

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss. SUPERIOR COURT C.A. NO. 2679CV00453

USPB JV, LLC and SPRINGFIELD TOWER
SQUARE, LLC,
Plaintiffs,

v.

MASSACHUSETTS DIVISION OF
CAPITAL ASSET MANAGEMENT AND

MAINTENANCE and FDS MA LIBERTY
JUNCTION, LLC, Defendants.

**SPECIALLY ASSIGNED TO THE
HONORABLE DAVID M. HODGE**

**DEFENDANT MASSACHUSETTS DIVISION OF CAPITAL ASSET MANAGEMENT
AND MAINTENANCE'S OPPOSITION TO PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendant

MASSACHUSETTS DIVISION OF CAPITAL
ASSET MANAGEMENT AND MAINTENANCE

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INTRODUCTION

Defendant Massachusetts Division of Capital Asset Management and Maintenance (“DCAMM”) hereby opposes Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction (“Motion”). This case concerns two disgruntled proposers that were not selected by DCAMM to provide the lease and building for the Springfield Regional Justice Center (“SRJC”). Plaintiffs have brought this suit because they cannot accept the truth—their proposals do not measure up to the proposal made by FDS MA Liberty Junction, LLC (“Liberty Junction”), and do not provide the best value to the Commonwealth. In particular, Springfield Tower Square, LLC (“Springfield Tower”) was not even selected as a finalist for the SRJC lease, and USPB JV, LLC’s (“USPB”) proposal would have cost the taxpayers approximately **\$420 million** more than Liberty Junction’s proposal. Plaintiffs’ Complaint is nothing more than a fever dream of imagined malfeasance in aid of Plaintiffs’ attempt to elevate their own financial interests over the public’s interest in a newly constructed judicial center that will serve the public for decades **and** would save taxpayers hundreds of millions of dollars. Plaintiffs’ disappointment and furious speculation, however, cannot stand up against the facts: DCAMM’s procurement was proper. As explained in the affidavit of the Trial Court Administrator, the selection of Liberty Junction’s proposal was “the obvious and only choice.” Ambrosino Aff. ¶ 6. DCAMM and the Trial Court selected the proposer for the SRJC lease that provided the best proposal as a matter of substance and cost. That proposer is Liberty Junction.

Plaintiffs are asking this Court to revisit and reverse a decision within the sound discretion of DCAMM, and the Motion should be denied. Plaintiffs seek an extraordinary remedy in asking this Court to overturn DCAMM’s discretionary decision regarding which proposer provides the best value for the Commonwealth, and to short-circuit DCAMM’s ongoing procurement process by preventing DCAMM from executing a lease. Plaintiffs have not met, and cannot meet, their burden to show a likelihood of success on the merits or irreparable harm stemming from the conditional selection of Liberty Junction for a potential lease contract on behalf of the Trial Court. Moreover, the public will suffer harm if the procurement process is

enjoined while Plaintiffs pursue through litigation what they could not achieve through a competitive public procurement process. Plaintiffs' Motion should be denied, and DCAMM should be permitted to pursue the final negotiations and execution of a lease consistent with the procurement process already being followed.

FACTUAL BACKGROUND

I. The Request for Proposals

DCAMM is the state agency responsible for capital planning, major public building construction, facilities management, and real estate services for the Commonwealth of Massachusetts. Russell Aff. ¶ 2. On January 21, 2025, the Trial Court submitted a proposal to the Asset Management Board ("AMB") for the SRJC. *Id.* ¶ 3. The AMB approved the proposal, and on June 30, 2025, DCAMM published a Request for Proposal ("RFP") seeking proposals for leased space in Springfield, Massachusetts for use by the Trial Court (the "Project"). *Id.* Ex. 1 at 2-4.

The RFP noted that DCAMM would select the proposer that provides the "best value" to the Commonwealth. Russell Aff. Ex. 1 at 11. The RFP informed proposers that DCAMM would have considerable discretion regarding the selection process, and that DCAMM could "select or reject proposals solely on subjective value and ability to meet the needs of the agency occupant." *Id.* DCAMM reserved the right in the RFP to, among other things, "waive portions of the RFP for all proposers," "excuse minor informalities in any proposal," and "discuss any provisions of the proposal in order to clarify the proposal." *Id.* The RFP set forth that the lease proposals need only be "substantially complete" and that multiple entities could jointly propose parcels of land for consideration. *Id.* at 10.

The RFP required proposers without an existing lease or ownership interest to demonstrate site control by submitting "a copy of a fully executed ... purchase-and-sale agreement, option to purchase or lease or other evidence of the proposer's control of the property[.]" *Id.* Finally, any proposer would have to demonstrate, to the satisfaction of DCAMM, actual control of the site at the time of leasing. *Id.*

The RFP also outlined the selection process for proposers. After an initial review, the RFP provides that DCAMM “will either make a conditional selection of a proposal, or provide Counter Proposals[.]” *Id.* at 12. The conditional selection “does not represent a contract and does not commit the Commonwealth to enter into a Lease.” *Id.* The final selection of a proposer would be contingent on “the prospective landlord satisfying specific conditions established by DCAMM and the [Trial Court].” *Id.* DCAMM also reserved the right to conditionally select another proposal if DCAMM’s requirements are not met. *Id.* In other words, even after conditionally accepting a proposer (as is the current status with Liberty Junction), DCAMM retains the right to not proceed with the lease if that proposer cannot meet DCAMM’s requirements at the time of leasing.

II. DCAMM Receives Proposals in Response to the RFP

On or before October 16, 2025, DCAMM received ten proposals in response to the RFP, including proposals from Plaintiffs and Liberty Junction. *See* Russell Aff. ¶ 9; Russell Aff. Ex. 1 at 2.¹ The submitted proposals were reviewed by a selection committee composed of DCAMM professional staff and members of the Trial Court, including the Chief Justice and the Court Administrator for the Trial Court. Russell Aff. ¶ 7; Ambrosino Aff. ¶¶ 4-5. The selection committee evaluated each proposal for compliance with the RFP and with the Trial Court’s objectives for the Project. Russell Aff. ¶¶ 8-9. The selection committee selected the four highest-ranked proposers for a shortlist, which included Liberty Junction and Plaintiff USPB, but not Plaintiff Springfield Tower Square. *Id.* ¶¶ 10-13. Each short-listed proposer then made presentations to the selection committee to clarify their proposals. *Id.* ¶ 16.

¹ Liberty Junction submitted a proposal identifying its contact person as Claiborne Williams and its company name as FDS MA Liberty Junction, LLC. Russell Aff. Ex. 2 at 6. Liberty Junction is a team comprised of FD Stonewater, LLC and CoJo Partners. *Id.* at 53. The Liberty Junction proposal also identified the proposed landlord as FDS MA Liberty Junction LLC with the named principals listed as Claiborne Williams, Richard Mann, John Barros, and Conan Harris. *Id.* at 7. The appended ground lease option was held by FD Stonewater, LLC and signed by Claiborne Williams. *Id.* at 20-22. Similarly, the appended purchase agreement held by FDS MA Springfield Dwight, LLC was also signed by Claiborne Williams. *Id.* at 44.

III. Mr. Barros' Role at MCCA

In January 2026, after all proposers submitted their proposals, Mr. Barros was named the Interim Executive Director of the Massachusetts Convention Center Authority (“MCCA”). Russell Aff. ¶ 33; Compl. ¶ 28. The MCCA is an independent public authority of the Commonwealth, governed by its own Board of Directors. Barros Aff. ¶ 3. The MCCA and DCAMM have no direct or indirect reporting relationship with one another. Russell Aff. ¶¶ 34, 37; Barros Aff. ¶ 3.

Mr. Barros is not employed by DCAMM and has had no participation or authority over DCAMM’s decisions regarding the procurement. Russell Aff. ¶ 34. Neither DCAMM nor the Trial Court has had communications with Mr. Barros about the Project or the RFP. *Id.* ¶ 35; Ambrosino Aff. ¶ 9. During its presentation, Liberty Junction confirmed that FD Stonewater would take the lead on the Project, not CoJo. Russell Aff. ¶ 36. Mr. Barros did not attend Liberty Junction’s presentation to the selection committee. *Id.*

On July 1, 2026, Mr. Barros filed a disclosure with the Massachusetts State Ethics Commission. Barros Aff. Add. A. In that disclosure, Mr. Barros states that he notified the Ethics Commission of Liberty Junction’s proposal prior to assuming the role of Interim Executive Director and complied with the Ethics Commission’s guidance. *Id.* Mr. Barros has since publicly announced an intention to divest from CoJo and will not be involved with the SRJC. Barros Aff. ¶ 10.

IV. DCAMM Provisionally Selects Liberty Junction As the Best Value Proposer The selection committee, including both the Trial Court Chief Justice and Court Administrator, recommended that DCAMM’s Commissioner conditionally select Liberty Junction because its proposal provided the best value to the Commonwealth. Russell Aff. ¶ 25; *Id.* Ex. 4. DCAMM’s Commissioner accepted this recommendation for several reasons. First, Liberty Junction’s proposal would save the Commonwealth approximately \$300 million when compared to the next most affordable proposal and approximately \$420 million when compared to Plaintiff

USPB's proposal. Russell Aff. ¶ 21. Second, Liberty Junction's location adjacent to

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Union Station provided ample access to parking and public transportation. Russell Aff. Ex. 4 at 6. Third, Liberty Junction's proposed layout for the court facilities provided natural light in common areas and courtrooms, and a "regular structural grid and flexible floor plates support long-term adaptability to evolving technology." *Id.* at 7. Fourth, Liberty Junction's team included Leers Weinzapfel Associates, "a recognized leader in courthouse design for more than thirty years [that] has successfully designed four new courthouses for the Commonwealth, bringing valuable expertise and familiarity with Massachusetts court operations and courthouse delivery requirements." *Id.* As the Trial Court stated, "the Liberty Junction proposal addressed [the Trial Court's] needs with **by far** the lowest projected impact on the Trial Court's future operating budgets," thus giving the Trial Court budgetary flexibility for future projects. Ambrosino Aff. ¶ 6 (emphasis in original).

On or about June 30, 2026, DCAMM transmitted a conditional selection letter which explicitly identified conditions that must be satisfied prior to execution of a lease. Russell Aff. Ex. 5. Among other conditions, the conditional selection letter states that final selection was subject to Liberty Junction demonstrating that it "has satisfied the RFP's site control requirements prior to lease execution" and noting that the Commonwealth "reserves the right to rescind this conditional selection and pursue another proposal." *Id.* at 2-3. The conditional selection letter also requires that "the selected team must consult with the State Ethics Commission regarding any actual potential, or perceived conflicts of interest that may have arisen as a result of a team member becoming a state employee between the date of proposal submission and the date of this selection." *Id.* at 4. Prior to contract execution, Liberty Junction "must take all necessary steps to disclose, mitigate, or eliminate any such conflicts to the satisfaction of the Commonwealth[.]" *Id.*

LEGAL STANDARD

"[T]he significant remedy of a preliminary injunction should not be granted unless the plaintiffs

[make] a clear showing of entitlement thereto.” *Student No. 9 v. Bd. of Educ.*, 440 Mass. 752, 762 (2004). Plaintiffs are not entitled to preliminary injunctive relief unless they can

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show: “(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of [Plaintiffs’] likelihood of success on the merits, the risk of irreparable harm to [Plaintiffs] outweighs the potential harm to the [Defendants] in granting the injunction.” *Loyal Order of Moose, Inc., Yarmouth Lodge # 2270 v. Bd. of Health of Yarmouth*, 439 Mass. 597, 601 (2003) (quoting *Tri-Nel Mgt., Inc. v. Bd. of Health of Barnstable*, 433 Mass. 217, 219 (2001)); *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). In addition, because Plaintiffs “seek[] to enjoin governmental action, the [Court] must also consider whether the grant of an injunction would adversely affect the public interest.” *Student No. 9*, 440 Mass. at 762.

Failure to meet any of the required prongs is fatal to a request for preliminary injunction. “In awarding preliminary injunctive relief, a court is justified in requiring the plaintiff to bear a slightly heavier burden, given the problems of enforcing injunctions.” *GTE Prods. Corp. v. Stewart*, 414 Mass. 721, 724 (1993). Here, Plaintiffs fail to meet their burden to prove any of the required elements for issuance of a preliminary injunction.

ARGUMENT

I. Plaintiffs Have Not Provided Any Evidence of Irreparable Harm Plaintiffs cannot show that they are suffering irreparable harm. As an initial matter, Plaintiffs’ claimed harm is speculative and rests on the flawed assumption that DCAMM will imminently “execute a lease agreement for the Project with Liberty Junction[.]” Mot. at 10. As Plaintiffs themselves acknowledge, Liberty Junction is only “the provisional recipient of a 40- year lease,” Compl. at 1, and they will suffer harm only “if DCAMM were to enter into a lease agreement with Liberty Junction[.]” Mot. at 10 (emphasis added). There are several months of remaining negotiations and assurances before any lease will be executed. Russell Aff. ¶ 38. Speculation that Liberty Junction may ultimately be awarded the lease that is the subject of the RFP is insufficient to

demonstrate irreparable harm. *See Commonwealth v. Suffolk Cty.*, 383 Mass 286, 289 (1981). DCAMM has made clear in the RFP and in its communications with Liberty Junction that the conditional selection is contingent on DCAMM's satisfaction as to a

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number of outstanding items, and that no lease is guaranteed by the conditional selection. Russell Aff. Ex. 1 at 12; *Id.* at Ex. 5.

Even assuming that DCAMM was to sign the lease immediately, Plaintiffs cannot show irreparable harm because their damages are solely economic. In evaluating a preliminary injunction, the Court “need consider only harms that would not be redressed by final relief” in the case. *GTE Prods. Corp.*, 414 Mass. at 724. Any movant must show a “reason why money damages would not adequately redress any harm [they] might suffer prior to a final judgment[.]” *Packaging Indus. Grp., Inc.*, 380 Mass. at 621. Here, the only concrete harms cited by Plaintiffs in the Complaint are the loss of leases, options, work, and profits. Compl. ¶ 62. These are all economic harms that could be redressed by money damages at final judgment. *See Bradford & Bigelow, Inc. v. Commonwealth*, 24 Mass. App. Ct. 349, 358-59 (1987) (discussing availability of monetary damages for bid procurement challenges against the Commonwealth).

In an attempt to sidestep the law providing for economic damages in procurement cases, Plaintiffs incorrectly rely on *Modern Continental Const. Co. v. City of Lowell*, 391 Mass. 829 (1984). *See* Mot. at 10-11. First, *Modern Continental* concerns the stringent requirements applicable to lowest-eligible-bidder public construction projects, not lease procurements on projects approved by the AMB and on which DCAMM is empowered with considerable discretion to choose the proposal that presents the best value to the Commonwealth. *Modern Continental*, 391 at 838-840; G.L. c. 149, §§ 44A-44H; Russell Aff. Ex. 1 at 2, 11. Second, *Modern Continental* concerns a situation in which the plaintiff lost the opportunity to bid because the awarding authority plainly did not follow a statutory requirement. *Id.* at 837-40. The Supreme Judicial Court held that the Plaintiff was entitled to injunctive relief because the plaintiff's “opportunity for consideration as a bidder would be forever lost,” given that the

contract was bid under the wrong statute. *Id.* at 831-32, 837. Stated otherwise, the plaintiff in *Modern Continental* faced irreparable harm because the contract was bid in violation of the controlling statutes. There is no analogous claim in this case, which instead challenges DCAMM's discretionary decision to conditionally select another proposal. *See generally*,

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Compl.; *See, e.g.*, Mot. at 2.² Accordingly, there is no irreparable harm, and Plaintiffs' Motion must be denied.

Indeed, and while not cited by Plaintiffs, this case is closer to the situation in *Peabody Const. Co., Inc. v. City of Boston*, 28 Mass. App. Ct. 100 (1989). The Appeals Court in *Peabody* affirmed the denial of a preliminary injunction where "the deviation was not from a statutory requisite but rather from a requirement imposed by the authority." *Id.* at 104. While DCAMM denies that it deviated from the requirements of the RFP and maintains that Plaintiffs cannot demonstrate any such deviation, *Peabody* stands for the proposition that in the absence of any alleged violation of a statutory requisite, the awarding authority "has the discretion to accept or reject the bid." *Id.* The right to submit a proposal does not create a right to be selected, and Plaintiffs cannot dispute that their proposals were received and considered by the selection committee. Plaintiffs have therefore not alleged any irreparable harm of the type contemplated in *Modern Continental* that would require this Court to take the extraordinary step of enjoining DCAMM's selection and overturning DCAMM's discretionary judgment as to which proposal provides the best value to the Commonwealth.³

II. Plaintiffs Cannot Succeed on the Merits

A. DCAMM's Conditional Selection of Liberty Junction Was Not Arbitrary and Capricious Because Liberty Junction Submitted the Best Proposal

The SRJC procurement is governed by G.L. c. 7B and 810 CMR 2.00. Russell Aff. Ex. 1 at 2. Plaintiffs have failed to demonstrate any violation of the governing law, and DCAMM's decision in this case must be "left to the reasonable judgment of the [] officers charged with responsibility therefore." *Datatrol Inc. v. State Purchasing Agent*, 379 Mass. 679, 698 n.15 (1980) (quotations omitted). The court will uphold the award if it has a "rational basis." *Pacella et al. v.*

Metropolitan Dist. Comm'n, 339 Mass. 338, 347 (1959). It is well-settled that when

² Plaintiffs' claims concerning alleged ethical violations do not relate to any statutes concerning the RFP, and are discussed separately below.

³ Plaintiff Springfield Tower Square has an additional burden of establishing any harm, because it was not selected as one of the four proposers on the shortlist. *Modern Continental*, 391 Mass. at 835 (to have standing to challenge compliance with bidding procedures, a party must have had "possessed the potential to obtain the award").

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evaluating decisions made by public officials, such decisions should be granted "every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare." *LaPointe v. License Board of Worcester*, 389 Mass. 454, 459 (1983). *See also Pacella*, 339 Mass. at 347.

In this case, Plaintiffs' Complaint and request for a preliminary injunction rests on speculation and assumption and cannot overcome the record evidence provided by DCAMM and the Trial Court establishing that the discretionary decision to choose Liberty Junction's proposal was not arbitrary, capricious, illegal, or made in bad faith. *See Cubic Transp. Systems, Inc. v. MBTA*, No. 025412BLS, 2002 WL 31957004, *4 (Suffolk Sup. Ct. Dec. 12, 2002) (van Gestel, J.) (collecting cases). The RFP itself disclosed to proposers that DCAMM had significant discretion in selecting a proposal. The RFP clearly sets forth the evaluation criteria and specifies that this will be a "best value" contract. Russell Aff. Ex. 1 at 11-16. The RFP explicitly states that DCAMM "may, at its sole discretion, select or reject proposals solely on subjective value and ability to meet the needs of the agency occupant." *Id.* at 11. DCAMM also reserved the right to "(i) waive portions of the RFP for all proposers, (ii) excuse minor informalities in any proposal, (iii) discuss any provisions of the proposal in order to clarify the proposal, (iv) negotiate with one or more proposers ... [or] reject any part of any proposal[.]" *Id.* As contemplated by the RFP, and as is the case here, DCAMM's "selection of a proposal may be conditioned upon the prospective landlord satisfying specific conditions established by DCAMM and the User Agency." *Id.* at 12. This conditional selection is not a commitment by the Commonwealth and "DCAMM reserves the right to conditionally select another proposal" if those conditions are not met. *Id.*

Liberty Junction's proposal was selected because it was ultimately better than the Plaintiffs' proposals in numerous respects. The Liberty Junction Team included developer FD Stonewater, and architect Leers Weinzapfel Associates, both of which have substantial experience on similar projects. Russell Aff. ¶ 22. Liberty Junction's proposal satisfied the evaluation criteria enumerated in the RFP by constructing the SRJC in a location preferable to

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those proposed by Plaintiffs, with better light, better layout, and better access to public transportation. Russell Aff. Ex. 4 at 6-8. Accordingly, the Liberty Junction proposal will provide the ultimate end users, the public, with easier and more convenient access to the Court, and thus, access to justice. Conversely, Springfield Tower's proposal would have split the court facility over numerous floors, which in turn would impede the movement of jurors, witnesses, detainees, and the public at large. *See* Russell Aff. ¶ 13. And notably, Springfield Tower's proposal was not even selected as one of the final four, leaving it little chance to establish any harm in this case. *Id.* While USPB's proposal was selected as one of the final four to be considered, its proposal would cost the taxpayers approximately \$420 million more than Liberty Junction's. *Id.* ¶¶ 12, 21. Based on the foregoing, DCAMM's decision to select Liberty Junction was sound and proper, but that is not the standard in this case. Instead, Plaintiffs must demonstrate that DCAMM's decision was arbitrary and capricious, a standard they have not, and cannot meet, given the numerous benefits of Liberty Junction's proposal and the detriments of their own.

B. Liberty Junction Demonstrated Site Control in Accordance With the RFP and Is an Eligible Proposer

Plaintiffs' challenge of Liberty Junction's selection based on the claim that Liberty Junction was not an eligible bidder is without merit. Plaintiffs allege that Liberty Junction was not an "eligible proposer," because the Ground Lease Option Agreement ("Option Agreement") included in its proposal and demonstrating Liberty Junction's control of the site is in FD Stonewater's name. Plaintiffs' conclusion is entirely unsupported by the requirements of the RFP.

The RFP required proposers to demonstrate site control as follows:

“[a]n eligible proposer may be defined as . . . a *prospective ground tenant of the proposed property whose lease will permit subleasing*, provided that such prospective purchaser or prospective ground tenant *must attach to the proposal a copy of a fully executed* (i.e., by the proposer, the prospective seller or the prospective ground landlord, and any other identified party) purchase-and-sale agreement, *option to purchase or lease or other evidence of the proposer’s control of the property*[.]”

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Russell Aff. Ex. 1 at 10. At the time of proposal, Liberty Junction met this requirement by attaching the fully executed Option Agreement, which grants FD Stonewater, LLC, “or its designee” an irrevocable option to ground lease.⁴ Russell Aff. Ex. 2 at 20-22. As set forth in Liberty Junction’s proposal, FD Stonewater is part of the Liberty Junction Team. *Id.* at 52-55. The Liberty Junction proposal is signed by Claiborne Williams, a co-founder and principal of FD Stonewater. *Id.* at 6, 56. It is not unusual for multiple entities to join together in making proposals on projects the size of the SRJC. Russell Aff. ¶ 30. The RFP states that a proposal “jointly submitted by or for different owners or tenants or prospective ground tenants of the proposed properties will be eligible for consideration provided that the proposal identifies a single point of contact for negotiation and execution of a single lease....” Russell Aff. Ex. 1 at 10.

Plaintiffs’ claims that the selection of Liberty Junction was improper based on the notion that Liberty Junction was not an eligible proposer are unavailing because: (1) Liberty Junction demonstrated sufficient site control in its proposal and (2) Liberty Junction’s selection is conditional on having the required control of the property prior to signing a lease with DCAMM.

Russell Aff. Ex. 2 at 20-51; Russell Aff. Ex. 5 at 2-3. Both the RFP and the Conditional Selection letter recognize that proposers with options to lease or purchase may not be able to ultimately perfect their interest in the property sufficiently to enter into the lease with DCAMM. The RFP sets forth “that no Lease will be signed until such prospective purchaser or prospective ground tenant becomes either the record owner or the ground tenant of the proposed property whose lease permits subleasing,” which also is a requirement of Liberty Junction’s conditional

selection. Russell Aff. Ex. 1 at 11; *Id.* Ex. 5 at 2-3. Given that the RFP was issued in June of 2025, and the resulting lease will not be signed until over a year later, the RFP sensibly requires

⁴Plaintiffs also point out that the purchase agreement that Liberty Junction submitted was executed by FDS MA Springfield Dwight, LLC. Compl. ¶ 26(a). First, this purchase agreement relates to an ancillary parcel of land proposed for parking. Russell Aff. Ex. 2 at 12, 24-25. Second, the purchase agreement reflects that FDS MA Springfield Dwight, LLC “or its designee” was the purchaser of the land and the agreement was also signed by Claiborne Williams. *Id.* at 24, 44.

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that the proposers demonstrate that they are eligible proposers by supplying an option agreement at the time of the proposal, and then later obtain the actual interest in the subject property to enter into a lease. This makes sense, because a proposer should demonstrate preliminary site control before DCAMM expends government resources evaluating proposals that have no hope of coming to fruition. Obtaining confirmation of ownership in the subject property is a standard feature of the negotiation of the lease, and it is something DCAMM can and will do here prior to execution without court intervention.

Given that FD Stonewater and Claiborne Williams are members of the Liberty Junction Team and that the Option Agreement includes leasing to FD Stonewater’s designee, Liberty Junction provided sufficient evidence of its control of the property.⁵ Accordingly, the unrefuted evidence shows that the selection committee’s determination that Liberty Junction is an eligible proposer because it adequately demonstrated that it had site control is supported by ample facts and cannot be characterized as arbitrary and capricious.

C. Plaintiffs Have Not Shown a Likelihood of Establishing a 268A Violation or that Any Alleged Violation Substantially Influenced DCAMM’s Selection

Plaintiffs cannot demonstrate any likelihood of success in this matter because Mr. Barros complied with G.L. c. 268A, § 7, and his financial interest in one of the members of the Liberty Junction Team had no impact on the selection process. Section 7 sets forth penalties for a “state employee who has a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or has reason to know.” G.L. c. 268A, § 7. Mr. Barros has complied with the

requirements of Section 7, exempting him from any penalty.

⁵ It is worth noting that Plaintiff Springfield Tower also provided proof of ownership held by entities other than the proposer. Springfield Tower Square, LLC, Springfield Regional Justice Center Lease Proposal at 7, 254, 261 (Oct. 16, 2025), available at <https://www.mass.gov/doc/springfield-trial-court-proposal-1515-main-st/download> (identifying proposer as Springfield Tower Square LLC and the property owners as Mittas Hospitality LLC, DD Development LLC, Rudra Realty LLC, Sai Raj LLC, and Arya Invest Mass LLC).

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Section 7 provides four requirements exempting employees from any penalty, all of which are satisfied in this case: (1) Mr. Barros “is not employed by the contracting agency” DCAMM in this case, or an agency that regulates DCAMM; (2) Mr. Barros “does not participate in or have official responsibility for any of the activities of the contracting agency,” DCAMM, if the contract is made; (3) the contract, *i.e.*, the lease, will be made after “public notice;” and (4) Mr. Barros has “file[d] with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract.” *See* G.L. c 268A, § 7. *See* Russell Aff. ¶¶ 5, 34-37; Barros Aff. Add. A.

In fact, none of the four requirements can be contested. Mr. Barros does not have any position with, or responsibility concerning the activities of DCAMM. Russell Aff. ¶ 34; Barros Aff. ¶ 3. Rather, he became the Interim Executive Director of the MCCA after Liberty Junction made its proposal, and the MCCA does not regulate DCAMM.⁶ Barros Aff. ¶¶ 1-4. Further, there can be no doubt that the lease, when entered into, will be the result of a significant public procurement and evaluative process, in which DCAMM had the duty to procure the best value for the Commonwealth. *See* Russell Aff. Ex. 1 at 11-12. Mr. Barros has also satisfied his duty to make a disclosure to the State Ethics Commission. Barros Aff. Add. A. Accordingly, all four requirements of Section 7 have been met.

Additionally, Plaintiffs’ reliance on G.L. c. 268A, § 23(b)(3) is misplaced because Section 23(b)(3) concerns an official’s actions or connections that indicate that he is subject to undue influence in his official capacity. *See* Pltf. Supp. Mem, at 5 n. 3. Section 23(b)(3) applies when a

public officer “act[s] in a manner which would cause a reasonable person . . . to conclude that any person can improperly influence or unduly enjoy [the public officer’s] favor in the performance of his official duties[.]” G.L. c. 268A, § 23(b)(3). Section 23(b)(3) does not apply here because there is no allegation that anyone has improperly influenced or unduly enjoyed Mr.

⁶ While Plaintiffs point to Mr. Barros’ attendance in his official capacity at an unrelated event with the Governor and correspondence generally between all MCCA employees and all DCAMM employees, Supp. Mem. at 6, they have presented the court with zero evidence that Mr. Barros had any contact with any member of DCAMM, much less the selection committee for the SRJC.

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Barros’ favor in his official capacity as Interim Executive Director at the MCCA. Nor would any inference of improper influence be reasonable where Mr. Barros consulted with the MCCA and the General Counsel of the Ethics Commission and relied upon their guidance. Barros Aff. ¶¶ 5-6.

Beyond all that, G.L. c. 268A only permits rescission of a state agency decision under circumstances not present here. A state agency action may be rescinded only when a violation of the conflict of interest law by a state official “substantially influenced the action taken by any state agency[.]” G.L. c. 268A, § 9(a). There is “a markedly strong presumption that public officials act in good faith[.]” *Nantasket Beachfront Condos., LLC v. Hull Redevelopment Auth.*, 87 Mass. App. Ct. 455, 464 (2015). Plaintiffs’ groundless speculation that “it is likely that Mr. Barros . . . engage[d] in *ex parte* communications with DCAMM personnel,” Mot. at 9, is unsupported by evidence and is insufficient to rebut that presumption here. *See City of Boston v. Massachusetts Gaming Comm’n*, No. 2015–0012–BLS2, 2015 WL 9805753, at *13 (Suffolk Super. Ct. Dec. 3, 2015). Neither the Trial Court nor DCAMM communicated with Mr. Barros about the RFP or the Project. Russell Aff. ¶ 35; Ambrosino Aff. ¶ 9. DCAMM has made it clear that Liberty Junction must “take all necessary steps to disclose, mitigate, or eliminate any such conflicts” under G.L. c. 268A before any lease is executed. Russell Aff. Ex. 5 at 4. There is precisely zero evidence to support the notion that DCAMM was influenced by Mr. Barros to conditionally select Liberty Junction’s bid.

The statutory requirements for rescission are also not met here because it would be contrary to the public interest. Section 9 permits rescission of a state agency action only when it is required by “the interests of the commonwealth *and* innocent third persons[.]” G.L. c. 268A, § 9(a) (emphasis added). Here, rescission would benefit only the Plaintiffs while inconveniencing the Trial Court and the public it serves, and costing the taxpayers additional funds. Russell Aff. ¶¶ 40-43; Ambrosino Aff. ¶¶ 2, 6, 10.

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D. Plaintiffs’ Additional Meritless Objections to Liberty Junction’s Proposal Plaintiffs’ minor objections concerning “informational” representations and the treatment of real estate taxes in Liberty Junction’s proposal also lack merit.⁷ Compl. ¶¶ 26(d)-(e). The RFP states that the lease proposals need only be “substantially complete.” Russell Aff. Ex. 1 at 10. Proposals would be deemed non-responsive only if they contained “material omissions” and “if allowing the missing information to be supplied after the opening of proposals would be prejudicial to fair competition.” *Id.* Here, Plaintiffs do not identify material omissions. The RFP itself provided exhibits that were for “informational reference,” *id.* at 18-19, and Liberty Junction was merely mirroring that caveat in their response. Russell Aff. Ex. 2 at 11. And contrary to Plaintiffs’ allegations, real estate taxes were the subject of clarification requests to both Liberty Junction and USPB and appropriately factored into a financial analysis prior to selection using a standardized real estate tax assumption. Russell Aff. ¶ 18. Accordingly, neither the provision of “informational” representations nor the handling of real estate taxes was a material omission. Plaintiffs’ Motion ignores DCAMM’s ample discretion and elevates form over substance for their own financial benefit. Plaintiffs’ Motion should be denied.

E. Plaintiffs’ Complaint is Legally Deficient and Fails to State a Claim In addition to the numerous factual deficiencies outlined above, Plaintiffs’ Complaint attempts to assert legal claims that do not exist, and counts that are barred by law. For this additional

reason, Plaintiffs have no likelihood of success.

a. There is No Private Cause of Action Against DCAMM Under G.L. c. 268A in this Case (Count I)

Plaintiffs' conflict of interest claim against DCAMM is unlikely to succeed because they have no private right of action against DCAMM. Plaintiffs allege that DCAMM has violated Sections 7 and 23(b)(3) of G.L. c. 268A, but neither section places requirements on, or authorizes a suit against, a state agency such as DCAMM. Both statutory sections are directed at

⁷ Given that the Complaint alleges ethical violations as the basis of a specific count, it is addressed separately in the following section.

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state agency *employees* rather than the agencies themselves. G.L. c. 268A, § 7 (“A state employee who has a financial interest ... in a contract made by a state agency ... shall be punished by a fine ... or by imprisonment ... or both.”); G.L. c. 268A, § 23(b)(3) (“No current officer or employee of a state ... agency shall knowingly or with reason to know ... act in a manner which would cause a reasonable person ... to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties”). DCAMM is not aware of any case where a plaintiff has successfully maintained a G.L. c. 268A claim directly against a Commonwealth agency. Even if such a claim were cognizable against a Commonwealth agency, Plaintiffs could not successfully bring such a claim here, as described *supra* Section II.C.

b. Plaintiffs Have Failed to State a Claim for Certiorari (Count II)

Plaintiffs are also unlikely to succeed on their certiorari claim. “The purpose of a civil action in the nature of certiorari is ‘to relieve aggrieved parties from the injustice arising from errors of law committed in proceedings affecting their justiciable rights when no other means of relief are open.’” *Frawley v. Police Com’r of Cambridge*, 473 Mass. 716, 726 (2016) (quoting *Figgs v. Boston Housing Auth.*, 469 Mass. 354, 361 (2014)). “To obtain certiorari review of an administrative decision, the following three elements must be present: (1) a judicial or quasi

judicial proceeding, (2) from which there is no other reasonably adequate remedy, and (3) a substantial injury or injustice arising from the proceeding under review.” *Id.* (quoting *Indeck v. Clients’ Sec. Bd.*, 450 Mass. 379, 385 (2008)). Plaintiffs cannot demonstrate the first or third elements of a certiorari claim here.

DCAMM’s conditional selection of Liberty Junction pursuant to a public procurement process is not a quasi-judicial proceeding. To determine whether the underlying proceeding was judicial or quasi-judicial, courts consider “the extent to which it resembles judicial action” based on whether the proceeding: (1) “is preceded by specific charges;” (2) “involves sworn testimony by witnesses subject to cross-examination, or a party attesting to certain facts, as opposed to unsworn statements by interested persons advocating for or against a proposed new policy;”

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(3) involves an “investigation into the veracity of attested-to facts;” (4) “culminates in an individualized determination of a party’s entitlement to some benefit” and (5) “is followed by the adoption of formal findings of fact.” *Fore River Residents Against Compressor Station v. Office of Coastal Zone Mgmt.*, 100 Mass. App. Ct. 556, 561 (2021) (quotations omitted). The procurement process here involved no specific charges, did not involve sworn testimony subject to cross-examination, did not entail an investigation, and did not result in the adoption of formal findings of fact by DCAMM. Russell Aff. ¶ 17. No quasi-judicial proceeding occurred. *See Fore River Residents*, 100 Mass. App. Ct. at 562 (holding the absence of a quasi-judicial proceeding foreclosed a certiorari action).

Procurement is a contractual rather than a quasi-judicial proceeding. *See Airport Fuel Servs., Inc. v. Martha’s Vineyard Airport Comm’n*, 102 Mass. App. Ct. 642, 646 (2023) (describing purposes of procurement). None of the cases Plaintiffs rely upon concern a procurement by an awarding authority. Mot. at 10. Rather, Plaintiffs’ cases stem from adjudicatory hearings such as licensing proceedings or contract ratification. *Cf. City of Revere v. Mass. Gaming Comm’n*, 476 Mass. 591, 593, 602 (2017) (concerning the award of a license following a hearing, statement of findings, and a 36-page written determination explaining the

licensing decision); *Gifford v. Comm'r of Public Health*, 328 Mass. 608, 610 (1952) (concerning the Massachusetts public building commission's approval of a contract awarded by the department of public health following a hearing). The preliminary selection of a proposer by a contracting agency without a hearing is not a quasi-judicial proceeding that would permit a certiorari action and therefore Plaintiffs are unlikely to succeed on this claim.

Plaintiffs also have no evidence that they have suffered a “substantial injury or injustice” that would sustain the certiorari claim. No lease has been awarded. Russell Aff. ¶ 38. As discussed *supra*, it was within DCAMM's discretion to conditionally select Liberty Junction. Russell Aff. Ex. 1 at 11-12. DCAMM did so, in consultation with the Trial Court, after reviewing all the bids received and making a determination that Liberty Junction's proposal would provide the best value to the Commonwealth. Russell Aff. ¶ 19-25; Ambrosino Aff. ¶¶ 7-

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8. Furthermore, Plaintiffs' allegations cannot constitute a “substantial injury or injustice” where, in the event that Liberty Junction is unable to meet all of DCAMM's specifications, DCAMM will not proceed with the lease and may conditionally select another proposer. Russell Aff. ¶ 39. Plaintiffs have therefore failed to demonstrate two of the essential elements of their certiorari claim.

**c. Declaratory Judgment Claim (Count III) Is Barred By Sovereign Immunity
and By the Discretion Granted to DCAMM Under the Terms of the RFP**

Plaintiffs' declaratory judgment claim is also unlikely to succeed. In Massachusetts, “[t]he general rule of sovereign immunity provides that the Commonwealth cannot be impleaded into its own courts except with its consent . . . in the manner and to the extent expressed . . . by statute.” *Randall v. Haddad*, 468 Mass. 347, 354 (2014) (cleaned up). “Consent to suit must be expressed by the terms of a statute, or appear by necessary implication from them.” *Ware v. Commonwealth*, 409 Mass. 89, 91 (1991) (citation omitted). DCAMM is a state agency. G.L. c. 7C, §§ 2, 4. Plaintiffs must therefore identify an unambiguous statutory waiver of sovereign immunity authorizing their suit against DCAMM, and they have not done so.

The Declaratory Judgment Act (“DJA”) is only a limited waiver of the Commonwealth's

sovereign immunity. *Sullivan v. Chief Justice for Admin. & Mgmt. of Trial Court*, 448 Mass. 15, 24–25 (2006). The statute waives sovereign immunity only as to “the legality of the administrative practices and procedures” of state agencies that are “alleged to be in violation of the ... constitution or laws of the commonwealth, or are in violation of rules and regulations promulgated under the authority of such laws, which violation has been consistently repeated.” G.L. c. 231A, § 2. Here, Plaintiffs do not challenge DCAMM’s administrative practices or procedures but seek a declaratory judgment regarding DCAMM’s provisional selection of a proposer for a specific RFP. Compl. ¶¶ 65-67. Plaintiffs also do not allege a “violation [which] has been consistently repeated,” but challenge the one-time provisional selection of Liberty Junction. Their declaratory judgment claim does not fall within the limited waiver set forth in the DJA and therefore is barred by sovereign immunity.

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Litigants are not permitted to leverage the DJA to overturn individual decisions by a Commonwealth agency. “[D]eclaratory relief is an appropriate way of testing the validity of regulations or the propriety of practices involving violations of rights, which are consistent and repeated in nature.” *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 471 Mass. 12, 30 (2015). “It is not, however, an appropriate remedy where the validity of an adjudication ... in an individual case is being challenged.” *Id.* at 31 (holding that declaratory relief was not available to overturn individual parole decisions). An attempt to second-guess a decision by a government agency is not a basis for a declaratory judgment. *See Frawley*, 473 Mass. at 726 (“The dispute between the parties is not about the meaning or scope of the commissioner’s obligation..., but, more accurately, whether the commissioner’s decision ... was improper.”). Plaintiffs here seek a remedy in their individual case – for this Court to overturn DCAMM’s discretionary decision for their own benefit.

Even if a declaratory judgment was not barred by sovereign immunity, Plaintiffs are unlikely to successfully show that DCAMM violated the RFP for the reasons discussed *supra*. Plaintiffs base their declaratory judgment claim on the allegation that there are “other

omissions or representations in the Liberty Junction proposal that call into question DCAMM's determination that the proposal ... provided the 'best value'" as compared to their own proposals. Mot. at 7. Plaintiffs' disagreement with the discretionary evaluation conducted by DCAMM in consultation with the Trial Court is not an appropriate basis for a declaratory judgment challenge and it is unlikely to succeed.⁸

F. Equities Weigh Against Awarding an Injunction

The balancing of the equities and the public interest weigh against an injunction in this case. As discussed above, Plaintiffs face no irreparable harm because they have a remedy at law

⁸ Although Plaintiffs set forth their request for injunctive relief as a separate count, the Complaint correctly acknowledges that injunctive relief, is just that—relief that must be derivative to a separate cognizable legal claim. Compl. ¶ 71. *See Mullins v. Corcoran*, 488 Mass. 275, 286 n.16 (2021) ("Injunctive relief is a remedy, and not a cause of action."). Accordingly, Count IV cannot survive the factual and legal deficiencies that doom Counts I through III.

for monetary damages, and even assuming, *arguendo*, that the standard set forth in *Modern Continental* applies to this case, they cannot meet that standard. *See* Sections I and II, *supra*. By contrast, an injunction would significantly harm DCAMM, and the end user for the SRJC, the Trial Court. The existing Springfield courthouse is in urgent need of replacement. Ambrosino Aff. ¶ 2. DCAMM has expended considerable time and resources to facilitate this procurement. Russell Aff. ¶¶ 40-43. A lengthy delay that prevents DCAMM from executing a lease agreement would require DCAMM to incur costs and prevent DCAMM from negotiating the lease as authorized by the Asset Management Board. *Id.* This is a crucial time in the procurement process, where DCAMM can engage with the conditionally selected bidder to negotiate and finalize the lease. *Id.* ¶ 42. Delay is unnecessary and unjustified here. An injunction would also harm the public interest. "Where a party seeks to enjoin government action, the judge also must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public." *Garcia v. Dep't of Hous. & Community Dev.*, 480 Mass. 736, 747 (2018) (quotation and citation omitted). The

existing courthouse “is beyond its useful life and lacks the modern features necessary to ensure the health and safety of court staff and visitors.” Ambrosino Aff. ¶ 2. Within the last month alone, it experienced a sewage pipe leak causing “[e]xtensive damage . . . to the walls, ceiling and flooring in areas of the second floor,” necessitating an “emergency waiver” to perform work “to preserve the health or safety of persons or property.” Moore Aff. Ex. 1 at 2. As Plaintiffs acknowledge, the Project is an “important initiative . . . for the benefit of the users and the public alike[.]” Mot. at 2 (internal quotations omitted). It is for this reason, the RFP set “[a]s soon as possible” as the target occupancy date (Russell Aff. Ex. 1 at 6.), and it is for this reason that the Court cannot elevate the Plaintiffs’ fiscal ambitions above the public’s need to access justice.

CONCLUSION

For the foregoing reasons, DCAMM respectfully requests that this Court deny Plaintiffs’ Motion.

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Defendant

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CERTIFICATE OF SERVICE

I, Hannah Vail, Assistant Attorney General, hereby certify that I have this day, August 5, 2026, served the foregoing document, upon all parties, by emailing a copy to:

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