COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss. **SUPERIOR COURT**
CIVIL ACTION NO. 2679CV00453

HAMPDEN COUNTY SUPERIOR COURT
FILED
AUG 24 2026
CLERK OF COURTS

USPB JV, LLC and another[1]

vs.

MASSACHUSETTS DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE and another[2]

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. Introduction

The plaintiffs, USPB JV, LLC ("USPB") and Springfield Tower Square, LLC, filed this action against the Massachusetts Division of Capital Asset Management and Maintenance ("DCAMM") and FDS MA Liberty Junction, LLC ("Liberty Junction") challenging the conditional selection, by DCAMM, of Liberty Junction as the recipient of a 40-year lease to be used by the Massachusetts Trial Court for a new Springfield courthouse. The plaintiffs' Verified Complaint for Declaratory and Injunctive Relief has four claims: violation of the Conflict of Interest Law, G.L. c. 268A, against DCAMM (Count 1); a request for review in the nature of certiorari under G.L. c. 249, § 4, against DCAMM (Count 2); declaratory judgment under G.L. c. 231A, § 1, against both DCAMM and Liberty Junction (Count 3); and preliminary and permanent injunctive relief, against DCAMM (Count 4).

This matter is before the Court on the plaintiffs' motion for a temporary restraining order and a preliminary injunction. After a hearing and careful consideration of the parties' submissions, the Court *denies* the plaintiffs' motion.

[1] Springfield Tower Square, LLC
[2] FDS MA Liberty Junction, LLC

27

II. Background

The following facts are taken from the parties' submissions, with some matters reserved for the legal discussion.

A. The Springfield Courthouse Procurement Process

DCAMM is the state agency responsible for capital planning, major public building construction, facilities management, and real estate services for the Commonwealth. On January 21, 2025, the Asset Management Board ("AMB") voted to approve the Trial Court's proposal for the Commonwealth to acquire a leasehold agreement for use by the Trial Court for a new Springfield courthouse. The AMB authorized DCAMM, pursuant to G.L. c. 7B and 81 Code Mass. Regs. § 2.02(1)(a)-(g), to procure the lease via alternative acquisition and competitive selection processes.[3] Specifically, the AMB authorized DCAMM, among other things, to prepare and issue a request for proposals ("RFP"), to evaluate proposals based on the requirements and criteria specified in the RFP, and to select the proposal most advantageous to the Commonwealth, based on DCAMM's and the Trial Court's evaluation of the proposals received and the Trial Court's recommendation.

On June 30, 2025, DCAMM issued the RFP in line with its plan to identify and acquire leased space for the construction of a new courthouse in Springfield. DCAMM designed the RFP to provide an open and competitive process for selecting the leased space and to inform all potential proposers of the Commonwealth's space needs, the steps for submitting proposals, and the procedures and criteria by which DCAMM would evaluate proposals and select the proposal that was most advantageous for the Commonwealth.

[3] In contrast to many suits filed challenging decisions by awarding authorities in response to requests for proposals, the plaintiffs here are not claiming that DCAMM's conditional selection of Liberty Junction violated competitive bidding statutes.

As set forth in the RFP, DCAMM has discretion to select or reject proposals solely based on subjective value and the ability to meet the Trial Court's needs. In relevant part, the RFP provided that (1) only eligible proposers with site control rights could submit proposals; (2) the proposals must be substantially complete and would be deemed non-responsive if allowing the proposer to supply missing information after the opening of proposals would be prejudicial to fair competition; and (3) "the DCAMM Office of Leasing and State Office Planning . . . [would be] the only authorized point of contact for the Commonwealth regarding this RFP and its subject matter. If a proposer or a proposer's representative engages in unauthorized contact, the proposal may be deemed non-responsive." DCAMM incorporated into the RFP the Conflict of Interest Law, G.L. c. 268A, to protect against conflicts of interest.

The deadline for submitting proposals in response to the RFP was October 16, 2025. Ten proposals were received by DCAMM and deemed responsive, including proposals by both of the plaintiffs and Liberty Junction. Liberty Junction proposed a six-story courthouse at 125 Liberty Street and identified as the landlord FDS MA Liberty Junction, LLC, with principals Claiborne Williams, Richard Mann, John Barros, and Conan Harris. The "Liberty Junction Team" included the development team, comprised of FD Stonewater, LLC (of which Williams is a principal) and CoJo Partners (also referred to as CoJo Real Estate, which is owned and was founded by Harris and Barros); as well as a construction contractor, subcontractors, architects, engineers, and property managers.

The ten proposals were evaluated by a selection committee made up of members of DCAMM and the Trial Court. The Trial Court members included Trial Court Administrator Thomas Ambrosino, Trial Court Chief Justice Heidi Brieger, the Trial Court's Chief of Construction Services, the Trial Court's Senior Legal Counsel/Leased Property Manager, and the

Trial Court's Facilities Director. In an affidavit, Ambrosino expressed his utmost confidence in the integrity and independence of the selection committee.

The evaluation of proposals occurred over the course of more than eight months. The evaluation criteria established in the RFP included developer qualifications and experience, design quality, location, parking and access, project schedule, and the extent to which each proposal satisfied the Trial Court's operational needs. The evaluation of proposals entailed a "desk review," site visits, and multiple rounds of clarification questions posed to the proposers as needed.

Based on the evaluations of the ten responsive proposals received, the selection committee shortlisted four proposals, including those by Liberty Junction and USPB, but not Springfield Tower Square, LLC.[4] The selection committee then evaluated the comparative costs and overall value of the four shortlisted proposals. Liberty Junction's proposal received rankings of "better" and "best" on 13 metrics, while USPB received one additional "better" ranking. The chart summarizing the comparative analysis of the four finalists shows that the proposals of Liberty Junction and USPB were neck and neck in some respects. The estimated timeline from the date of lease execution to courthouse occupancy was 33 months for USPB and 42 months for Liberty Junction. On the other hand, the cost of Liberty Junction's proposal was substantially lower than that of USPB. For example, the total estimated annual cost of occupancy under USPB's proposal was $59,242,690.73, whereas under Liberty Junction's proposal, it was $48,560,429.46.

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[4] The proposal by the plaintiff, Springfield Tower Square, LLC, for a courthouse at 275 Chestnut Street, ranked highly overall, but had drawbacks, notably that: (1) the distribution of program spaces across a significant number of floors did not achieve the operational efficiency envisioned by the RFP; and (2) it was significantly more expensive than the four proposals which were shortlisted by the selection committee.

The selection committee also conducted interviews with the four shortlisted proposers to obtain clarification of some aspects of their proposals and to ensure the accuracy of their cost analysis. On February 19, 2026, in its interview by the selection committee, USPB confirmed that, under its proposed triple-net lease structure, the Commonwealth would be responsible for operating expenses, including real estate taxes. On March 5, 2026, the selection committee interviewed Liberty Junction, which clarified that, under its proposal, the Commonwealth would be responsible for the payment of "Additional Rent inclusive of real estate taxes." Because the shortlisted proposals used differing assumptions regarding projected real estate taxes, the selection committee evaluated that aspect of the proposals using a common real estate tax assumption. For purposes of the comparative cost analysis, the selection committee applied a valuation derived from the City of Springfield's assessments of recent large-scale construction projects and escalated that annual amount by 2.5% over the lease term to normalize the proposals.

On April 6, 2026, DCAMM sent Liberty Junction twelve questions, which Liberty Junction answered on April 11, 2026, in a letter. The first question asked Liberty Junction to describe the development team's experience in developing multi-block, mixed-use developments as proposed for the Springfield courthouse project. Liberty Junction's response included a chart describing fifteen projects in six states, three of which were developed by Barros. Of those fifteen projects, Liberty Junction highlighted four "featured projects that are directly analogous to the proposed developments. . . ." Of those four featured projects, Barros was identified as a developer of two mixed-use buildings (in Charlestown and Dorchester) and Barros was described as leading CoJo Partners to develop 14 of 36 acres it had acquired in Roxbury and Dorchester.

The fourth featured project described Williams's development of a mixed-use project in Maryland.

Based on its comparative cost analysis, the selection committee provisionally determined that Liberty Junction's proposal represented the lowest overall cost to the Commonwealth and the best overall value among the shortlisted proposals. The selection committee recommended Liberty Junction's proposal to the DCAMM commissioner, who made the final selection determination. DCAMM's conditional selection of Liberty Junction did not represent a contract and does not commit the Commonwealth to enter into a lease. DCAMM retains the right to conditionally select another proposal if DCAMM's requirements are not satisfied by Liberty Junction.

As explained in the August 5, 2026, affidavit of Deborah Russell, DCAMM's Director of Leasing and a member of the selection committee, Liberty Junction's proposal will save the Commonwalth at least $600,000 a month compared to the other finalists' proposals, and the total estimated cost of occupancy at Liberty Junction is $7.4 million lower than the next closest finalist on an annual basis, and provides the lowest cost to taxpayers by nearly $300 million over the 40-year lease term. The Liberty Junction proposal was approximately $420 million lower than the proposal by USPB.

The Liberty Junction proposal was also attractive because its team included developer FD Stonewater and architect Leers Weinzapfel Associates, both of which have substantial experience on similar projects, which experience the selection committee believed would minimize costs and delays as the project progressed. Other reasons for the selection of Liberty Junction's proposal included the location of the courthouse on Liberty Street, near public transportation, and a 42-month delivery schedule, which was realistic and one of the fastest proposed schedules.

In his August 5, 2026, affidavit, Ambrosino explained why Liberty Junction was selected:

> "6. From the perspective of the Trial Court, the Liberty Junction proposal was the obvious and only choice. Of the 10 proposals, 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. The Liberty Junction proposal was the lowest cost proposal ***by several millions of dollars each year*** and would ultimately save the Trial Court approximately $300 million over the entire term of the lease. This preserves the Trial Court's ability to fund other important components of the delivery of justice for the people of the Commonwealth.
> 7. The Liberty Junction project is supported by a well-qualified development team which demonstrated extensive experience in delivering large scale public facilities for federal and state governments, with a design team that brings expertise in courthouse design, including previous projects for the Trial Court. The [Liberty Junction] project will deliver a layout that protects the safety of court users and introduces natural light into all courtrooms, in a location that is well-served by public transportation and the regional highway network. . . .
> 8. The Trial Court recommended that DCAMM conditionally select the Liberty Junction team's proposal because it provided the best value to the Trial Court and the Commonwealth. . . ."

(Emphasis in original).

On June 30, 2026, DCAMM notified Liberty Junction by letter that the Trial Court and DCAMM had determined that its proposal provided the best value to the Commonwealth, and that DCAMM had conditionally selected it. The conditional selection marks the commencement of lease negotiations, which are expected to last several months, between DCAMM and Liberty Junction.

The notification letter listed numerous conditions, among them that (1) Liberty Junction must provide evidence that it has met the site control requirements before execution of the lease; (2) because the development team, including architects, engineers, contractors, consultants, and key subcontractors as identified in the proposal, was a material factor in the selection of Liberty Junction, any "material change to any member of the proposed development team shall be subject to the prior written review and approval of DCAMM . . . ."; (3) the Liberty Junction team shall consult with the State Ethics Commission ("SEC") "regarding any actual, potential, or perceived conflicts of interest that may have arisen as a result of a team member [referring to Barros] becoming a state employee between the date of proposal submission and the date of this selection. The selected team must take all necessary steps to disclose, mitigate, or eliminate any such conflicts to the satisfaction of the Commonwealth prior to contract execution"; and (4) "Any changes to or deviations from the RFP, the Proposal, the attached revised program requirements, or the Lease shall be subject to DCAMM's review and approval in its sole discretion."

B. Barros's Roles in Liberty Junction and MCCA

As noted, the just described conditional selection notification letter's reference to 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" referred to Barros. In January 2026, nearly three months after Liberty Junction submitted its proposal for the courthouse project, and about six months before it was conditionally selected, one of its principals, Barros, learned that he might be appointed as the Interim Executive Director of the Massachusetts Convention Center Authority ("MCCA"). MCCA is an independent public authority of the Commonwealth, governed by its own board of directors. It owns and operates several convention center facilities in Massachusetts, such as the MassMutual Center in Springfield, and it aims to generate regional economic activity by attracting conventions and other events to use MCCA's facilities.

MCCA has no authority over or stake in the lease and project for the new Springfield courthouse. MCCA does not fall under the jurisdiction of DCAMM or the Executive Office of Administration and Finance ("EOAF"), within which DCAMM is located. DCAMM and EOAF have no authority over MCCA. The defendants note that the secretary of EOAF is Matthew Gorzkowicz, who is also a member of the board of directors of MCCA.

In early January 2026, before his appointment to MCCA, Barros disclosed in writing to Kevin Scanlon, General Counsel for MCCA, his interest in Liberty Junction and its proposal for the new Springfield courthouse project. With Scanlon, Barros also consulted Eve Slattery, General Counsel for the SEC, about these matters.[5] Barros sought advice from Scanlon and Slattery about what he should do and should not do, including any disclosures he should make, if he were appointed as Interim Executive Director of MCCA. Both Scanlon and Slattery advised Barros that he could retain his interest in the Liberty Junction team and its proposal, but that he should not participate in any discussions between the team and DCAMM or in any presentations made by the team to DCAMM regarding the proposal. Scanlon and Slattery further advised Barros that he was not, at that point, required to submit a filing or public disclosure with the SEC because DCAMM had not yet selected the proposer for the courthouse project, but that in the event that Liberty Junction's proposal were selected, Barros would be required to file a disclosure of financial interest under G.L. c. 268A, § 7(b). As set forth below, Barros complied fully with those instructions.

On January 9, 2026, Barros was appointed to the role of Interim Executive Director of MCCA, and he assumed that position on January 14, 2026. The selection committee and DCAMM became aware of that appointment. On March 5, 2026, Barros did not attend Liberty Junction's interview with the selection committee. During that interview, the selection committee asked as one of its first questions about the effect of Barros's appointment to MCCA on the relationship between FD Stonewater and CoJo Partners. Liberty Junction replied that FD

[5] Emails exchanged between Barros and Scanlon show that on January 8 and 9, 2026, they conferred about when Barros would be available to meet with the SEC.

Stonewater and CoJo Partners worked in a partnership, that FD Stonewater, not CoJo Partners, was taking the lead on the project, and that Barros would continue to be an owner.

Barros had no communications with the selection committee, DCAMM, or the Trial Court regarding the RFP, Liberty Junction's proposal, or the courthouse project. Barros did not participate in any DCAMM decisions regarding the procurement for the new Springfield courthouse. Barros has had no authority over DCAMM's decisions regarding that procurement.

On March 17, 2026, Barros filed a Statement of Financial Interest ("SFI") for the year 2025 with the SEC pursuant to G.L. c. 268B. That SFI does not refer to his interest in CoJo Partners.

On July 1, 2026, the day after DCAMM conditionally selected Liberty Junction's proposal, Barros filed a "Disclosure By State Employee of Financial Interest in a State Contract and Certification by Head of Contracting Agency as Required by G.L. c. 268A, § 7(b)." That prompt disclosure comported with the advice of SEC's general counsel and MCCA's general counsel in January 2026. In it, Barros disclosed that he has a financial interest in a contract with DCAMM, and he confirmed that his employer, MCCA, does not regulate the activities of DCAMM; that MCCA is not the contracting agency; that in working for MCCA, Barros does not participate in or have official responsibility for any of DCAMM's activities; and that the contract in which Barros has a financial interest with DCAMM was made after public notice or through competitive bidding. Barros further stated in his disclosure that: as equal owner of CoJo Partners, he will receive indirect financial compensation from the contract lease with DCAMM; MCCA will have no involvement with the Springfield courthouse project; and "I will continue to not act as an agent nor have any decision-making authority or interactions with DCAMM and the

[Liberty Junction] Team relative to this contract. My role will continue to be that of a passive investor."

In his July 30, 2026, affidavit filed in support of the defendants' opposition to the plaintiffs' motion for a preliminary injunction, Barros stated that, notwithstanding his disclosures as required by G.L. c. 268A, § 7(b), and as advised by the SEC, and notwithstanding the fact that he has not taken any action in his role at MCCA with respect to the courthouse project, "I am divesting myself from the Liberty Junction Team and any interest in the Springfield Courthouse project. I will not have any economic interest in the project. I would not want my involvement in the project to imperil the significant public benefits that will come to downtown Springfield and the residents of the Commonwealth." (Barros Aff. para. 10).

Likewise, on August 2, 2026, Barros, through his attorney, announced that he was divesting from his interest in the Liberty Junction project and that he was divesting from CoJo Real Estate. The same day, Liberty Junction asked DCAMM to approve Barros's divestment from the Liberty Junction team. No information has been presented to the Court with respect to any response by DCAMM.

III. Legal Analysis

A party moving for a preliminary injunction bears the burden of showing (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm from the denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction. *Garcia* v. *Dept. of Hous. & Community Dev.*, 480 Mass. 736, 747 (2018). Where, as here, a party seeks to enjoin government action, the Court must determine that the requested injunctive relief promotes the public interest, or, alternatively, that the injunctive relief will not adversely affect the public. *Boston Firefighters Union, Local 718, International Assoc'n of Fire Fighters, AFL-CIO* v. *City of Boston*, 491 Mass. 556, 562 (2023).

Among these factors, the moving party's likelihood of success on the merits is "especially important," such that "the preliminary injunction cannot survive if the plaintiffs are unlikely to succeed on the merits." *Abner* v. *Massachusetts Interscholastic Athletic Ass'n*, 490 Mass. 538, 545 (2022) (citations omitted). "[T]he movant's likelihood of success is the touchstone of the preliminary injunction inquiry . . . . [Without it], the remaining factors become matters of idle curiosity." *Lieber* v. *Pres. & Fellows of Harvard College*, 488 Mass. 816, 822 (2022), quoting *Foster* v. *Comm'r of Corr.*, 484 Mass. 698, 712 (2020).

If the failure to grant the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must balance that risk against any similar risk of irreparable harm which issuing the injunction would create for the opposing party. *Abner,* 490 Mass. at 545. "What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Packaging Industries Group, Inc.* v. *Cheney,* 380 Mass. 609, 617 (1980).

A. The Plaintiffs' Likelihood of Success on the Merits

The court begins by assessing the plaintiffs' likelihood of success on the merits of the claims in their Verified Complaint.

1. Violation of Conflict of Interest Law, G.L. c. 268A, Against DCAMM (Count 1)

(a) G.L. c. 268A, § 7

In Count 1, the plaintiffs allege that in the procurement process, DCAMM violated the Conflict of Interest Law, G.L. c. 268A, § 7, as "a result of Mr. Barros's unwaivable conflict," and that Barros was required to have, but failed to disclose to the SEC that he was both a state employee and had an interest in Liberty Junction's proposal before DCAMM.

Section 7 establishes 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 state agency is an interested party, of which interest he has knowledge or reason to know." As relevant here, § 7 clarifies that this provision does not apply to

> "(a) a state employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or
> (b) to a state employee . . . who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the state employee files with the state ethics commission a statement making full disclosure of his interest . . . in the contract . . . ."

There are myriad difficulties with Count 1. Most obviously, it is brought against DCAMM, which is not a state employee, and which therefore cannot be liable for violating G.L. c. 268A, § 7. There is no legal or logical support for the plaintiffs' convoluted theory that DCAMM somehow violated G.L. c. 268A, § 7, in the procurement process as a "result of" what they call Barros's "unwaivable conflict." On that ground alone, the plaintiffs have not shown that they have a likelihood of success on the merits on their claim that DCAMM violated § 7.

Even if the plaintiffs could clear that hurdle, they have presented no legal or factual support for their contention that DCAMM's conditional selection of Liberty Junction contravened the Conflict of Interest Law due to what the plaintiffs assume to be a conflict of interest by Barros. There is no evidence in the voluminous record that Barros violated any provision of G.L. c. 268A, § 7. To the contrary, Barros went above and beyond in ascertaining and then fulfilling his obligations under § 7. Even before he became a state employee, Barros sought the advice of SEC's general counsel and of MCCA's general counsel with regard to any potential conflict of interest arising out of his interest in Liberty Junction and its proposal for the courthouse project. Barros then fully complied with that advice and with § 7.

Barros did not violate G.L. c. 268A, § 7, even in the weeks before he divested his interest in the project, because (1) Barros was not employed by the contracting agency, DCAMM, nor for for an agency which regulates the activities of DCAMM; (2) Barros did not participate in or have an official responsibility for any of DCAMM's activities; (3) on July 1, 2026, the day after Liberty Junction was conditionally selected, Barros filed with the SEC the requisite disclosure of his financial interest in the contract pursuant to G.L. c. 268A, § 7(b), as had been advised by the SEC's general counsel in January 2026; and (4) the contract was made after public notice and competitive bidding. See G.L. c. 268A, § 7(b). Therefore, the plaintiffs have not presented evidence that there was a violation of G.L. c. 268A, § 7, at any time by Barros, who is not a defendant, or by DCAMM. See G.L. c. 268A, § 7.

(b). G.L. c. 268A, § 23(b)(3)

The plaintiffs further allege that the conditional selection of Liberty Junction evidences a violation of another provision in the Conflict of Interest Law, G.L. c. 268A, § 23(b)(3), which provides in relevant part that no state employee shall act in a manner which would cause a reasonable person to conclude that any person can improperly influence or unduly enjoy that employee's favor in the performance of his official duties. Section 23(b)(3) instructs that even if there is an appearance of impropriety, the public employee may act on a matter "if such officer or employee has disclosed in writing to his appointing authority . . . the facts which would otherwise lead to such a conclusion."

The plaintiffs' claim of a violation of § 23(b)(3) fails for reasons in addition to the fact that DCAMM, the named defendant, is not a state employee. The plaintiffs have offered no evidence that Barros ever acted in a manner that would cause a reasonable person to conclude that any person could improperly influence him or unduly enjoy Barros's favor in his performance of duties as the Interim Executive Director of MCCA. Nor is there evidence that Barros, through his position at MCCA, ever attempted to influence anyone at DCAMM on matters pertaining to Liberty Junction's proposal or the Springfield courthouse project, or that Barros exercised improper influence in the procurement process. Instead, as set forth in the affidavits of Russell and Ambrosino, Barros had no communications regarding the RFP or Liberty Junction's proposal or the courthouse project with the selection committee, DCAMM, or the Trial Court.

Without pointing to any evidence, specific communications or transactions, the plaintiffs surmise that there must have been some improper influence involving Barros because one member of MCCA's board is DCAMM's secretary, Matthew Gorzkowicz. But the plaintiffs do not allege facts supporting an inference that or describing how Gorzkowicz's MCCA board membership translates into Barros's improper influence on DCAMM's decision with respect to the Springfield courthouse proposal.

Nor is there evidence of Barros trying to conceal his dual roles. The record leaves no doubt that even before Barros became a state employee, he disclosed to his appointing authority, MCCA, his interest in the Liberty Junction proposal. Barros's appointment to MCCA was no secret to DCAMM. On March 5, 2026, the selection committee asked Liberty Junction during the interview, in one of its first questions, about the effect of Barros's appointment to MCCA on the relationship between FD Stonewater and CoJo Partners. Liberty Junction replied that FD Stonewater and CoJo Partners worked in a partnership, with FD Stonewater taking the lead, and that Barros would continue to be an owner. In short, MCCA, the SEC, and DCAMM were all well aware of Barros' dual roles during the procurement process, before DCAMM conditionally selected Liberty Junction's proposal.

DCAMM's knowledge of this issue is also evident in its conditional selection notification letter, which expressly directed Liberty Junction to consult with the SEC

> "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. The selected team must take all necessary steps to disclose, mitigate, or eliminate any such conflicts to the satisfaction of the Commonwealth prior to contract execution."

Barros had already consulted with the SEC, knew what he was required to disclose, and did so the day after Liberty Junction was conditionally selected. In sum, the plaintiffs have not shown that they have any likelihood of succeeding on the merits to the extent their claims are premised upon an alleged conflict of interest involving Barros.

(c). G.L. c. 268A, § 9(a)

Further compounding the plaintiffs' difficulties in moving for a preliminary injunction is G.L. c. 268A, § 9(a), which provides that no state agency action can be rescinded for a conflict of interest violation under §§ 7 or 23 unless the violation substantially influenced the state action. Even if the plaintiffs could show a substantial likelihood of demonstrating that DCAMM's decision somehow violated G.L. c. 268A, §§ 7 or 23 - which they cannot - they have presented no evidence, and, therefore, have not shown a likelihood of demonstrating, that what they perceive as Barros's conflict of interest substantially influenced DCAMM's conditional selection of Liberty Junction.

As explained in the affidavits of Ambrosino and Russell, the conditional selection of Liberty Junction was based on the assessment of objective factors, primarily the price tag. Whether viewed as a lump sum, annually, or monthly, it is uncontrovertible that the cost of Liberty Junction's proposal to the Commonwealth is projected to be far less than that of the other proposals, including those made by the plaintiffs, and that this was the number one driving factor behind the conditional selection decision.

The considerable relevant experience of FS Stonewater, CoJo Partners, and their entire team in large public construction projects bolstered support for the conditional selection of Liberty Junction's proposal. Barros's multi-use development experience was one factor. When asked by the selection committee about its experience in multi-use development projects, Liberty Junction described fifteen such projects in six states, three of which were developed by Barros (and highlighted as among the particularly relevant projects of the team). But even if Barros's track record as a developer was a significant factor in the decision to select Liberty Junction's proposal,[6] the plaintiffs have no likelihood of showing that Barros had a conflict of interest. They, therefore, have no chance of demonstrating that the conditional selection of Liberty Junction was substantially influenced by any conflict of interest as required to rescind the decision under G.L. c. 268A, § 9(a).

Equally unavailing is the plaintiffs' contention that Liberty Junction's proposal should have been rejected because, in March 2026, Barros filed a Statement of Financial Interest ("SFI")

[6] The court need not and does not address the plaintiffs' recent argument that Barros's divestment from the project requires DCAMM to approve or reject that change, and, due to its nature, rescind its conditional selection of Liberty Junction.

omitting some of Barros' financial interests. That SFI was filed under G.L. c. 268B, which, in contrast to G.L. c 268A, was not incorporated into the RFP. Any perceived violation of G.L. c. 268B might be resolved in a proceeding before the SEC, see G.L. c. 268B, § 3(f)(4), but the plaintiffs have not shown that it would undermine Liberty Junction's proposal.

It follows that the plaintiffs have not shown a likelihood of success on the merits of any of their claims insofar as they are based upon an alleged conflict of interest involving Barros.

2. Certiorari under G.L. c. 249, § 4, against DCAMM (Count 2)

The plaintiffs' claim for review in the nature of certiorari pursuant to G.L. c. 249, § 4, seeks a remedy to correct what the plaintiffs assert are errors in DCAMM's conditional selection of Liberty Junction.

(a). Legal Standard for Certiorari Review under G.L. c. 249, § 4

"It is the function of a writ of certiorari . . . to correct substantive errors of law by a judicial or quasi judicial tribunal which are not otherwise reviewable by a court." *Gifford* v. *Comm'r of Public Health*, 328 Mass. 608, 619 (1952). "Review extends to the entire record of the proceedings that are the subject of the complaint for relief in the nature of certiorari, or to such portions of the record as the parties agree are necessary." *Abner*, 490 Mass. at 546.

Factors considered in determining whether a proceeding was judicial or quasi judicial include whether the proceeding was preceded by specific charges; whether the proceeding involved 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 new policy; whether the agency conducted an investigation into the veracity of attested-to facts; whether the proceeding culminated in an individualized determination of a party's entitlement to some benefit; and whether the proceeding was followed by the adoption of formal findings of fact. *Fore River Residents Against Compressor Station* v. *Office of Coastal Zone Management*, 100 Mass. App. Ct. 556, 610 (2021).

In an action in the nature of certiorari, the standard of review may vary according to the nature of the action for which review is sought. *Forsyth Sch. for Dental Hygienists* v. *Bd. of Registration in Dentistry*, 404 Mass. 211, 217 (1989). The standard of review under G.L. c. 249, § 4, accommodates the kind of decision involved. *Pollard* v. *Conservation Comm'n of Norfolk*, 73 Mass. App. Ct. 340, 348 (2008).

The defendants contend that review in the nature of certioriari is not available here because DCAMM's decision was not judicial or quasi judicial. In support of that argument is the statement in Russell's affidavit that the selection committee did not issue formal written findings, conduct investigations, or take sworn testimony during the interviews. While that argument has some superficial appeal, it is unavailing. Certiorari has been used to review agency decisions in analogous contexts. In *Gifford*, the decision awarding a public construction contract under public bidding laws was subject to review in the nature of certiorari. *Gifford*, 328 Mass. at 619-620. The Supreme Judicial Court reasoned that

> "[i]n approving the contract for the hospital project, we think that the [Commissioner of Public Health] was acting in a quasi judicial capacity. The statute from which [the Commission's] authority is derived provides that 'no construction of any such project shall be undertaken until plans, specifications and contracts therefor shall have been approved by the commission. G.L. c. 92A, § 2 . . . .The requirement that the contract be 'approved' necessarily involved the making of findings by the commission and then applying the law to the facts found. . . . The prescribed approval inevitably included making a decision that [construction contract bidder] was the 'lowest responsible and eligible bidder' within the meaning of [G.L. c. 149, § 44A]"

(citations omitted). *Id.* See also *Mello Const., Inc.* v. *Division of Capital Asset Management and Maintenance*, 84 Mass. App. Ct. 625, 631 (2013) (absent any other reasonably adequate remedy, certiorari was proper mechanism for review of DCAMM's denial of application for certification of eligibility as general contractor specializing in large scale public construction contracts; DCAMM's decision was not arbitrary or capricious and was based on its certified contractor evaluations and followed DCAMM's meeting with plaintiff prior to its final determination to discuss evaluations); *Revere* v. *Mass. Gaming Comm'n*, 476 Mass. 591, 601-602 (2017) (certiorari review of decision by gaming licensing commission where applicants presented information under oath to commission and commission investigated and made specialized decision).

The process for review by the selection committee and DCAMM of the proposals for the Springfield courthouse project and making a conditional selection was not preceded by specific charges, nor did it entail taking testimony or issuing formal findings of fact. However, it involved an extensive, lengthy evaluation of proposals which were submitted with signatures under the following language akin to an attestation:

> "Proposer represents and warrants that 1) the information and statements in this Proposal are complete and accurate to the best of the Proposer's ability to make them, and 2) the Proposer has not communicated with any representative of the Commonwealth of Massachusetts regarding preparation of this Proposal other than the DCAMM Project Manager."

The selection committee questioned the shortlisted proposers repeatedly, in interviews and in writing, and retained professional assistance for its evaluation of some aspects of the proposals, all culminating in an individualized assessment of the proposals. Although DCAMM did not issue formal written findings of fact, it did issue its ultimate factual conclusion, that Liberty Junction presented the most advantageous proposal for the Commonwealth. This procedure is analogous to the agency procedures used in *Gifford* and *Mello Const., Inc.*, where certiorari under G.L. c. 249, § 4, was determined to be the proper review mechanism, absent any other reasonably adequate remedy. Likewise, here, there appears to be no reasonably adequate alternative remedy or review mechanism. Therefore, the Court assumes without deciding that an action in the nature of certiorari is the proper mechanism for review of DCAMM's conditional selection decision.

(b) Standard for Reviewing DCAMM's Decision

Generally, the assessment of an agency's decision under G.L. c. 249, § 4, will ultimately turn on whether it was arbitrary and capricious, unsupported by substantial evidence, or otherwise an error of law. *Langan* v. *Bd. of Registration in Med.*, 477 Mass. 1023, 1025 (2017). When, however, an agency decision implicates an exercise of administrative discretion, review under G.L. c. 249, § 4, is generally available only to determine whether the decision was arbitrary and capricious. *Abner*, 490 Mass. at 546. As set forth below, here, the result is the same under either standard.

To this decidedly deferential standard of review, two further principles apply. First, "[i]t is to be presumed that public officers will discharge their duties honestly and in accordance with the rules of law. . . . Every presumption is in favor of legality and good faith until the contrary is shown." *General Outdoor Advertising Co.* v. *Dept. of Pub. Works*, 289 Mass. 149, 192 (1935). Moreover, in an analogous legal challenge, "under the [competitive bidding statute] it is for the awarding authority and not for the courts to determine the competence of bidders." *Fred C. McClean Heating Supplies, Inc.* v. *Westfield Trade High Sch. Bldg Comm'ee of City of Westfield*, 345 Mass. 267, 273-274 (1962).

(c). Merits of Certiorari Claim

The plaintiffs assert in paragraphs 56 and 57 of their Verified Complaint that DCAMM erred in two ways: (1) it failed to follow "statutory and procedural obligations, including requirements designed to prevent unfair and windfall profits and conflicts of interest"; and (2) it "violated provisions of the RFP; exceeded contractual, legal and equitable authority; pursued unlawful procedures in an arbitrary and capricious manner; and abused their discretion."

For all the reasons detailed above, insofar as the certiorari claim is based on the theory that DCAMM's decision was tainted by a conflict of interest, it fails and requires no further discussion. What is left of Count 2 is the plaintiffs' claim that DCAMM's decision violated the RFP provisions and exceeded DCAMM's contractual, legal and equitable authority. This aspect of the certiorari claim rests on five specific ways in which Liberty Junction's proposal was allegedly flawed:

> "a. It identifies [sic] that site rights are held by other corporate entities other than the proposer.
> b. It does not include any assignment of interest in those properties or contract rights to the named proposer or landlord, thus contravening the RFP's definition of 'eligible proposer.'
> c. It includes a defective Ground Lease Option Agreement between FD Stonewater and Northeastern Investments that fails to confer any formal rights to extend the option period to either party.
> d. It identifies [sic] that certain categories of information are informational only.
> e. It contains unresolved contradiction [sic] regarding real estate taxes."

None of these five purported defects afford the plaintiffs a tenable basis for relief. The first three of them concern what the parties refer to as site control, i.e., that the proposer have control over the site, either in a lease or ownership or an option for control, in order to be an eligible proposer.

(i) Evidence of Site Control by Liberty Junction

At the time its proposal was submitted on October 16, 2025, Liberty Junction provided evidence to DCAMM that it held a ground lease option agreement at the proposed site, at 125 Liberty Street, and that it had a purchase and sale agreement for an adjacent parcel. The ground lease option was held by FD Stonewater, LLC, and that option has been extended to November 9, 2026. The purchase and sale agreement was executed on behalf of FDS MA Springfield

Dwight, LLC, which is organized and managed by Williams. Both the option agreement and the purchase and sale agreements were signed by Williams, a principal for Liberty Junction and the contact person for its proposal.[7]

Because multiple individuals and corporate entities are typically involved in a procurement proposal of this size, and procurements such as this take considerable time, it is not uncommon for site control to be reconfirmed after the conditional selection and during the lease negotiations. As stated in the conditional selection notification, DCAMM will not execute a lease with Liberty Junction until it obtains confirmation that Liberty Junction has the authority to bind the property owners to an agreement and that the record owner or tenant will sign the lease pursuant to the RFP.

Based on Liberty Junction's documentary submissions, DCAMM determined that Liberty Junction had adequately demonstrated site control to qualify as an eligible proposer. The plaintiffs have not shown that this determination was arbitrary or capricious, an abuse of discretion, or that it contravened the RFP requirements.

(ii) Whether Liberty Junction's Proposal Was Substantially Complete

The two remaining alleged flaws underpinning the certiorari claim stand on even shakier ground. The plaintiffs vaguely complain that Liberty Junction's proposal "identifies [sic] that

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[7] In his August 2, 2026, affidavit, Williams delineated his roles in FDS MA Liberty Junction, LLC (as its organizer), FD Stonewater, LLC (as co-founder and authorized member), and in FDS MA Springfield Dwight LLC (as its organizer and managing member). Williams explained that on October 16, 2025, FDS MA Liberty Junction and its team members submitted the proposal for the courthouse project and that Williams, on behalf of FD Stonewater, LLC, executed the Ground Lease Option Agreement for 125 Liberty Street, for that proposal. Williams also, on behalf of FDS MA Springfield Dwight, LLC, executed the Agreement of Purchase and Sale for 280 Chestnut Street, which is the adjacent property within the Liberty Junction proposal. On May 8, 2026, FD Stonewater, LLC and Northeast Investments LLC executed a First Amendment of Ground Lease Option Agreement which extended the Option Period, through which FD Stonewater, LLC, or its designee or assignee, may exercise an option to ground lease the real property at 125 Liberty Street to November 9, 2026. A copy of that extended option agreement has been provided to DCAMM.

certain categories of information are informational only." Pursuant to the RFP, the proposals had to be substantially complete and would be deemed non-responsive if allowing the proposer to supply missing information after the opening of proposals would be prejudicial to fair competition. The plaintiffs fail to identify the significance of the referenced categories of information. They have not shown that Liberty Junction's proposal was not substantially complete, nor do they point to evidence that fair competition was harmed by purported gaps in Liberty Junction's proposal. The plaintiffs' conclusory assertion of error in this regard, devoid of any support, warrants no further discussion.

(iii) Real Estate Taxes

The plaintiffs' last discernible claim of error in their certiorari count is that Liberty Junction's proposal "contains unresolved contradiction [sic] regarding real estate taxes." Russell sheds light on this issue in her affidavit as follows.

> "During the clarification process, Liberty Junction clarified that, under its proposal, the Commonwealth would be responsible for the payment of Additional Rent inclusive of real estate taxes. USPB likewise confirmed that, under its proposed triple-net lease structure, the Commonwealth would be responsible for operating expenses, including real estate taxes. The selection committee considered these clarifications in its cost analysis. Because the shortlisted proposals used differing assumptions regarding projected real estate taxes, the proposals were evaluated using a common real estate tax assumption. For purposes of the comparative cost analysis, DCAMM applied a valuation derived from the City of Springfield's assessments of recent large-scale construction projects and escalated that annual amount by 2.5% over the lease term to normalize the proposals."

(Russell Aff. par. 18).

The selection committee's evaluation process enabled both Liberty Junction and USPB to elucidate their treatment of real estate taxes. As a result, the selection committee determined that it could fairly evaluate that aspect of the proposals by using a common real estate tax assumption. The plaintiffs have not offered any evidence that what they characterize as an "unresolved contradiction regarding real estate taxes" in Liberty Junction's proposal constitutes a defect rendering the proposal ineligible. The record establishes, instead, that clarification was needed in order to evaluate fairly both Liberty Junction's and USPB's proposals with respect to their treatment of real estate taxes because they were grounded in different assumptions.

The defendants have presented evidence, in the form of detailed affidavits, written communications, and other documents, undercutting each of the plaintiff's claims, which rely primarily on speculation and unsupported inferences. DCAMM's decision was consistent with the recommendation of the independent selection committee which conducted a rigorous, extensive evaluation of ten proposals, and appropriately took into account the significant budget considerations, the depth of experience in Liberty Junction's proposal, and the characteristics of the proposed building. The plaintiffs have not shown that they are likely to succeed on any of their claims, in the absence of evidence that DCAMM's conditional selection of Liberty Junction was an abuse of discretion, arbitrary or capricious, or that it ran afoul of RPF requirements.

3. Declaratory Judgment Claim Against Both Defendants (Count 3)

In Count 3 of their Verified Complaint, the plaintiffs seek a declaration pursuant to G.L. c. 231A that "Liberty Junction is disqualified from the project because of undisclosed conflicts of interest by Mr. Barros, a named principal in the selected proposal." (Complaint, par. 67). The plaintiffs also repeat their allegations that the conditional selection of Liberty Junction was flawed in other ways, all of which are discussed above, but in Count 3, they do not request a declaration with respect to any of them. In their prayers for relief, however, the plaintiffs request declarations that DCAMM violated the Conflict of Interest Law, materially breached the RFP, and violated "contractual, legal and equitable requirements regarding fairness in the procurement process," and that Liberty Junction has failed to satisfy the requirements of the RFP and was therefore ineligible to have its proposal conditionally selected by DCAMM.

Because all of this ground has been covered, the claim for declaratory judgment requires only cursory discussion. Count 3 is dependent upon and falls with the plaintiffs' other claims, each and every one of which is without support. It follows that the plaintiffs have not shown a likelihood of success on the merits of their declaratory judgment claim.[8]

4. Request for Injunctive Relief Against DCAMM (Count 4)

The same conclusion obtains with respect to Count 4, in which the plaintiffs seek temporary, preliminary, and permanent injunctive relief by enjoining DCAMM from executing the lease with Liberty Junction, or, alternatively, insofar as the defendants have executed the lease, the plaintiffs seek an order declaring the lease void *ab initio*. This injunctive relief claim is based entirely upon the plaintiffs' claims that DCAMM's conditional selection of Liberty Junction's proposal was flawed. As explained above, the plaintiffs have not shown that they are likely to succeed on the merits of any of those claims. That result compels the conclusion that the plaintiffs are not likely to succeed on the merits of their claim for injunctive relief.

B. The Balancing Test for Motions for Preliminary Injunctions

Because the moving party's likelihood of success is the touchstone of the preliminary injunction inquiry, without which "the remaining factors become matters of idle curiosity, . . . [a] preliminary injunction will not be granted if the moving party cannot demonstrate a likelihood of success on the merits." *Lieber*, 488 Mass. at 821-822, quoting *Foster*, 484 Mass. at 712. Where

[8] The court is not persuaded by DCAMM's argument that this claim is barred because it has sovereign immunity as a Commonwealth agency, where declaratory judgments have been granted against state agencies. See, e.g., *SIEU* v. *Dept. of Mental Health*, 476 Mass. 51, 52 (2016) (union could challenge, by way of declaratory judgment action, decision by Department of Mental Health allegedly violating statute which did not provide a private right of action); *Naranjo* v. *Dept. of Revenue*, 63 Mass. App. Ct. 260, 266 (2005) (reversing judgment dismissing plaintiff's complaint seeking declarations that state agency was statutorily required to provide him with hearings and administrative review in child support proceedings; "[a] complaint for declaratory relief filed in Superior Court is the proper vehicle for challenging the legality of an administrative action, 'even though such action is neither an "adjudication" nor the promulgation of a "rule,"' so long as the prerequisites to bringing a declaratory judgment action are met"), citing *Haverhill Manor, Inc.* v. *Comm'r of Public Welfare*, 368 Mass. 15, 30 (1975).

the plaintiffs have not shown that they are likely to succeed on the merits of any of their claims, "the [motion for] preliminary injunction cannot survive." See *Abner*, 490 Mass. at 545. That is precisely where this case stands, such that the motion for preliminary injunction has no viability. See *id.; Lieber*, 488 Mass. at 822; *Foster*, 484 Mass. at 712. Nonetheless, out of an abundance of caution and in light of the high stakes at issue, the Court considers the remaining relevant factors in deciding a motion for preliminary injunction.

The plaintiffs have not presented any evidence or persuasive argument that the denial of the preliminary injunction would irreparably harm them. If they were to prevail at trial in this case, they could recover a monetary judgment for the amount of their lost profits.

If the injunction were granted, the potential harm to Liberty Junction would also be largely if not entirely monetary, but not irreparable. For DCAMM, the potential loss from granting an injunction would not be limited to monetary damage. Russell states in her affidavit that if DCAMM is barred from entering a lease agreement, it will harm DCAMM and the Trial Court because DCAMM has devoted significant time and resources to this procurement, including hiring third-party architects to work with the selection committee and with Liberty Junction, and that those resources will have been wasted if DCAMM cannot complete its negotiations and execute a lease agreement with Liberty Junction. According to Russell, if DCAMM can proceed with negotiating with Liberty Junction, it can identify any insurmountable obstacles to lease execution and select another proposer, but that would not be possible if there is a delay in executing the lease for several months. This is a crucial time in the procurement process, and the target occupancy for the new courthouse is as soon as possible. These potential losses to DCAMM, in the event the injunction issues, are substantial but do not rise to the level of irreparable harm. See *Modern Continental Const. Co., Inc.* v. *City of Lowell*, 391 Mass. 829, 838 (1984) (city's enhanced administration costs from rebidding public construction contract did not constitute irreparable harm).

The risk of possible harm to the litigants may be a wash. The balance between these risks plainly does not cut in favor of the plaintiffs. As a result, issuance of the preliminary injunction would be improper. See *Packaging Industries Group, Inc.*, 380 Mass. at 617.

One further consideration remains. Where, as here, a party seeks to enjoin government action, the court must determine that the requested injunctive relief promotes the public interest, or, alternatively, that the injunctive relief will not adversely affect the public. *Boston Firefighters Union, Local 718, International Assoc'n of Fire Fighters, AFL-CIO*, 491 Mass. at 569. This factor also weighs against granting the requested preliminary injunction. As explained by Ambrosino in his affidavit, "Any further delay in the negotiation process with Liberty Junction will negatively impact the Trial Court and the public it serves because the existing courthouse facility urgently needs replacement."

The longstanding, serious problems with the current courthouse in Springfield are well known. Enjoining the defendants from proceeding with these negotiations would harm the public interest by delaying an already protracted process required for the Commonwealth to build, as expeditiously as possible, a sorely needed new courthouse in Springfield. See *LeClair v. Norwell*, 430 Mass. 328, 337-339 (1999) (where enjoining important school construction project would harm public interest, no error in denial of motion for preliminary injunction despite plaintiffs' meritorious allegations that town violated public construction statute and town by-law); *Comm.* v. *Mass. CRINC*, 392 Mass. 79, 89 (1984). The conclusion that granting the injunctive relief would not promote the public interest, but would adversely affect it, when viewed with the other considerations weighing against injunctive relief, leave no doubt that the plaintiffs have not met their burden in seeking injunctive relief. See *Boston Firefighters Union, Local 718, International Assoc'n of Fire Fighters, AFL-CIO*, 491 Mass. at 569.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Paper No. 6) is **DENIED**.

David M. Hodge
Justice of the Superior Court

Dated: August 24, 2026