Interest on NB Kenney Claim

Suffolk and NB Kenney seek CDA interest on the amounts recovered. We find that the CDA interest began to accrue on February 11, 2015, the date that the contracting officer received NB Kenney's revised claim. The principal amount awarded above totals \$3,099,134 and the parties shall compute the CDA interest based on that amount.

City Lights Claim

City Lights' claim is the subject of CBCA 3596, and consists of fourteen claim elements, which we discuss in order.

(i) Increased General Conditions Costs

Suffolk and City Lights seek \$812,494 for additional general conditions costs. City Lights divides its general conditions claim into two time periods, a claim for \$522,426.29 for the period December 1, 2008, through May 29, 2009, and a claim for \$379,006.95 for the period May 29, 2009, through September 25, 2009.

For the first period, City Lights links its increase in general conditions costs to being directed to accelerate on October 14, 2008 (when GSA presented to Suffolk the May 29, 2009 revised completion date to accommodate GSA tenants' occupancy in the fall of 2009), resulting in increased overtime and the use of a second shift. City Light's supervisory costs increased as a result of City Lights employing additional tradesmen for the project, as well as implementing a second shift. However, modification PS-37 provided City Lights additional trade overtime and premium time of \$177,314 and associated general conditions costs of \$76,800 covering the prior acceleration incurred by City Lights and whatever additional acceleration was needed to meet the May 29, 2009, completion date. Thus, City Lights' general conditions costs arising from the acceleration due to the shaft delays were settled in PS-37. It is clear that City Lights was performing change order work in the period between December 23, 2008, and May 29, 2009, that was not covered by PS-37. Based on the value of that change order work, the record supports granting additional general conditions costs of \$182,000.

For the second time period of May 29 to September 25, 2009, City Lights argues that it incurred additional supervisory costs due to impacts to the electrical work resulting from changes and delays that stretched its work beyond May 29 and required it to have its supervisory staff working beyond the time it would have but for the changes to the project work. GSA argues that this claim is barred by the Severin doctrine because the subcontract between Suffolk and City Lights includes a no damages for delay clause. We reject GSA's argument as this pass-through claim is properly brought pursuant to the terms of the prime contract. Having reviewed the record and the supervisory costs incurred, we grant general conditions costs of \$95,000.

(ii) Additional Material Handling Costs

From the beginning of the project until December 1, 2008, City Lights incurred material handling costs at the rate of \$579 per day. City Lights expected its material handling rate to remain relatively constant until the May 29, 2009, revised completion date. However, due to increased extra work during this period, City Lights' actual material handling costs increased to \$284,880. Suffolk and City Lights seek the marked-up difference in the expected costs versus the actual costs, \$200,476. GSA correctly argues that extra material handling due to acceleration covered by PS-37 is not recoverable. Based on our review of the record and the non-PS-37 changes affecting City Lights' work, we grant additional material handling costs of \$40,400.

(iii) First Shift Overtime and Second Shift Premium Time Costs

Suffolk and City Lights seek \$168,761 consisting of \$231,922 for additional overtime hours and \$286,839 for premium time second shift hours due to the volume of change order

work after December 23, 2008, less \$350,000 for which City Lights has previously been reimbursed by Suffolk under change orders. The amount sought is not overtime and premium time incurred in connection with the actual change order work, as City Lights has already been reimbursed for its overtime and premium time costs incurred in the PCOs through modifications or PCOs granted by us. Rather, the basis of the claim is that because City Lights had to perform so much additional change order work, this added work required City Lights to incur more overtime and premium time in its regular work than was contemplated and paid for under modification PS-37. We find that the record supports a recovery of \$47,675, inclusive of markups.

(iv) Labor Loss of Productivity Costs

Suffolk and City Lights seek \$4,935,631 for labor loss of productivity costs. City Lights asserts that its original estimated scope of electrical work—based on the drawings and specifications—would require 92,722 labor hours to complete by the original substantial completion date. As of February 1, 2008, City Lights had expended 50,527 man-hours and was only 36.7% complete. In December 2008, City Lights was just over 80% complete. It was certainly feasible for City Lights to complete its work by the May 29, 2009, completion date if there had been no more changes and impacts to its work. Although City Lights had been granted an additional 7173 labor hours budgeted from approved change orders, it had requested thousands of additional hours that were in pending change order requests. City Lights asserts that its work was greatly impacted by an unexpected influx of change orders, directives to accelerate the work through the use of overtime and second shift, differing site conditions in the shafts, and directives to complete work originally anticipated to be performed by a GSA security contractor, who would be under a separate contract with GSA.

City Lights asserts these changes and changes to other trades' work preceding City Lights' electrical work resulted in it performing work on every floor in the building at a point when it had expected all of its work to be confined to the bottom floors. City Lights estimates that GSA is responsible for an adjusted 61,672 labor hour overrun that represents a loss of productivity. This loss of productivity labor hour total was multiplied by the average straight time wage paid by City Lights during the same time period to arrive at the claimed amount.

We believe that the record shows that City Lights incurred substantial inefficiencies during the October through December 2008 period when it was accelerating performance and its labor force was working significant overtime and second shift work to make up for delays to the project from the shaft redesign, the coordination design changes, and the demolition changes, all of which impacted the other trade work preceding electrical as well as the electrical work directly, causing a fracturing of City Lights' planned method of performance. Those inefficiency costs, however, were released by the terms of modification PS-37, which

resolved time and time impact claims and barred inefficiency and loss of productivity claims. Also released were the inefficiencies arising from the overtime and premium time needed by City Lights to complete its performance of the contract, including changes made to the contract prior to December 23, 2008, and the changes identified in paragraph E of PS-37. Thus, City Lights may only recover for demonstrated inefficiencies caused by changes to the work after December 23, 2008. We agree with City Lights' position that changes to the other trades which preceded City Lights' electrical work had an impact on City Lights' follow-on work. The electrical and non-electrical changes rendered City Lights' performance of base contract work and change order work more inefficient, aggravating the difficulties already inherent in the accelerated performance of City Lights to meet the May 29, 2009, revised completion date. Excluding inefficiency costs released by PS-37, and making adjustments for inefficiencies not caused by GSA, we conclude that the record supports awarding inefficiency costs including markup of \$525,000.

(v) Door Hardware

Suffolk and City Lights seek \$308,440 for pulling wire and terminating devices associated with the door card readers. Drawing QY001 provided that: "All card readers, intercom, intercom master noted as GFGI [government furnished, government installed] are for future smart card system and are not part of this Security Contractors scope of work. Wiring and devices to be provided under a separate project." Specification section 01100 provides that "A separate contract may be awarded for Telecommunication Systems, Security Systems, Audio Visual Systems, and Systems Furniture." Drawing E-505 originally showed one detail for each door in the building, labeled "typical conduit requirements, single hollow metal door for card reader configuration." Mr. Callahan of City Lights testified that the drawing shows a junction box at the top of the door with note 1 in a hexagon symbol which indicated that City Lights would provide power to the box in the form of a standard voltage electrical cable. There was no indication that City Lights was also to provide low-voltage cabling for the door because he understood that the drawings indicated that GSA was to provide that. However, the design team issued bulletin 45 and revisions which introduced ten distinct details on drawing E-506 for the doors that required additional conduit drops and back boxes. While GSA has already paid for the cost of the new conduit, junction boxes, and pull strings to account for the variety of new door configurations in bulletin 45, it refused to pay for the additional wiring that went into the new conduit. GSA argues that specification section 8710 and 16050 required the wiring as part of the base contract. This argument is illogical, as GSA agrees that it paid for the added conduit, boxes, and pull string through change order. The new wiring in the new conduit was also a change. City Lights is entitled to recover its added costs for the door hardware wiring and we credit Mr. Callanan's estimates for calculating the credit applied to the costs for the portion of the work that was within the base contract scope. We grant the claim in the amount of \$308,440.

(vi) Automated Assistance System

Suffolk and City Lights seek \$411,622 relating to the “automated assistance system.” Each party cites to different scopes of work relating to this issue. There were two intercom systems specified for the project, the “Intercommunication Equipment” system (called for in specification section 16727 and shown on the electrical drawings) and the “Emergency Call System” (called for in specification section 17930 and indicated on the security system drawings). The parties agree that the Emergency Call System was deleted by solicitation amendment 4. Bidder question 85 found in that amendment states: “There is a conflict between the spec and the drawings. Section 17930 calls for an Emergency Call System. The specification intent seems to specify an intercom system. However, drawing QY001 states that the intercom stations and intercom master stations are government furnished government installed (GFGI). Is Section 17930 part of the security contractor’s scope?” The response states: “The Intercom System specifications 17930 have been removed from the Division 17 Section.” Question 86 states: “What brand of access control system is intended to connect the government furnished government installed card readers that are future?” The response states: “The Access Control System specifications have been removed from the Division 17 Section. These systems may be specified at a later date. The Security Contractor is to provide a Radionics intrusion detection system. No Exceptions. Response: GCA [Goody Clancy] to respond.” The intercommunication system specified in section 16727 is described in 16727 part 1.3 as follows: “The intercommunication system should provide emergency communication from the stairwell to a monitored location.” The electrical drawings are stated to show the locations. In contrast, the emergency call system in section 17930 describes the system as “continuously supervised and provide for open voice, selective calling type voice communications from substations as indicated on the drawings, to the new master station located at the Lobby Desk.” The location of the substations is shown on the drawings.

City Lights and Suffolk have not clearly shown from the record that the work claimed here to be extra work involved wiring and furnishing devices as depicted in the security drawings (substations to lobby desk) rather than wiring and devices depicted on the electrical drawings (stairwells to a monitored location). The former would be extra work while the latter would be base contract work. Because City Lights and Suffolk have not demonstrated from the record that City Lights installed the emergency call system as shown in the deleted section 17930 specification and QY security drawings, we deny the claim.

(vii) Exit Sign Relocation

Suffolk and City Lights seek \$38,116 for relocating exit signs. City Lights asserts that it was directed to relocate certain exit signs from the locations designated in the contract drawings. This work was performed largely in April and May 2009. City Lights claims

incurred direct labor of approximately \$28,000 required to relocate the designated exit signs and their wiring. However, GSA asserts that modifications 57 and 67 already paid City Lights for the relocation. We have reviewed these modifications and PCO 846 and find that the work covered by PCO 846 (performed by K&H Electrical and other trades) differed from that performed by City Lights at issue here. Based on our review of the record, we grant this claim in the amount of \$35,000.

(viii) Cost of the Elevator Delays

Suffolk and City Lights seek \$324,727 for the cost of elevator delays. Contrary to the original plans, City Lights argues that it worked on most floors during the critical work periods. As a result, City Lights encountered delays when moving its workers to and from the floors to access the work. City Lights tracked the delay time in the daily reports. GSA asserts that the elevator transportation fell under Suffolk's responsibility for vertical transportation and that the calculation of elevator delay costs is improper. We agree with GSA that applying a factor of 0.452 hours per man-day against total City Lights man-days of 8388 is not an appropriate measure of costs. We find that elevator delays should only be applied to the portion of the work that related to change order work and conclude that the record supports costs of \$30,500.

(ix) CCTV Supply and Installation

Suffolk and City Lights claim \$157,024 for performing work under specification section 17920 relating to the closed circuit television (CCTV) system. City Lights argues that it was required to provide the electrical conduit and pull strings for the CCTV system and that GSA's security contractor was to provide the actual CCTV devices and wiring. Paragraph 1.2 of specification section 01100, entitled "Work Under Other Contracts," provides:

- A. Concurrent and/or Future Work: Separate contract work may be awarded by the Government for additional work to be performed at the site that will be conducted either simultaneously with the Work of this contract or after Substantial Completion of the Work of this Contract. Interface work under this Contract shall be satisfactorily conducted in compliance with the schedule requirements of the related concurrent separate contract work. Preparatory activities under this Contract shall be satisfactorily completed prior to the scheduled related future separate contract work.

1. A separate contract may be awarded for Tele-Communication Systems, Security Systems, Audio Visual Systems, and Systems Furniture.

The provision adds that the contractor, contract number, and contracting officer for such separate contract is “TBD.” Under drawing QY-001, entitled “Security Index, Notes & Legend,” the security notes indicate that the “Electrical contractor shall furnish and install all conduit, junction or pull boxes, etc. as indicated and/or required for complete installation,” “shall furnish and install a pull wire in all empty conduit,” “provide all coring and fire stops,” and “coordinate the installation of the security junction boxes with the electrical outlet boxes.” Specification section 17920 is the specification for the CCTV system. The specification repeatedly refers to the “Security Contractor” and shows that this security contractor is to deal directly with the contracting officer on the performance of the CCTV work. GSA cites part 3.A.1 of section 17920, which states: “Installation shall include the delivery, storage, setting in place, fastening to the building structure, interconnection of the system components, alignment, adjustment and all other work whether or not expressly described herein, which is necessary to produce tested and operational systems” According to GSA, the security contractor referenced here was meant to be a Suffolk security contractor, not GSA’s security contractor. GSA in fact hired a security contractor under a contract priced at over \$2 million who performed security systems work in the building. We find that City Lights’ interpretation of the contract documents was reasonable in interpreting its scope of work to include only the work defined for the electrical contractor. The incorporation of section 17920 into City Lights’ subcontract is not inconsistent with this interpretation as there is an electrical scope of work which was applicable to City Lights for the CCTV system. GSA does not challenge the quantum. Based on our review of the record, we grant the claim in the amount of \$157,024.

Suffolk General Conditions Claim

Suffolk seeks \$2,265,986 plus interest for extended general conditions costs for the period of delay between May 29, 2009, and March 31, 2010, the final completion date. Suffolk argues that the extensions of time granted by GSA in various modifications beyond May 29, 2009, were the result of critical path delays arising from the EPA tenant changes and other express and constructive changes for which GSA is responsible. GSA argues that Suffolk was responsible for concurrent delays during this period in performing base contract work, and that the bilateral modifications included general conditions reimbursements and contain releases which bar Suffolk from recovering additional general conditions costs.

The first time period at issue is from May 29 (the revised completion date) through June 18, 2009. Modification PS-50 extended the completion date by twenty days. GSA knew that EPA had significant changes to its tenant spaces coming and GSA states that it

“was willing to give Suffolk an additional 20 calendar days to see how that situation was going to work out.” GSA had temporarily deleted EPA tenant space construction in January 2009, knowing that systems could not be completed until the EPA changes to that space were incorporated, which would not happen until months later. Although GSA argues that Suffolk was significantly behind schedule, the record demonstrates that the contractor team had made substantial accelerated progress in performing base contract work since December 23, 2008, and had performed and was continuing to perform significant change order work since December 23, 2008. That change order work affected the completion of base contract work, including rough-in, finishing, testing, commissioning, and punchlist. We find no credible support for any contractor concurrent delay during this period. Although GSA argues that PS-50 bars a claim for general conditions, the record shows that the parties had agreed that Suffolk’s general conditions costs were an issue in controversy to be resolved at a later time.

The second time period at issue is from June 18 through August 21, 2009. Modification PS-52 extended the completion date by sixty-four days and increased the contract price by \$1,389,786, which included general conditions costs of \$123,000. The work related to PCO 852A for EPA tenant improvement work of installing UPS equipment, power distribution units and module, automatic transfer switch, heat pump on the floor 13 mezzanine, and vertical and horizontal cable trays on floor 2 and related demolition/restoration work. GSA and Suffolk agreed in this modification that the general conditions included in the price were those paid for by EPA relating only to this EPA work and not project-wide general conditions. At the time the modification was executed, GSA was on notice that Suffolk would be claiming project-wide general conditions costs for this time period and both parties recognized that it was an issue in controversy. GSA argues that Suffolk had the choice of whether or not to perform this work, but in reality GSA determined that it was in the Government’s best interest to have Suffolk perform this work to preserve its systems warranties. Performing this change order work and other change order work during this period had the effect of delaying completion of finish work, testing, commissioning, and punchlist work. Again, we find no credible support for any contractor concurrent delay during this period, and the record supports finding Suffolk entitled to general conditions costs for this period, less the general conditions costs paid for by EPA.

The third time period at issue is from August 21 through November 20, 2009. Modification PS-54 extended the completion date by ninety-one days and increased the contract price by \$2,357,513, which included general conditions costs of \$480,000. The work related to PCO 778 and RFP 162 (dated May 22, 2009), which included substantial EPA first and second floor tenant improvement work. GSA and Suffolk agreed in this modification that the general conditions included in the price were those paid for by EPA relating only to this EPA work, and not project-wide general conditions which remained an issue in controversy. GSA argues as it did for the PS-52 work that Suffolk had the choice of whether or not to perform this work, but again GSA determined that it was in the

Government's best interest to have Suffolk perform this work to preserve its systems warranties. Performing this change order work and other change order work during this period had the effect of delaying completion of finish, testing, commissioning, and punchlist work. We find no credible support for any contractor concurrent delay during this period and the record supports finding Suffolk entitlement to general conditions costs for this period, less the general conditions costs paid for by EPA.

The fourth time period at issue is from November 20, 2009, through January 31, 2010, which was the subject of modification PS-60 (which extended the completion date by seventy-two days) and modification PS-65 (which extended contract completion by fifty-nine days, through March 31, 2010). Modification PS -60 was stated to be a no-cost modification for administrative purposes to facilitate the processing of contractor payment applications, and modification PS-65 increased the contract price \$859,295 for change order work involving numerous PCOs. GSA argues that Suffolk had a skeleton crew on-site performing base contract work such as completing the building maintenance system, commissioning, and punchlist, and that Suffolk is responsible for any delays. Suffolk states that this change order work and other changes kept Suffolk on the project for the extended period. GSA and Suffolk could not agree on general conditions costs, and since the tenants were not paying for these changes, GSA and Suffolk deferred resolving the general conditions issue until after project completion. The record supports finding that the extended period of performance resulted from a significant number of changes which in turn delayed the completion of related testing, commissioning, and punchlist work. The record supports finding Suffolk entitled to general conditions costs for this period, though at a significantly lower daily rate than prior periods.

Adjusting for general conditions paid by GSA and its tenants, and for a share of such costs in the disputed and approved change orders, we find Suffolk entitled to \$1,135,000.

Cistern Leak Claim

Suffolk seeks payment of \$994,614 for repairs related to a leak of the building's cistern system that occurred during a major storm on July 10, 2010. GSA claimed that Suffolk had a nonconforming pipe coupling in the cistern system which failed during the storm, the coupling failed to meet a ten-foot head of water requirement, and the cistern tanks should not have had vents. GSA also claims Suffolk is liable for \$698,914 in additional cleaning costs paid by GSA to third-party contractors. For the reasons discussed below, we find that Suffolk is entitled to payment for the cost of repairs related to the cistern system leak that GSA directed it to perform, and is not liable for GSA's asserted third-party costs.

On the afternoon of July 10, 2010, personnel of GSA's building facilities management contractor discovered flooding and water damage on the third, second, and first floors of the

building. The leak was traced to the third floor mezzanine, where a facilities contractor saw that a coupling unit that joined rain leader piping to a cistern tank had separated and leaked rainwater into the mechanical room. At the direction of GSA, the facilities contractor and two other contractors began immediate remedial work. GSA notified Suffolk of the water leak and damage on July 12. On July 13, GSA claimed that Suffolk was responsible for the leak and damage and demanded that Suffolk assess the scope of the damage and begin all repairs needed. Suffolk began its repairs on July 23. Suffolk denied liability and hired two plumbing engineering consultants to prepare reports.

As background, GSA added by solicitation amendment an option to construct a “green roof” garden courtyard on the building’s fourth floor. The work relevant to the issues here, as identified in four plumbing schematic-type drawings, required the installation of a water storage cistern system on the third floor mezzanine immediately beneath the green roof. The drawings showed drains on floors 17 and 4, with rain leader piping that would carry the roof water to a cistern storage tank system, but did not provide a detailed design of the cistern system itself. The contract specifications did not include a special specification relating to the cistern system itself, only specification 02810 for the garden roof irrigation.

In April 2007, Suffolk submitted RFI 433 seeking specifications and manufacturer for the cistern holding tank system. The design team responded in June 2007, identifying approved models of solar powered pumps, photovoltaic panels, and fiberglass cistern tanks for installation. As a result of meetings between the Suffolk team and the design team, the parties agreed on a design and the components for the cistern system involving a ten-tank polyethylene cistern system instead of the solicitation’s two-tank cistern schematic. The work was performed pursuant to the parties’ agreed ten-cistern tank design, and a submittal showing the ten-tank system with tanks manufactured by Chem-Tainer is dated February 2008 and was approved by the design team in March 2008. In October 2008, Tishman received the specification manual for the Chem-Tainer tanks. Under the operating parameters section, the manufacturer notes that the tanks must be properly vented and that “flexible connections REQUIRED to preserve warranty.” The plumbing subcontractor used Fernco flexible couplings to connect the rain leader pipes from floors 4 and 17 to the cistern tanks’ polyethylene hubs. The record contains a revised schematic of a plumbing drawing showing the as-built cistern system. Two symmetrical sets of five polyethylene cistern tanks stored rainwater that entered the system through two sets of cast iron rain leader pipes, one emanating from the fourth floor green roof drains, the other from the seventeenth-floor roof drains. Both tank farms had a six-inch overflow pipe that led to the building’s sewer system and piping for pumping the stored water to the fourth-floor green roof. In March 2008, Suffolk expressed concern that a leak in the cistern system might cause water damage to lower floors of the building, as the third floor mezzanine was not equipped with floor drains. GSA declined to add the floor drains but did direct Suffolk to resurface the concrete floor of the mezzanine, waterproof it, and install a water overflow alarm system. On May 26, 2009,

Suffolk conducted a “fire pump test” of the completed cistern system. Over a ten-minute period, 5000 gallons of water were sprayed down the building’s roof drains, at a flow rate that would result from a six-inch-per-hour rainstorm, which was more than twice the design requirement. The cistern system and its rain leaders, with its combined storage capacity of 7540 gallons, passed the fire pump test without incident. GSA accepted the cistern system effective July 6, 2009, when it issued a temporary certificate of occupancy for the entire building. The cistern system worked satisfactorily from July 2009 through the beginning of July 2010.

On July 10, 2010, an average of 1.6 inches of rain fell on the Boston area in less than an hour. The storm brought approximately 20,900 gallons of water to the building’s roof areas and drainage system. Simultaneously, rain water overloaded the City of Boston’s sewer system, causing the building’s ground floor drains and bathrooms to backup and overflow. As the water pressure in the cistern system increased, a Fernco flexible coupling connecting a six-inch cast-iron rain leader pipe from the seventeenth floor with a cistern water tank separated, allowing water to leak. Suffolk contends that the Fernco coupling ruptured because of the unusually severe rain event, and Boston’s overflowing sewer system added back-pressure to the cistern system. GSA argues that the Fernco coupling did not meet the contract design requirements. GSA does not contest that the sewer system backed up during the storm, but it argues that the cistern should have been able to withstand the backup. GSA argues that the Fernco coupling did not comply with section 705.16 of the applicable International Plumbing Code (IPC) of 2003 and did not meet contract requirements.

IPC section 705.16 required that

Joints between different piping materials shall be made with a mechanical joint of the compression or mechanical sealing type conforming to ASTM C 1173, ASTM C 1460 or ASTM C 1461. . . . 705.16.4 Plastic pipe or tubing to other piping material. Joints between different grades of plastic pipe or between plastic pipe and other piping material shall be made with an approved adapter fitting. Joints between plastic pipes and cast-iron hub pipe shall be made by a caulked joint or a mechanical compression joint.

ASTM C 1173 is a standard specification for flexible transition couplings. GSA states that the Fernco coupling joined a cast iron rain pipe with polyethylene tank hub but was a two-band flexible transitional coupling, rather than a mechanical or compression coupling. Suffolk retained two plumbing engineering consulting firms who state that the Fernco coupling complied with the IPC and conformed to the ASTM C 1173 specifications. GSA has not persuaded us that the Fernco coupling did not meet the requirements of IPC section 705.16 or the contract requirements.

Since water could not flow down the piping and exit the building, GSA notes that the water should have simply backed up onto the fourth floor green roof, which was less than ten feet above the cistern tanks. GSA has not shown that the cistern piping and connections did not meet the ten-foot head of water requirement. In addition, the coupling that failed was connected to rain leader piping from the seventeenth floor (not the fourth floor) which might have been over 100 feet above the cistern tanks.

On August 5, 2010, a second rainstorm caused flooding in the third floor mezzanine. A joint inspection found that rainwater had again caused the sewer system to back up and overflow, but that no cistern system coupling or piping had ruptured. Instead, the inspection determined that rainwater had spilled out of relief vents located on the top of each tank. GSA contends that these vents were not required by the contract and had not been indicated on Suffolk's submittal. Suffolk states that vents were required by the manufacturer, again citing to a provision of the manufacturer's manual advising customers to "make sure tank is properly vented for the type of material and flow rates expected." On GSA's instruction, Suffolk disconnected the cistern system from the drain system and re-routed the rooftop rainwater drains directly into the sewer system. The cistern system remained disconnected at the time of the hearing.

Citing FAR 52.246-21, Warranty of Construction, GSA further asserts that Suffolk had responsibility to "remedy at the contractor's expense any damage to Government-owned or controlled real or personal property" resulting from Suffolk's "fail[ure] to furnish and install Contract compliant systems. . . ." As stated earlier, to prevail under a warranty of construction provision, the Government must prove that the contractor was responsible for the defective materials or workmanship at issue, that it notified the contractor within the time period prescribed by the warranty clause, and that it did not cause or contribute to the alleged defects.

We conclude that GSA has failed to prove the elements of its warranty claim. First, we have found that GSA has not shown that the Fernco coupling at issue did not comply with IPC 705.16 or the contract requirements, including the ten-foot head of water specification requirement. In view of the record, GSA's argument that it did not require venting of the cistern tanks simply does not convince us that venting was a defective condition. GSA inspected and approved of the cistern system and did not identify any concerns with the couplings or vents.

Regarding the second element of the warranty claim, the one-year notice provision, a contractor is responsible for all defects in materials delivered and work performed on a contract "until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract." 48 CFR 52.236-7. Where a unit of work has been accepted, the Government may still recover for any "defect in equipment,

material, or design furnished, or workmanship performed” under the Warranty of Construction clause. 48 CFR 52.246-21(a), (b). The Government’s ability to recover under the clause is limited to a period of time equal to one year from either the date of the final acceptance of the work or from the date the Government took possession of the work. The one-year limitation does not limit the Government’s right to recover for latent defects, fraud, or gross mistakes amounting to fraud. *See* 48 CFR 52.246-12(i), -21(j).

Based on the record before us, we conclude that GSA failed to notify Suffolk of the alleged defects within one year from the date that GSA accepted and took possession of the cistern system. GSA does not argue that the Fernco couplings or the tank’s air vents were latent defects. Because the construction warranty clause lasts “for a period of 1 year from the date the Government takes possession,” the warranty expired no later than July 6, 2010, one year from the effective date of the temporary certificate of occupancy. GSA admits that it did test and accept the cistern system by the date that the temporary certificate of occupancy was issued, July 1, 2009. However, GSA argues that its July 6, 2009, possession of the building was limited and instituted only to offset the impact of Suffolk’s alleged delays. GSA contends that “possession” for the purposes FAR 52.246-21 should be understood to mean ‘beneficial possession,’ which it says occurred on March 31, 2010, when final acceptance of the building occurred. GSA’s novel interpretation seeks to distinguish between its actual possession of the building generally and its “beneficial possession” of those areas necessary to “facilitate turn-over of spaces to building tenants/other federal agencies.” GSA argues that it did not have “beneficial possession” of the cistern system area on the third floor mezzanine because GSA and its tenants did not perform work in that area. We do not agree with this argument. In *Fraser Engineering Co.*, VABCA 3265, 91-3 BCA ¶ 24,223, the Government contracted to update the environmental systems of a federal building in Boston and occupied the building prior to final acceptance. *Id.* at 121,145. The damage at issue affected renovated cooling towers that the Government had accepted prior to final acceptance of the entire project. *Id.* at 121,146. Though no government employees worked on the towers or in their vicinity after the contractor had finished its work, the Board found that the Government had “possession” because it “had acknowledged that the towers were complete and [it] exercised full control over access to the towers.” *Id.* at 121,148. In construction projects where portions of a facility are accepted at different times, the agency may take “beneficial occupancy” of those portions as they are accepted and set the date of warranty from the date of acceptance, without accepting the entire project. *Dick Pacific Construction Co.*, ASBCA 57675, *et al.*, 16-1 BCA ¶ 36,196, at 176,627 (2015) (finding the Government took beneficial occupancy of a runway construction project in three phases, as portions of the project were accepted).

We find that GSA took possession of the cistern system no later than July 6, 2009, for purposes of the warranty clause, as work had finished on the cistern system, GSA had accepted the cistern system, and GSA controlled access to the cistern system area. As in

Fraser, when GSA occupied the building, it assumed responsibility for building security and took from Suffolk the obligation to control access to the facility.

The third element requires GSA to show that its conduct did not contribute to the alleged defective condition of the cistern system. This is an affirmative burden borne by the Government under the Warranty of Construction clause and is not satisfied by merely refuting allegations to the contrary. *ABM/Ansley*, 93-1 BCA at 125,749. Given that the cistern system design was a collaborative process between the design team and the contractor team, that GSA declined to add floor drains in the cistern mechanical area, and that GSA inspected and accepted the cistern system as collaboratively designed, we reject GSA's suggestion that it did not contribute to the subsequent failures of the cistern system.

As GSA has failed to prove its claim under the contract's Warranty of Construction clause, we find that Suffolk should not have been denied payment for repairs made resulting from the July 2010 storm. GSA has not challenged quantum. We grant the claim in the amount of \$994,614, deny GSA's claim for \$698,914 for third-party cleanup costs, and deny GSA's claim for \$50,000 for estimated cistern repairs.

Contract Retainage and Balance

Suffolk seeks payment of \$1,563,616, consisting of contract retainage of \$988,482 and the unpaid remainder of the contract balance of \$575,134. GSA does not contest the quantum of retainage and unpaid balance that Suffolk requests, but contends that it is owed \$3,196,437 in credits and thus properly withheld Suffolk's claimed \$1,563,616. The \$3,196,437 GSA claims in credits consists of \$2,146,475 for the fifty claimed credits found at attachment 2 of its final decision, \$787,698 for emergency work for the sixth floor valve leak and third floor mezzanine cistern leak, \$314,302 for Suffolk's costs relating to the sixth floor valve leak that GSA accounted for in modification PC-63, and \$50,000 in estimated repair costs for the cistern system.

Applying GSA's credit amounts found above totaling \$299,514, to the contract retainage and balance, we find Suffolk entitled to a net amount of \$1,264,102 for retainage and the contract balance.

Summary of Quantum

We have granted in part Suffolk's claim, which are summarized here:

First and Second PCO Claims	\$4,669,697
NB Kenney Claims	\$3,099,134
City Lights Claims	\$1,420,999

Suffolk General Conditions Claim	\$1,135,000
Cistern Leak Claim	\$ 994,614
Contract Retainage and Balance	\$1,264,102

CDA Interest

Suffolk is entitled to recover CDA interest according to the following dates when the contracting officer received Suffolk's claims: February 15, 2013, for the first PCO claim; May 7, 2014, for the second PCO claim; February 11, 2015, for the NB Kenney claim; May 2, 2013, for the City Lights claim; March 29, 2012, for the cistern leak claim; and April 24, 2012, for Suffolk's general conditions claim.

Decision

We **GRANT IN PART** the appeals and conclude that appellant is entitled to recover \$12,583,546 plus CDA interest.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

We concur:

Jeri Kaylene Somers
JERI K. SOMERS
Board Judge

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge