OFFICE
OF
THE ADMINISTRATIVE LAW JUDGE

2025 REPORT

MASSACHUSETTS DEPARTMENT OF TRANSPORTATIONOFFICE OF THE ADMINISTRATIVE LAW JUDGE

2025 Report

Overview of the Office

The Office of the Administrative Law Judge is established pursuant to G.L. c. 6C, §40, as amended by St. 2009, c. 25, §8. Its essential function is to make fair and impartial decisions on disputes involving the Department, including:

- construction contract disputes appealed from decisions of the Chief Engineer
- appeals from the denial of outdoor advertising permits by the Department's Division of Outdoor Advertising
- contractor appeals from decertification of disadvantaged minority business enterprises
- appeals from decisions of the Department's Right of Way Bureau pursuant to the requirements of 49 CFR Part 24 §24.10
- other matters as assigned by the Secretary of Transportation

Executive Summary

This report provides the status and disposition of appeals and other matters brought to the Office of the Administrative Law Judge in 2025.

In summary, the following matters were handled in calendar year 2025:

- One (1) construction contract appeal was heard and resolved by a report and recommendation to the Secretary pursuant to M.G.L. c. 6C, §40.
- One (1) construction contract appeal that was pending was withdrawn after the parties reached a settlement.
- Two (2) construction contract appeals are pending and will be heard in calendar year 2026.

- Seven (7) direct payment demands were ruled upon in accordance with G.L. c.30, §39F.

- The Adjudicatory Board of the Mass. Unified Certification Program implemented changes to its hearing procedures to comply with recent amendments to 49 CFR Part 26.

- One (1) appeal from the denial of an application for an outdoor advertising permit was resolved. An adjudicatory hearing was held, and a final agency decision was issued in accordance with 700 CMR 3.19 and G.L. c. 30A.
- One (1) appeal from the revocation of an outdoor advertising permit was received. All proceedings are stayed pending action by the Superior Court.

Construction Contract Appeals

Appeals Resolved / Withdrawn

MDR Construction Company, Inc. #5-112878-001

A notice of appeal was received appealing the Chief Engineer's determination to deny, in part, a claim in the amount of $94,915.85 and a time extension resulting from differing site conditions encountered while performing drainage operations. The Chief Engineer made a determination to approve the claim for a reduced amount of $2,846.00 and a contract time extension of 13 days. After this Office made rulings on pre-hearing motions filed by the department, the contractor advised that the parties reached a settlement. The appeal was withdrawn.

Appeals Resolved by Report and Recommendation to the Secretary

Baltazar Contractors, Inc. # 2-116287-002

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim for additional costs associated with the placement of concrete for a bridge rail system as a result of an omission of a contract pay item for the installation of 5000 psi concrete. A hearing was held, and a report and recommendation was made to the Secretary on _____, recommending that the appeal be denied because the contractor did not perform any extra work and the pay item omission did not caused it to incur costs that it otherwise would not have incurred.

Appeals Pending

Baltazar Contractors, Inc. # 3-109684-003

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim in the amount of $501,715.28 for additional costs incurred for removal and replacement of damaged concrete sidewalks. A hearing will be held, and a report and recommendation will be made to the Secretary in calendar year 2026.

Baltazar Contractors, Inc. # 2-97278-001

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim in the amount of $499,372.69 for additional costs incurred for removal and replacement of damaged concrete sidewalks. A hearing will be held, and a report and recommendation will be made to the Secretary in calendar year 2026.

Direct Payment Demands

In 2025, the following direct payment demands were received and resolved by rulings on the merits in accordance with G.L. c.30, §39F:

Allied Painting, Inc. – March 26, 2025

General Contractor:	New England Infrastructure, Inc.
Contract:	Contract #111658 - Bridge Replacement Br. No. B-28-009=C-05-013 (Steel) Buckland – Charlemont, Route 2 - Mohawk Trail over the Deerfield River
Amount:	$946,548.97
Decision:	Denied – April 11, 2025 (The Demand seeks amounts that are part of a pending claim for extra work, not payments that have "already been included … or which is to be included in a payment to the general contractor" for work performed by the subcontractor.)

IDS Highway Safety, Inc. – June 24, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #118959 - Oxford - Bridge Repairs and Related Work
Amount:	$41,965.56
Decision:	Denied – July 14, 2025 (the subcontractor has yet to achieve substantial completion of its subcontract work.)

IDS Highway Safety, Inc. – June 24, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #121025 - Holyoke - Bridge Repairs and Related Work
Amount:	$45,448.90
Decision:	Denied – July 14, 2025 (the subcontractor has yet to achieve substantial completion of its subcontract work.)

IDS Highway Safety, Inc. – June 24, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #121734 - Westford – Bridge Preservation
Amount:	$5,644.00
Decision:	Denied – July 14, 2025 (the subcontractor has yet to achieve substantial completion of its subcontract work.)

Sealcoating Inc. d/b/a Indus Inc. – August 26, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #121026 - Leominster, Uxbridge – Bridge Repairs and Related Work (Including Painting) Bridges over I-90 and Rte. 146.
Amount:	$149,252.26
Decision:	Denied – September 26, 2025 (the subcontractor has yet to achieve substantial completion of its subcontract work.)

Atlantic Bridge & Engineering, Inc. – September 8, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #118959 - Oxford - Bridge Repairs and Related Work
Amount:	$180,024.38
Decision:	Denied – September 24, 2025 (the subcontractor has yet to achieve substantial completion of its subcontract work.)

Northern Construction Service, LLC. – December 8, 2025

General Contractor:	Atsalis Brothers Painting Company
Contract:	Contract #118959 - Bridge Repairs and Related Work, Oxford
Amount:	$584,241.35
Decision:	Withdrawn – January 6, 2026 (the subcontractor confirmed receipt of payment from the general contractor.)

Massachusetts UCP Board Appeals

In 2025, the MassUCP Adjudicatory Board did not receive any contractor appeals from DBE decertification proceedings initiated by the MassUCP.

The Board took action to implement changes to its hearing procedures to comply with amendments to 49 CFR Part 26, which are further described below.

Notice of Rules Changes

On April 1, 2025, the Board gave notice of the following:

"The Adjudicatory Board of the Massachusetts Unified Certification Program (Board) hereby gives notice that it is implementing a change in its hearing procedures to comply with recent amendments to 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

49 CFR §26.87(d)(3) requires that a Notice of Intent (NOI) to decertify a DBE "must inform the DBE of a hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI." Accordingly, the Board authorizes MassUCP to inform the DBE in any NOI sent pursuant to 49 CFR §26.87(c) that the date set for the Board's hearing of the matters at issue therein will be the 30th day from the date of the NOI, or if such date falls on a holiday or weekend, the next business day thereafter.

If a hearing is requested pursuant to 49 CFR §26.87(d)(1), the Board will endeavor to hold the hearing on the date scheduled in the NOI or on a different date as provided in 49 CFR §26.87(d)(2) and 801 CMR, § 1.02(1)(j), such date being no more than 45 days from the date of the NOI unless the Board determines that there is good cause to set a later date."

Outdoor Advertising Appeals

In 2025, the following appeal from the denial of outdoor advertising permits was heard in accordance with 700 CMR 3.19.

Murray Outdoor Communications – Appeal of Denial of Outdoor Advertising Permits ##2024D002 and 2024D003

This appeal concerned the denial of applications submitted by Murray Outdoor Communications to convert static billboards located adjacent to Route I-95 in Attleboro to electronic billboards. On March 3, 2025, a final agency decision was issued: ("The proposed location at 100 Roddy Avenue in Attleboro violates the spacing requirements of the Federal State Agreement [and] also violates the spacing requirements in 700 CMR 3.07(18)")

Bay Colony Associates LLC – Appeal of Revocation of Outdoor Advertising Permits ##2021D010 and 2021D011

This appeal concerns the revocation of two outdoor advertising permits. The Appellant's motion to stay all proceedings was allowed pending action by the Superior Court in the case *Bay Colony Associates, LLC v. MassDOT Office of Outdoor Advertising*, No, 2284CV02347.

APPENDIX OF DECISIONS/RULINGS

APPENDIX A-1

RULINGS

CONSTRUCTION CONTRACT APPEALS

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Phillip Eng, Interim MassDOT Secretary
Jonathan L. Gulliver, Undersecretary and Highway Administrator

massDOT
Massachusetts Department of Transportation
Highway Division

MEMORANDUM

To: Phillip Eng, Interim MassDOT Secretary

From: AC Albert Caldarelli, Administrative Law Judge

Date: January 8, 2026

Re: Report and Recommendation on Appeal of Baltazar Contractors, Inc. from the Chief Engineer's Denial of Claim #2-116287-002

I am pleased to submit for your consideration the attached report and recommendation that addresses an appeal by Baltazar Contractors, Inc. (BCI), the general contractor for contract #116287.

The contract provided for roadway reconstruction and related work on a Section of Russel Street (Route 9) in Hadley. The work included installation of bridge rail system to protect a bridge sidewalk from traffic (the "BR-2 Rail"). The plans required that all concrete for the BR-2 Rail "be 5000 psi, ¾ in., 685 HP cement concrete." BCI completed the concrete work for the BR-2 Rail as provided in the plans and specifications; however, it claims that it is entitled to additional compensation as a result of an omission in the contract pay items. Specifically, the designer failed to include a separate pay item for the installation of 5000 psi concrete and instead, included the cubic yards of 5000 psi cement concrete required for construction of the BR-2 Rail system within the estimated quantities for pay item 904 for installation of 4000 psi, ¾ inch, 610 Cement Concrete. The Department paid BCI for work at the contract bid price for Item 904 based on the quantity of concrete used, plus an additional amount under an extra work order for the increased cost of the concrete.

On June 18, 2025, the Chief Engineer issued a determination denying BCI's claim for additional costs on the basis that all the work was originally anticipated and contained in the contract plans and specifications and therefore did not constitute "extra work" as defined in the contract. The contractor appealed that determination, and on December 11, 2025, I held a hearing on the matter. Based on the evidence and testimony presented at the hearing, the contract plans and specifications, and the position papers submitted by the parties, I agree with the Chief Engineer's determination.

Pursuant to M.G.L. c. 6C, § 40, my recommendation as to the disposition of this matter is to maintain the Chief Engineer's denial of the claim.

Agree ☒ Disagree ☐

dated: 2/4/26

Phillip Eng
Interim MassDOT Secretary

REPORT AND RECOMMENDATION
APPEAL OF BALTAZAR CONTRACTORS, INC.
REGARDING THE CHIEF ENGINEER'S DECISION
TO DENY CLAIM #2-116287-002

This report and recommendation is provided in accordance with the provisions of M.G.L. c. 6C, §40 and Division I, Subsection 7.16 of the Contract.

BACKGROUND

By letter dated June 18, 2025, the Chief Engineer issued a determination denying a claim by Baltazar Contractors, Inc. (BCI) for additional costs associated with the placement of 5000 psi concrete for a bridge rail system (the "BR-2 Rail"). In accordance with Division I, §7.16 of the contract, BCI appealed the Chief Engineer's determination by submitting a Notice of Appeal on July 3, 2025, and a Statement of Claim dated July 29, 2025, to the Office of the Administrative Law Judge.

The parties participated in a status conference on October 8, 2025, concerning the factual background, procedural issues, and potential legal and factual issues to be heard. The parties also engaged in voluntary discovery and briefed their respective positions. A hearing was held on December 11, 2025. BCI was represented by Marwan Zubi, Esq. The Department was represented by Counsel Ruth Deras. Testimony was offered by the following witnesses:

For BCI:

- Dinis Baltazar, Secretary and Treasurer, Baltazar Contractors, Inc.
- Justin Roy, Project Manager, Baltazar Contractors, Inc.

For the Department:

- Brian Kelleher, Deputy Highway Administrator

The parties were given the opportunity to fully present their cases, including legal argument by each party's counsel. At the conclusion of the hearing, I took the matter under advisement.

FINDINGS

I have considered the evidence and testimony presented at the hearing, the contract plans and specifications, and the position papers submitted by the parties. I make the following findings of fact:

1. Contract #116287 ("Contract") provided for roadway reconstruction and related work on a Section of Russel Street (Route 9) in Hadley. The work included installation of concrete as part of a rail system on each side of a bridge structure to protect the sidewalks from traffic (the "BR-2 Rail").

2. Division I, Subsection 901 of the Contract governs the installation of cement concrete, including materials, handling and placing, forms and falsework, weather protection, finishing and curing, removal of forms and falsework, and other construction methods, and requires that cement concrete be constructed to the

designs and dimensions indicated on the plans.[1] The plans required that all concrete for the BR-2 Rail "be 5000 psi, ¾ in., 685 HP cement concrete."[2]

3. The Contract, however, does not contain a pay item for the installation of 5000 psi, ¾ in., 685 HP cement concrete. The designer failed to include a separate pay item for the installation of 5000 psi concrete and instead, included the cubic yards of concrete required for construction of the BR-2 rail in the estimated quantities for pay item 904 for installation of 4000 psi, ¾ inch, 610 Cement Concrete.[3]

4. BCI's bid price for pay item 904 was $1,500.00 per cubic yard.[4]

5. BCI testified that when preparing its bid, it reviewed the Contract plans and understood that 5000 psi concrete was required for construction of the BR-2 rail.[5]

6. Between June 26, 2023, and August 11, 2023, BCI's Project Manager and the Department's Resident Engineer exchanged emails concerning the requirement to use 5000 psi concrete for the BR-2 rails.[6]

    i. By email dated August 11, 2023, the Resident Engineer advised: "Yes, we will use the 5000, ¾, 685 HP Mix. There will be no additional compensation for the 5000 psi HP concrete. Compensation will be per calcbook, for quantity installed in place, under item #904."

    ii. On the same day, BCI's Project Manager responded: "Baltazar disagrees with the District's position on the additional costs. Baltazar will track these additional costs and submit once completed with the first phase (south side)."

7. BCI constructed the BR-2 rail on the south side of the bridge in the fall of 2023 between October 10 and October 30, 2023. It tracked its costs for this work on a time and materials basis and also used this information to support an estimate of future costs to construct the north side BR-2 rail. By letter dated November 17, 2023, BCI included this information in an itemized statement to the District Highway Director claiming extra work in the amount of $197,214.71.[7]

8. BCI completed the BR-2 rail on the north side of the bridge in the fall of 2025 between August 11 and September 24, 2025. It tracked its costs for this work on a time and materials basis. BCI introduced an itemized statement of the costs in the amount of $122,876.71 as an exhibit during the appeal hearing. The statement is in

[1] Contract, Div. I, § 901.20: ("Cement Concrete with or without reinforcement as required for bridges, culverts, walls, steps, drop inlets and other work shall be constructed to the designs and dimensions indicated on the plans …")
[2] Contract Plans, Sheet 230 of 384.
[3] Letter dated January 24, 2024, from District Highway Director; *see* BCI Exhibit 13 and Department Exhibit F.
[4] BCI Exhibit 5.
[5] Testimony of Dinis Baltazar.
[6] BCI Exhibit 12 and Department Exhibit E.
[7] BCI Exhibit 13 and Department Exhibit F.

the form of an Extra Work Order Summary Sheet dated October 30, 2025, and related supporting documentation.[8]

9. The Department paid BCI for the installation of concrete for the BR-2 rail construction pursuant to Pay Item 904 at the contract unit price of $1,500.00 per cubic yard (60.43 CY @ $1,500 per CY = $90,645.00).[9]

10. The Department issued Extra Work Order #10 in the amount of $6,210.00 to pay BCI for the increased cost the concrete needed to construct the BR-2 rails, i.e., the difference in price between 4000 psi, ¾ inch, 610 Cement Concrete and 5000 psi, ¾ in., 685 HP cement concrete for the quantity used.[10]

11. The Department also issued Extra Work Order #20 in the amount of $14,752.62 to pay BCI for the installation of 53 additional 4-inch weep holes within the North and South BR-2 rail curb walls because the weep holes were not shown on the contract plans.[11]

12. On appeal, BCI claims entitlement to additional compensation in the amount of $117,967.59 based on its time and materials costs minus the amounts paid by the Department under Pay Item 904 and the Extra Work Orders ($229,575.11 less $90,645.00 less $6,210.00 less $14,752.62).[12]

DISCUSSION

Compliance with Notice Provisions – Subsection 7.16

As a threshold matter, the Department contends that BCI's claim is "forfeited and invalidated" pursuant to Division I, Subsection 7.16 of the Contract because BCI did not submit to the engineer an itemized statement of claim "on or before the 15th day of the month succeeding that in which such work is performed or damage sustained."[13] Specifically, after installing the concrete necessary for the BR-2 rail on the south side of the bridge between October 10 and October 30, 2023, BCI filed its itemized statement of the details and amount of such work with the engineer on November 17, 2023. Because the itemized statement was filed after the 15th day of the month succeeding that in which such work was performed or damage sustained, I agree that the claim for additional costs related to installation of the concrete necessary for the BR-2 rail on the south side of the bridge is forfeited and invalidated pursuant to Division I, Subsection 7.16.

With respect to construction of the north side BR-2 rail, the itemized statement filed by BCI on November 17, 2023, included the details and amount of anticipated work or damage to be sustained.

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[8] BCI Exhibit 22.
[9] BCI Exhibit 23.
[10] Extra Work Order #10; *see* BCI Exhibit 16.
[11] Extra Work Order #20; *see* BCI Exhibit 18.
[12] BCI Exhibit 23.
[13] Division I, § 7.16: "the Contractor shall, on or before the 15th day of the month succeeding that in which such work is performed or damage sustained, file with the Engineer an itemized statement of the details and amount of such work or damage and unless such statement shall be made as required, the Contractor's claim for compensation shall be forfeited and invalidated, and they shall not be entitled to payment on account of any such work or damage."

Based on a detailed estimate,[14] BCI claimed that it would incur additional costs in the amount of $90,516.31. The north side construction did not take place until the fall of 2025; therefore, the itemized statement filed with the engineer for that work was timely.

BCI's subsequent attempt to revise and increase its claim related to construction of the north side BR-2 rail was invalid. BCI was required to file with the engineer any itemized statement supporting an increase in the amount of its claim on or before the 15th day of the month succeeding that in which such work was performed or damage sustained, in this case by October 15, 2025.[15] The itemized statement containing time and materials costs for construction of the north side BR-2 rail is dated October 30, 2025, and was not filed with the engineer. Filing an itemized statement with the hearing examiner after the due date as an exhibit in an appeal hearing does not satisfy the requirements of Division I, Subsection 7.16.

BCI's Claim for Extra Work

To the extent that BCI's claim in part survives the procedural defects noted above, I also conclude that BCI did not perform any extra work that would entitle it to the amount that it claims.

The Contract defines Extra Work as "[w]ork which . . . was not originally anticipated and/or contained in the contract." There is no question that the plans required that all concrete for the BR-2 Rail "be 5000 psi, ¾ in., 685 HP cement concrete." BCI's witnesses testified as such and acknowledged that the plans are clear with respect to the requirement to use 5000 psi concrete for construction of the BR-2 rails on the south and north sides of the bridge. Similarly, the requirements for the installation of the concrete (handling and placing, forms and falsework, weather protection, finishing and curing, removal of forms and falsework, and other construction methods) are contained in Division I, Subsection 901 of the Contract. Because all the work was originally anticipated and contained in the contract, it is not Extra Work.

BCI's allegation that an email dated August 11, 2023, from the Resident Engineer to BCI's Project Manager constituted an order to perform extra work is without merit. A plain reading of the email is that the Resident Engineer was confirming, in response to BCI's inquiry, work that was otherwise provided for in contract (i.e., that BCI was required to construction of the BR-2 Rails using 5000 psi concrete) and providing notice to BCI that the Department intended to make payment for the work under Item 904. The email contains no "particular reference" to Subsection 4.03 of the Contract and does not designate that any of the work is to be done as Extra Work.[16]

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[14] The Department has acknowledged that an Itemized Statement may be based on a detailed estimate and projection of costs. *See* MassDOT Standard Operating Procedure CSD 25-14-1-000 at Subsection 1.7.4 ("The Itemized Statement of Claim shall be based on the Contractor's best available information and estimate of money and/or time being requested, and shall include at a minimum the dollar amount of additional compensation and length of contract time extension being requested, as well as the known and projected cost and supporting documents that serve as the basis for the requested compensation or time.") and at Attachment 3 ("The Itemized Statement of Claim shall include as much information as [the Contractor] has available or can estimate regarding the details and amount of the work performed, damage sustained and/or time claimed.").

[15] *See* Findings #7: The north side BR-2 rail was constructed between August 11 and September 24, 2025.

[16] Division I, § 4.03: "The Contractor shall do any work not herein otherwise provided for when and as ordered in writing by the Engineer, such written order to contain particular reference to this Subsection and to designate the work to be done as Extra Work."

Finally, I do not construe Extra Work Order #10 as an agreement, acknowledgement, or directive by the Department that the entire construction of the BR-2 Rails was to be paid as Extra Work on a time and materials basis. The Department issued Extra Work Order #10 specifically to provide payment for the increased cost of the quantity of 5000 psi concrete needed for the BR-2 Rail (as compared to the cost of 4000 psi concrete) to address the omission of a pay item for that class of concrete. The approval form and accompanying documentation clearly explain that the scope of the extra work order is limited to the difference in the cost of the concrete and considered to be "simply ... a substitution of material." Otherwise, there is nothing in Extra Work Order #10 that expressly or implicitly changed or added to any of the work described in the plans and specifications. The design, dimensions, construction methods, and quantity of concrete for the construction of the BR-2 Rails remained as originally specified in the Contract plans and specifications.

Item Omission

The designer omitted a pay item for 5000 psi concrete and mistakenly included the quantity of concrete required for construction of the BR-2 rail in the estimated quantities for pay item 904. Item 904 was priced at $1,500.00 per cubic yard in BCI's bid. As discussed above, all of the work required to construct the BR-2 rails was originally anticipated and contained in the plans and specifications. The omission of the pay item for 5000 psi concrete did not change or add to the work in any way. BCI was not directed to, nor did it in fact, perform any Extra Work. Therefore, notwithstanding the omission, BCI was obligated to construct the BR-2 rails at the unit price per cubic yard of concrete provided in item 904.

If the omission, however, caused BCI to incur costs that otherwise would not have been incurred, such costs are compensable because the Department is responsible for omissions in its plans and specifications.[17] BCI still bears the burden of proving its damages, if any. In this case, except for the price difference in the concrete, which was paid in Extra Work Order #10, BCI failed to demonstrate that the omission caused it to incur costs that it otherwise would not have incurred.

BCI presented time and materials documentation showing that construction of the BR-2 rails ended up costing more than its bid price of $1,500.00 per cubic yard for Item 904. However, this is not determinative because no evidence was presented to rule out inefficiencies, bid errors, or other contractor issues as the cause of the overrun. Moreover, nothing presented at the hearing indicated that the increased costs were caused by the item omission. When pressed, BCI's witnesses conceded that no aspect of its as-bid plan to construct the BR-2 rails was changed or modified because of the omission. A contractor is not entitled to additional compensation for completing work that it was already obligated to perform.[18]

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[17] *See Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co.*, 472 Mass. 549, 556, *quoting United States v. Spearin*, 248 U.S. 132, 136 (1918) ("If the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in plans and specifications.")

[18] *See* Corbin on Massachusetts Contracts § 7.01 (discussion of "The Pre-Existing Duty Rule").

RECOMMENDATION

For the reasons stated above, I recommend that the contractor's appeal be DENIED.

Respectfully submitted,

Albert Caldarelli
Administrative Law Judge

Dated: January 8, 2025

OFFICE OF THE ADMINISTRATIVE LAW JUDGE

To: Marwan S. Zubi, Esq.
Nicolai Law Group, P.C.
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P.O. Box 15289
Springfield, MA 01115

Stuthi Balaji, Counsel
Office of the General Counsel
MassDOT
10 Park Plaza
Boston, MA 02116

Re: Baltazar Contractors, Inc.
Claim No. 2-116287-002 / Item Omission
Department's Motion to Dismiss

MEMORANDUM AND ORDER
ON DEPARTMENT'S MOTION TO DISMISS

Baltazar Contractors, Inc. (BCI) is the general contractor on MassDOT Contract #116287, which provides for roadway reconstruction and related work on a section of Russel Street (Route 9) in Hadley.

BCI claims that it incurred additional costs in the amount of $85,397.19 due to the omission of a contract pay item for quantities of 5000 psi HP concrete required to construct a stem wall. BCI appeals from the Chief Engineer's written determination dated June 18, 2025, denying the claim.

On October 24, 2025, the Department, citing Mass. R. Civ. P. 12(b)(6), moved to dismiss the appeal on three counts: (1) the appeal was not timely taken; (2) BCI failed to provide timely notice of its claim in accordance with §7.16 of the contract; and (3) the appeal fails to state a claim upon which relief can be granted. BCI submitted an Opposition to Motion on October 31, 2025.

Based on the factual findings and legal conclusions discussed below, the Department's Motion to Dismiss is DENIED.

FINDINGS

For purposes of this Memorandum, I accept the following factual allegations contained in the Statement of Claim as true, drawing all reasonable inferences from such facts in favor of BCI:[1]

[1] The standard of review applicable to motions to dismiss requires that the factual allegations contained in BCI's Statement of Claim be accepted as true, as well as such inferences as may be drawn therefrom in BCI's favor, *Flagg*

1. The contract work included the installation of a concrete stem wall, which was required to be constructed with 5000 psi HP concrete.[2]

2. The contract contains a pay item and estimated quantity of cubic yards of 4000 psi concrete required for the project but does not contain a pay item for quantities of 5000 psi HP concrete required to construct the stem wall.[3]

3. Baltazar incurred additional costs in the amount of $85,397.19 as a result of constructing the stem wall with 5000 psi concrete instead of 4000 psi concrete.[4]

4. Baltazar provided the Department with initial notice of its claim by letter dated February 19, 2024, to the District 2 Highway Director, including an itemized statement of the details and amount of costs claimed.[5]

5. The Chief Engineer issued a written determination dated June 18, 2025, denying the claim.[6]

6. BCI filed a Notice of Appeal dated July 3, 2025, by email dated the same day to this Office with a copy to the Department.[7]

DISCUSSION

The Department moves to dismiss BCI's claim and subsequent appeal of the Chief Engineer's determination on the basis that the appeal was not timely taken; that BCI failed to provide timely notice of its claim in accordance with §7.16 of the contract; and that the appeal fails to state a claim upon which relief can be granted.[8]

For purposes of M.G.L. c. 6C, § 40, a motion to dismiss will be allowed only where it is certain that the contractor is not entitled to relief under any combination of facts that could be drawn, or reasonably inferred, from the allegations contained in the claim. In other words, a motion to dismiss will be denied unless it appears beyond doubt that the contractor can prove no set of facts at a hearing which would lead to entitlement of the relief sought.[9]

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v. AliMed, Inc., 466 Mass.23, 26 (2013), and a determination as to whether such "factual allegations plausibly suggest an entitlement to relief." *Iannacchino v. Ford Motor Company*, 451 Mass. 623, 635-36 (2008).

[2] BCI Statement of Claim, July 29, 2025.

[3] *Id*.

[4] *Id*.

[5] *Id*. at Exhibit A.

[6] *Id*. at Exhibit B.

[7] Although this fact is not alleged in BCI's Statement of Claim. I take notice of it because it is part of the administrative record for this appeal.

[8] *See* Mass.R.Civ.P. 12(b)(6).

[9] *See Iannacchino v. Ford Motor Company,* 451 Mass. 623, 635-36 (2008); *also see Eigerman v. Putnam Invs., Inc.*, 450 Mass. 281, 286 (2007).

Timeliness of Appeal

The Rules of Practice and Procedures for the Office of the Administrative Law Judge require that a Notice of Appeal be filed within thirty calendar days of the Department decision or action being appealed, unless otherwise provided in the applicable contract, statute, or regulation.[10]

In this case, a Notice of Appeal was filed by BCI and received by this Office on July 3, 2025, which was fifteen days after the Chief Engineer issued her written determination denying the claim. The Notice of Appeal was timely filed.

Written Notice of Claim

Subsection 7.16 of MassDOT's standard specifications requires BCI to submit a written statement of any claim for compensation "within one week after the beginning of any work or the sustaining of any damage on account of such act." It must also submit "an itemized statement of the details and amount of such work or damage" on or before the 15th day of the following month. The provision reads in pertinent part:

> All claims of the Contractor for compensation other than as provided for in the Contract on account of any act of omission or commission by the Party of the First Part or its agents must be made in writing to the Engineer within one week after the beginning of any work or the sustaining of any damage on account of such act, such written statement to contain a description of the nature of the work performed or damage sustained; and the Contractor shall, on or before the 15th day of the month succeeding that in which such work is performed or damage sustained, file with the Engineer an itemized statement of the details and amount of such work or damage and unless such statement shall be made as required, the Contractor's claim for compensation shall be forfeited and invalidated, and they shall not be entitled to payment on account of any such work or damage.

For construction contracts in Massachusetts, procedural requirements for providing notice of claims, such as those contained in Subsection 7.16, are strictly construed. A contractor's failure to follow notice requirements may result in a forfeit of its claim.[11]

In this appeal, the Statement of Claim submitted by BCI states that notice of its claim was provided by letter dated February 19, 2024, to the District 2 Highway Director. In the letter, a copy of which is included as an exhibit to the Statement of Claim,[12] BCI's Project Manager certifies that the costs shown on a referenced itemized statement are true, accurate, and complete. At this stage of the proceedings, and drawing all reasonable inferences in favor of BCI, these pleadings

[10] Standard Operating Procedure ALJ-01-01-1-000, VI(B). I also note that the severe sanction of dismissal of an appeal to this Office based on an untimely filing has been considered appropriate only when the delay was particularly egregious or has caused prejudice to the Department, *e.g., see*, Notice of Dismissal, Appeal of MDR Construction Company, Inc., dated Oct. 16, 2023 (Despite multiple inquiries over four months from the date of the Chief Engineer's determination, the appellant had not submitted a Statement of Claim, nor provided any reason for failing to do so or to justify an extension of the date for submission).

[11] *See Marinucci Bros. v. Commonwealth*, 354 Mass. 141, 144-145 (1968); *also see Glynn v. City of Gloucester*, 21 Mass. App. Ct. 390, 392-93 (1986).

[12] BCI Statement of Claim at Exhibit A.

asserting compliance with the notice requirements of the contract are sufficient to survive a motion to dismiss pursuant to Rule 12(b)(6).[13]

Claim for Extra Work

The Statement of Claim alleges that BCI incurred costs in the amount of $85,397.19 because "Baltazar was required to use 5000 psi HP concrete to construct a stem wall instead of the 4000 PSI concrete specified in the bid tab."[14]

In its detailed factual account of the claim, BCI states:

> The facts regarding Baltazar Contractors, Inc.'s ("Baltazar") claim are largely undisputed. The "Roadway Reconstruction and Related Work (Including Signals) on a Section of Russell Street (Route 9)" in Hadley (the "Project") involved, among other work, the installation of concrete stem wall. The bid tab for the Project did not include an item for installation of the stem wall. The quantity of cubic yards of concrete for construction of the stem wall was apparently included in Item No. 904 – "4000 PSI, ¾ Inch, 610 Concrete Cement." Baltazar was required to use 5000 psi HP concrete to construct a stem wall instead of the 4000 PSI concrete specified in the bid tab. Unlike other similar MassDOT projects requiring 5000 psi HP concrete, there was no bid items for the material Baltazar was required to use for the stem wall. Baltazar incurred substantial additional costs as a result of being required to use 5000 psi HP concrete instead of the 4000 psi.

At this stage of the proceedings, and drawing all reasonable inferences in favor of BCI, this statement of BCI's claim for extra work is sufficient to survive a motion to dismiss.[15]

ORDER

For the reasons stated above, the Department's Motion to Dismiss is DENIED.

Albert Caldarelli
Dated: November 3, 2025 Administrative Law Judge

[13] The Department's motion alleges dates and timelines concerning commencement and completion of work and other events that rely on facts beyond those pled in BCI's Statement of Claim. In ruling on a motion to dismiss an appeal brought under G.L. c. 6C, § 40, matters outside of those alleged in the Statement of Claim are excluded. At the hearing, however, the parties may present evidence to establish or rebut any facts necessary to support legal and contractual arguments, including whether BCI met the requirements of Subsection 7.16.

[14] Attachment to BCI Statement of Claim.

[15] The Department's motion alleges many facts beyond those pled in BCI's Statement of Claim. *See supra* fn. 13.

APPENDIX B-1

RULINGS

DIRECT PAYMENT DEMANDS

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: AC Albert Caldarelli, Administrative Law Judge

DATE: April 11, 2025

RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: Allied Painting, Inc.
Contractor: New England Infrastructure, Inc.
Contracts: Contract #111658 - Bridge Replacement Br. No. B-28-009=C-05-013 (Steel)
Buckland – Charlemont, Route 2 - Mohawk Trail over the Deerfield River
District: District 1
Amount: $946,548.97

This Direct Payment Demand (Demand) by Allied Painting Inc. was received by the Department on March 26, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 1 construction staff, and the applicable contract, I make the following findings:

1. Allied Painting is an approved subcontractor on MassDOT Contract #111658.

2. The subcontract between Allied Painting and the general contractor New England Infrastructure, Inc. contains the following description of the subcontract work and prices:

Description	Quantity	U/M	Unit Price	Total
PAINT STEEL BR NO. B-28-009	1.00	LS	$688,000.00	$688,000.00
Remove Protective Shielding Bridge NO.18-009	1.00	LS	$100,000.00	$100,000.00
Perform cleaning and repair of existing prime coat	10.00	DAY	$ 15,000.00	$150,000.00
			Total:	$1,038,000.00

3. The Demand consists of a letter dated March 10, 2025, from counsel for Allied Painting, transmitting a sworn statement signed by the President of the company, also dated March 10, 2025.

4. The sworn statement certifies that Allied Painting substantially completed its subcontract work on November 4, 2024, and that the general contractor has not fully paid for the work, leaving a balance due under the subcontract of $946,548.97.

5. The general contractor, New England Infrastructure, submitted a reply dated March 20, 2025. It was received by the Department on March 21, 2025. The reply transmits canceled checks and other supporting documentation demonstrating that New England Infrastructure has paid Allied Painting a total of $1,046,178.61 for subcontract work performed under Contract #111658.

6. New England Infrastructure contends: (1) the Demand is untimely[1] and (2) the amounts that are the subject of the Demand are entirely related to a claim for extra work. The claim is in the amount of $1,551,003.28 (identified as Claim No. 1-111658-004), is currently under review by the Department, and no payments for the claimed extra work have been made by the Department to New England Infrastructure.

7. Allied Painting, through counsel, submitted a letter dated April 1, 2025, responding to the assertions made by New England Infrastructure in its reply to the Demand.

8. District 1 construction staff confirms that the amount that is the subject of the Demand is part of Claim No. 1-111658-004, which is under review. The District confirms that none of the amount claimed has been paid to New England Infrastructure, nor has any amount claimed been approved by the Department for inclusion in a payment to New England Infrastructure for subcontract work performed by Allied Painting.

RULING

Pursuant to M.G.L. c.30, § 39F(1)(c), a subcontractor may demand direct payment from an awarding authority "for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor …"

Based on the findings above, Allied Painting has received payment for all subcontract work for which the Department has paid New England Infrastructure. The $946,548.97 amount of the Demand is a claim for extra work, which is part of Claim No. 1-111658-004 currently under review by District 1. The amount, therefore, has not "already been included in a payment to the general contractor" and, unless and until the claim is approved, it is not "an amount that is to be included in a payment to the general contractor for payment to the subcontractor." If the Department approves any portion of Claim No. 1-111658-004 for claimed extra work performed by Allied Painting, New England Infrastructure is required to pay Allied Painting "forthwith" after receipt of payment from the Department.[2]

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[1] In light of the ruling below, I need not address this procedural issue raised by the general contractor. I note, however, that I do not read G.L. c. 30, § 39F(1)(d) as setting a limitation on the time within which a subcontractor must make a direct payment demand. Rather, I understand the statute to mean at least seventy days from substantial completion must pass before a subcontractor may make a demand for direct payment from the awarding authority.

[2] *See* G.L. c c.30, § 39F(1)(a).

For the reasons stated above, the Demand must be DENIED at this time.[3]

cc:

Allied Painting, Inc.
P.O. Box 1130
Williamstown, NJ 08094

New England Infrastructure, Inc.
16 Brent Drive
Hudson, MA 01749

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Francisca Heming, District 1 Highway Director

[3] Nothing in this ruling applies to future payments, if any, to the general contractor for work performed by Allied Painting or to any demand for direct payment related thereto, or to any contract rights and remedies that Allied Painting may have pursuant to its subcontract with New England Infrastructure.

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: AC Albert Caldarelli, Administrative Law Judge

DATE: July 14, 2025

RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: IDS Highway Safety, Inc.
Contractor: Atsalis Brothers Painting, Co.
Contracts: Contract #118959 - Oxford - Bridge Repairs and Related Work
District: District 3
Amount: $41,965.56

This Direct Payment Demand (Demand) by IDS Highway Safety, Inc. (IDS) was received by the Department on June 24, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 3 construction staff, and the applicable contract, I make the following findings:

1. IDS is an approved subcontractor on MassDOT Contract #118959.

2. The Demand consists of a letter dated May 7, 2025, from the President of IDS, including the following sworn statement:

> The original subcontract value was $91,560.00. There have been change orders approved by Atsalis in the amount of $126,840.00, resulting in a total adjusted contract value of $218,400.00. The total value of the work that IDS has completed on the Project is $298,685.97, and therefore, $41,965.56 ($298,685.97 - $256,720.41 = $41,965.56) remains due and owing to IDS under the subcontract.

3. The general contractor, Atsalis Brothers Painting, Co., did not submit a reply within the 10-day statutory period for doing so.

4. District 3 construction staff advises that contract work is ongoing and the subcontract work to be performed by IDS is not substantially complete.

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: "**If, within seventy days after the subcontractor has substantially completed the subcontract work**, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

MassDOT construction staff in District 3 has advised that IDS has yet to achieve substantial completion of its subcontract work as required in G.L. c.30, §39F. Therefore, the Demand submitted by IDS is pre-mature. A subcontractor is not eligible for direct payment until seventy days after completion of the subcontract work.

For the reasons stated above, the Demand is DENIED.

cc:

IDS Highway Safety, Inc.
1230 Mendon Road
Cumberland, RI 02864

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Barry Lorion, District 3 Highway Director

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: AC Albert Caldarelli, Administrative Law Judge

DATE: July 14, 2025

RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: IDS Highway Safety, Inc.
Contractor: Atsalis Brothers Painting, Co.
Contracts: Contract #121025 - Holyoke - Bridge Repairs and Related Work
District: District 2
Amount: $45,448.90

This Direct Payment Demand (Demand) by IDS Highway Safety, Inc. (IDS) was received by the Department on June 24, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 2 construction staff, and the applicable contract, I make the following findings:

1. IDS is an approved subcontractor on MassDOT Contract #121025.

2. The Demand consists of a letter dated May 7, 2025, from the President of IDS, including the following sworn statement:

> The original subcontract value was $103,890.00. There have been change orders in the amount of $47,876.00, resulting in a total adjusted contract value of $151,766.00. IDS has completed $57,710.90 worth of work, and therefore $45,448.90 ($57,710.00 - $12,262.00 = $45,448.90) remains due and owing to IDS under the subcontract.

3. The general contractor, Atsalis Brothers Painting, Co., did not submit a reply within the 10-day statutory period for doing so.

4. District 2 construction staff advises that the subcontract work to be performed by IDS is not substantially complete.

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: "**If, within seventy days after the subcontractor has substantially completed the subcontract work**, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

MassDOT construction staff in District 2 has advised that IDS has yet to achieve substantial completion of its subcontract work as required in G.L. c.30, §39F. Therefore, the Demand submitted by IDS is pre-mature. A subcontractor is not eligible for direct payment until seventy days after completion of the subcontract work.

For the reasons stated above, the Demand is DENIED.

cc:

IDS Highway Safety, Inc.
1230 Mendon Road
Cumberland, RI 02864

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Patricia Leavenworth, District 2 Highway Director

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: AC Albert Caldarelli, Administrative Law Judge

DATE: July 14, 2025

RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: IDS Highway Safety, Inc.
Contractor: Atsalis Brothers Painting, Co.
Contracts: Contract #121734 - Westford – Bridge Preservation
District: District 3
Amount: $5,644.00

This Direct Payment Demand (Demand) by IDS Highway Safety, Inc. (IDS) was received by the Department on June 24, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 3 construction staff, and the applicable contract, I make the following findings:

1. IDS is an approved subcontractor on MassDOT Contract #121025.

2. The Demand consists of a letter dated May 7, 2025, from the President of IDS, including the following sworn statement:

> The original subcontract value was $6,500.00. There have been change orders, approved in the amount or $7,523.50, resulting in a total adjusted contract value of $14,023.50. IDS has completed $7,523.50 worth of work on the Project, and therefore, $5,644.00 ($7,523.50 - $1,879.50 = $5,644.00) remains due and owing to IDS under the subcontract.

3. The general contractor, Atsalis Brothers Painting, Co., did not submit a reply within the 10-day statutory period for doing so.

4. District 3 construction staff advises that the subcontract work to be performed by IDS is not substantially complete.

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: "**If, within seventy days after the subcontractor has substantially completed the subcontract work**, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

MassDOT construction staff in District 3 has advised that IDS has yet to achieve substantial completion of its subcontract work as required in G.L. c.30, §39F. Therefore, the Demand submitted by IDS is pre-mature. A subcontractor is not eligible for direct payment until seventy days after completion of the subcontract work.

For the reasons stated above, the Demand is DENIED.

cc:

IDS Highway Safety, Inc.
1230 Mendon Road
Cumberland, RI 02864

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Barry Lorion, District 3 Highway Director

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: AC Albert Caldarelli, Administrative Law Judge
DATE: September 26, 2025
RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: Sealcoating Inc. d/b/a Indus Inc.
Contractor: Atsalis Brothers Painting, Co.
Contracts: Contract #121026 - Leominster, Uxbridge – Bridge Repairs and Related Work (Including Painting) Bridges over I-90 and Rte. 146.
District: District 3
Amount: $149,252.26

This Direct Payment Demand (Demand) by Sealcoating Inc. d/b/a Indus Inc. (Indus) was received by the Department on August 26, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 3 construction staff, and the applicable contract, I make the following findings:

1. Indus is an approved subcontractor on MassDOT Contract #121026. District 3 approved in writing on September 28, 2023.

2. The Demand consists of a letter dated August 20, 2025, from Indus' Senior Project Manager with attachments, including a quantity payment summary and progress billing invoices, indicating that Indus has billed but has not been paid by the general contractor for work performed under the Contract totaling $149,252.26.

3. There is no sworn statement attesting to the truth and accuracy of the facts claimed in the Demand. *See* M.G.L. c. 30, § 39F(1)(d).

4. The general contractor, Atsalis Brothers Painting, Co., did not submit a reply within the 10-day statutory period for doing so.

5. District 3 construction staff advises that the subcontract work to be performed by Indus is not substantially complete. According to the District, Indus has completed approximately 65% of its approved subcontract work. Remaining subcontract work includes Phase II of Pond Street, substructure work, and slope work.

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: "**If, within seventy days after the subcontractor has substantially completed the subcontract work**, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

MassDOT construction staff in District 3 advises that Indus has yet to achieve substantial completion of its subcontract work as required in G.L. c.30, §39F. The Demand, therefore, is pre-mature because subcontractors performing work on contracts awarded pursuant to G.L. c.30, § 39M are not eligible for a direct payment until seventy days after substantial completion of the subcontract work.

Even if Indus had achieved substantial completion of its subcontract work, the Demand cannot be considered because it was not made by a sworn statement as required by G.L. c. 30, § 39F(1)(d).

For the reasons stated above, the Demand is DENIED.

cc:

Sealcoating, Inc. (d/b/a Indus)
825 Granite Street
Braintree, MA 02184

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Barry Lorion, District 3 Highway Director

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: AC Albert Caldarelli, Administrative Law Judge
DATE: September 24, 2025
RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: Atlantic Bridge & Engineering, Inc.
Contractor: Atsalis Brothers Painting, Co.
Contracts: Contract #118959 - Oxford - Bridge Repairs and Related Work
District: District 3
Amount: $180,024.38

This Direct Payment Demand (Demand) by Atlantic Bridge & Engineering, Inc. (ABE) was received by the Department on September 8, 2025.

FINDINGS

Based on my review of the Demand, information provided by District 3 construction staff, and the applicable contract, I make the following findings:

1. ABE is an approved subcontractor on MassDOT Contract #118959. A Subcontractor Approval Agreement was approved by District 3 on September 30, 2022. ABE is performing steel repairs pursuant to Item 107.97 of the Contract.

2. The Demand consists of a letter dated August 21, 2025, from the President of ABE with attachments including correspondence and requisitions for payment submitted to the general contractor, and including the following sworn statements:

- ***Subcontractor**: Atlantic Bridge & Engineering, Inc. located at 150 High Street Hampton, NH 03842*
- ***General Contractor**: Atsalis Brothers Painting Company 24595 Groesbeck Highway Warren, MI 48089*
- ***MassDOT contract number**: 612133-118959 Subcontract # l 18959-06*
- ***Project Location:** Four(4)Bridges along a Section of I-395 in the Town of Oxford, MA*
- ***Balance Due under Subcontract:** $180,024.38*
- ***Status of completion:** Subcontract work substantially completed as of 5/27 /25.*
- ***Detailed breakdown of the balance due under the subcontract:** (See Attached Sheets)*

3. The general contractor, Atsalis Brothers Painting, Co., did not submit a reply within the 10-day statutory period for doing so.

4. District 3 construction staff advises that contract work is ongoing and the subcontract work to be performed by ABE is not substantially complete. According to District 3 construction staff, Contract #118959 is approximately 60-65% complete, and subcontract work to be performed by ABE is approximately 45% complete based on quantities paid for work performed under Item 107.97 (to date, 7,800 lbs. has been paid out of estimated total of 17,800 lbs.).

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: "**If, within seventy days after the subcontractor has substantially completed the subcontract work**, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

MassDOT construction staff in District 3 has advised that ABE has yet to achieve substantial completion of its subcontract work as required in G.L. c.30, §39F. The Demand, therefore, is pre-mature because subcontractors performing work on contracts awarded pursuant to G.L. c.30, § 39M are not eligible for a direct payment until seventy days after substantial completion of the subcontract work.

For the reasons stated above, the Demand is DENIED.

cc:

Atlantic Bridge & Engineering, Inc.
150 High Street
Hampton, NH 03842

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, State Construction Engineer
Barry Lorion, District 3 Highway Director

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: AC Albert Caldarelli, Administrative Law Judge

DATE: January 6, 2026

RE: Request for Direct Payment pursuant to M.G.L. c.30, §39F

Claimant: Northern Construction Service, LLC
Contractor: Atsalis Brothers Painting, Co.
Contract: Contract #118959 - Bridge Repairs and Related Work, Oxford
District: District 3
Amount: $584,241.35

This Direct Payment Demand (Demand) by Northern Construction Service, LLC was received by the Department on December 8, 2025.

FINDINGS

On December 24, 2025, Northern Construction Service, LLC confirmed to MassDOT's State Construction Engineer that it has received payment from the general contractor of the amounts due and therefore, is withdrawing the Demand.

RULING

The Demand has been withdrawn by the subcontractor. Therefore, no further action is necessary, and this matter may be closed.

cc: Northern Construction Service, LLC
1520 Park Street
P.O. Box 900
Palmer, MA 01069

Atsalis Brothers Painting, Co.
24595 Groesbeck Highway
Warren, MI 48089-2145

Carrie Lavallee, Chief Engineer
Brian Kelleher, Deputy Highway Administrator
Barry Lorion, District 3 Highway Director

APPENDIX C-1

RULINGS

MASSUCP ADJUDICATORY BOARD

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO

massDOT
Massachusetts Department of Transportation

MASSACHUSETTS UNIFIED CERTIFICATION PROGRAM
ADJUDICATORY BOARD

NOTICE OF RULES CHANGE

The Adjudicatory Board of the Massachusetts Unified Certification Program (Board) hereby gives notice that it is implementing a change in its hearing procedures to comply with recent amendments to 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

49 CFR §26.87(d)(3) requires that a Notice of Intent (NOI) to decertify a DBE "must inform the DBE of a hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI." Accordingly, the Board authorizes MassUCP to inform the DBE in any NOI sent pursuant to 49 CFR §26.87(c) that the date set for the Board's hearing of the matters at issue therein will be the 30th day from the date of the NOI, or if such date falls on a holiday or weekend, the next business day thereafter.

If a hearing is requested pursuant to 49 CFR §26.87(d)(1), the Board will endeavor to hold the hearing on the date scheduled in the NOI or on a different date as provided in 49 CFR §26.87(d)(2) and 801 CMR, § 1.02(1)(j), such date being no more than 45 days from the date of the NOI unless the Board determines that there is good cause to set a later date.

Dated: April 1, 2025

The Adjudicatory Board

By: Albert Caldarelli, Presiding Officer

Ten Park Plaza, Suite 4160, Boston, MA 02116
Tel: 857-368-4636, TTY: 857-368-0655
www.mass.gov/massdot

APPENDIX C-1

RULINGS

MASSUCP ADJUDICATORY BOARD

OFFICE OF THE ADMINISTRATIVE LAW JUDGE

APPEAL DOCKET

APPEAL OF DENIAL OF OUTDOOR ADVERTISING PERMITS ##2024D002 and 2024D003

PARTIES	
APPELLANT **MURRAY OUTDOOR COMMUNICATIONS** **Address: P.O. Box 431 M.O.** **Shrewsbury, MA 01545** **Counsel: Steven S. Broadley, Esq.** **ArentFox Schill LLP** **800 Boylston Street** **Boston, MA 02199**	**APPELLEE** **OFFICE OF OUTDOOR ADVERTISING** **MASS. DEPT. OF TRANSPORTATION** **Address: 10 Park Plaza** **Boston, MA 02116** **Counsel: Eileen Fenton, Senior Counsel** **10 Park Plaza, Room 3510** **Boston, MA 02116**

PROCEEDINGS AND ORDERS		
Entry #	**Filing Date**	**Description**
1	11/5/24	NOTICE OF APPEAL filed by Murray Outdoor Communications by Letter dated November 5, 2024, from Joseph T. Murray, President
2	12/2/24	STATUS CONFERENCE held as scheduled.
3	12/3/24	SCHEDULING ORDER: • Position Papers: The parties have elected to submit position papers in advance of the hearing. - Appellant shall file and serve its position paper on or before December 20, 2024. - The Department shall file and serve its position paper on or before January 10, 2025. - If Appellant elects to submit a response to address new issues raised in the Department's position paper, it shall file and serve such response by January 17, 2025. • Discovery: The parties are encouraged to engage in voluntary discovery. • Witnesses: On or before January 17, 2025, each party shall file and serve its Witness List identifying the names, titles, and anticipated subject matter of testimony from each witness expected to testify at the hearing. • Hearing Exhibits: The parties shall serve copies of their proposed hearing exhibits on or before January 17, 2025. After conferring, the parties shall file a joint exhibit list at least 48 hours before the date of the hearing that identifies and attaches all hearing exhibits that are agreed upon and any proposed hearing exhibits that are dispute. • Hearing: A further Scheduling Order will be issued to set the date, time, and location of the hearing.
4	12/19/24	PRE-HEARING MEMORANDUM filed by Murray Outdoor Communications.
5	1/10/25	NOTICE OF APPEARANCE filed by attorneys for Office of Outdoor Advertising, Thaddeaus Heuer and Kevin Chen
6	1/10/25	PRE-HEARING MEMORANDUM filed by Office of Outdoor Advertising.
7a	1/17/25	COVER LETTER filed by Murray Outdoor Communications.

7b	1/17/25	EXHIBITS filed by Murray Outdoor Communications.
7c	1/17/25	WITNESS LIST filed by Murray Outdoor Communications.
7d	1/17/25	RESPONSE TO OOA's PREHEARING MEMORANDUM filed by Murray Outdoor Communications.
8a	1/17/25	EXHIBITS filed by Office of Outdoor Advertising,
8b	1/17/25	WITNESS LIST filed by Office of Outdoor Advertising,
9	2/4/25	AGREED EXHIBITS AND STIPULATIONS filed by the Parties
10	2/6/25	HEARING held as scheduled
11	2/7/25	SCHEDULING ORDER • Post-Hearing Briefs: The Parties may submit post-hearing briefs by February 21, 2025.
12	2/21/25	POST-HEARING BRIEF filed by Murray Outdoor Advertising
13	2/21/25	POST-HEARING BRIEF filed by Office of Outdoor Advertising
14	3/3/25	FINAL AGENCY DECISION sent to Parties

OFFICE OF THE ADMINISTRATIVE LAW JUDGE

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Re: Murray Outdoor Communications
Appeal of Denial of Electronic Billboard Applications
#2024D002 and 2024D003

NOTICE OF FINAL AGENCY DECISION

Pursuant to M.G.L. c. 30A, 700 CMR 3.19, and 801 CMR 1.02, the Office of the Administrative Law Judge hereby gives notice of a decision in the above-captioned matter.

A copy of the decision is attached. The decision is subject to judicial review in accordance with G.L. c. 30A, §14.

The parties have been notified by mail on this date.

Dated: March 3, 2025

By: Lisa Harol, Executive Assistant

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

FINAL AGENCY DECISION

APPEAL OF MURRAY MARKETING INC.
d/b/a MURRAY OUTDOOR COMMUNICATIONS
DENIAL OF ELECTRONIC BILLBOARD APPLICATIONS
#2024D002 AND 2024D003

This decision addresses an appeal by Murray Marketing Inc. ("Murray") concerning the denial of two applications for outdoor advertising permits to construct a double-sided electronic billboard at 100 Roddy Avenue in the town of Attleboro.

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By letter dated November 5, 2024, Murray requested an appeal hearing to contest the decision of the Office of Outdoor Advertising ("OOA") to deny the applications. On February 6, 2025, I held a hearing in accordance with the requirements of M.G.L. c. 30A, 700 CMR 3.19, and 801 CMR 1.02. Murray was represented by Steven S. Broadley, Esq. The OOA was represented by Thaddeus A. Heuer, Esq., Kevin Y. Chen, Esq., and Eileen Fenton, Managing Counsel. The following witnesses appeared and gave sworn testimony and evidence concerning the matters at issue in the appeal:

Joseph Murray, President, Murray Marketing
Timothy McCarthy, Director, Office of Outdoor Advertising
Christopher Chaves, MassDOT Transportation Program Planner
Neil Boudreau, MassDOT Assistant Administrator for Traffic and Safety

FINDINGS OF FACT

After consideration of the testimony and evidence presented at the hearing, I make the following findings of fact:

1. Murray currently owns and operates a double-sided static billboard at 100 Roddy Avenue in the town of Attleboro pursuant to OOA permits #200030 and #200107.[1]

2. Previously, in 2000, OOA granted a permit to erect a single-sided static billboard at the location. Then, in 2001, OOA granted permits to allow the conversion of the structure to a double-sided static billboard. OOA has renewed these permits annually through 2024.[2]

3. In 2024, Murray submitted applications seeking permits to construct a double-sided electronic billboard at 100 Roddy Avenue in Attleboro.[3] OOA assigned numbers 2024D002 and 2024D003 to the applications.

[1] Exhibits 01-060 and 01-061.
[2] Exhibits 01-060 through 01-152.
[3] Exhibits 01-016 through 01-027.

4. The location of the proposed electronic signs at 100 Roddy Avenue is adjacent to Interstate 95 South where the highway approaches the interchange of I-95 and Roosevelt Avenue at Exit 43.[4]

5. By letter dated October 18, 2024, OOA denied Murray's applications for permits 2024D002 and 2024D003 for the proposed double-sided electronic billboard at 100 Roddy Avenue in Attleboro.[5] OOA's denial was based on non-compliance with the so-called "Interchange Rule", also referred to as the "Ramp Rule", contained in the spacing requirements of the Federal State Agreement between the Commonwealth and the United States.[6]

6. The "Interchange Rule" in the Federal State Agreement reads as follows:

> **2.) Interstate Highways and Freeway Primary Highways:**
>
> a.) Spacing between signs along each side of the highways shall be a minimum of 500 feet.
>
> b.) No sign may be located adjacent to or within 500 feet of an interchange or intersection at grade, information center, or rest area measured along the Interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way. This subsection (b) does not apply in cities and towns of over 50,000 population.

7. The terms "Traveled Way" and "Main Traveled Way" are defined in the Federal State Agreement[7] as follows:

> **G. TRAVELED WAY** means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
>
> **H. MAIN-TRAVELED WAY** means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions in a main traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

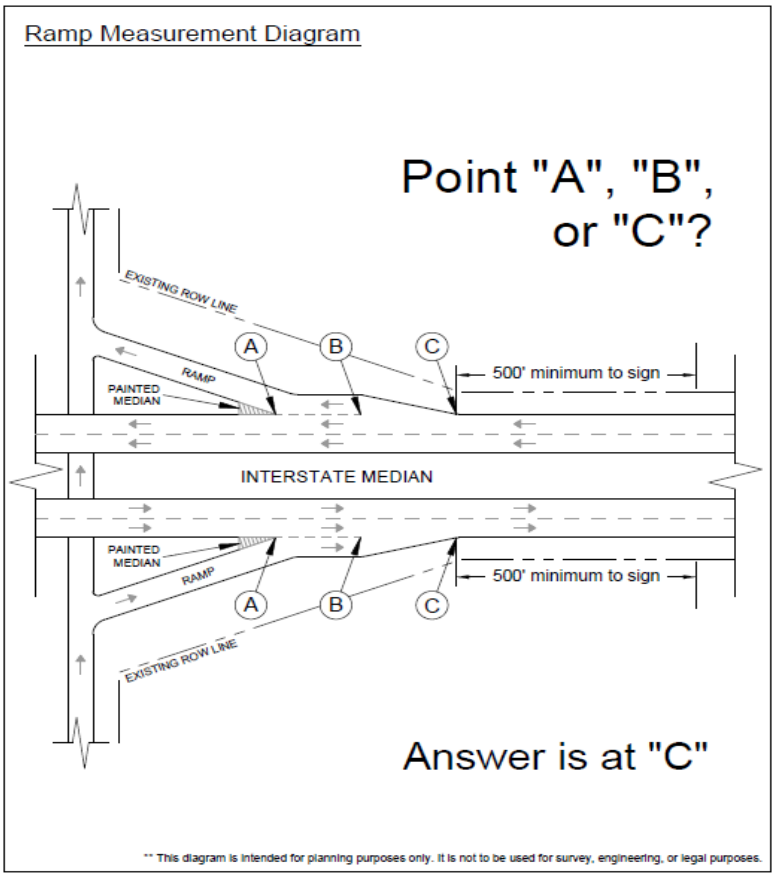
8. While this appeal was pending, MassDOT promulgated new regulations effective December 6, 2024, that added the following provision at 700 CMR 3.07(18):

> No sign, including electronic, trivision or static signs, may be located adjacent to or within 500 feet of an interchange or intersection at grade, information center, or rest area on an Interstate Highway or Freeway Primary Highway, measured along the Interstate Highway or Freeway Primary Highway from the nearest point of the beginning or ending of widening of the main traveled way at the exit from or entrance to the main traveled way.

[4] Exhibits 09-001 and 11-006.
[5] Exhibit 01-002.
[6] *Id*.; Exhibit 08-007.
[7] These same definitions of "Traveled Way" and "Main Traveled Way" are contained in 700 CMR 3.01.

9. When measuring distances from interchanges and intersections at grade, OOA establishes a point at the exit from or entrance to the main traveled way, referred to as "Point C", where the main traveled way transitions to an exit ramp or where an entrance ramp transitions to the main traveled way. It measures along the roadway from that point to determine whether the proposed sign location meets the 500-foot spacing requirement in the Interchange Rule.[8]

10. OOA's measurement methodology is illustrated in the diagram below.[9]



11. The Ramp Measurement Diagram was provided to OOA by the Federal Highway Administration as guidance for the proper methodology for determining compliance with "Interchange Rule".[10]

12. The Ramp Measurement Diagram depicts the main traveled way defined by solid lines on each side of the Interstate Median. Arrows indicate the flow of traffic in two lanes in each direction along the Main Traveled Way. The lanes are separated by broken lines. A deceleration taper to the exit ramp and an acceleration taper from the entrance ramp are each defined by a solid line widening from the main traveled way and broken lines between the points

[8] Testimony of Timothy McCarthy, Christopher Chaves, and Neil Boudreau.
[9] Exhibit 07-002.
[10] Testimony of Timothy McCarthy, Christopher Chaves, and Neil Boudreau. (I note here that in reaching my conclusion regarding guidance provided by FHWA, I credit the testimony of McCarthy, Chaves and Boudreau, and give no weight to the hearsay communications introduced by Murray in Exhibit 13 which I consider unreliable).

identified at A and B. Shoulders and auxiliary lanes are not shown on the diagram.[11]

13. With respect to the 100 Roddy Avenue location for the proposed electronic signs, OOA determined that "Point C" was the point on the highway at the start of the ramp deceleration taper for Exit 43 at the interchange of I-95 and Roosevelt Avenue. "Point C" was identified at the location by OOA staff on August 23, 2024, during a site inspection.[12]

14. OOA measured from "Point C" to the location of the proposed electronic signs at 100 Roddy Avenue and determined that the location is 45 feet inside of "Point C", which is adjacent to and within 500 feet of the interchange of I-95 and Roosevelt Avenue.[13]

15. Murray proffered a different measurement of the distance of the proposed electronic signs from the interchange based on a comparison of "road width" at the proposed location and at the exit ramp. It used a feature of Google Maps[14] to set points and make measurements of the width of the road across the travel lanes and shoulder at different locations. It then used the same feature of Google Maps to measure the distance from a point approaching the exit ramp where the "road width" became wider than the "road width" at the other points. Google Maps reported the distance between those two points to be 699.95 feet.[15]

DISCUSSION

The issue presented in this appeal is whether the location at which Murray proposes to erect electronic billboards, 100 Roddy Avenue in Attleboro, complies with the spacing requirements of the "Interchange Rule". It does not.

OOA performed an inspection at the site and measured the distance to the proposed location from a point on the highway where the main traveled way widens to the ramp deceleration taper at Exit 43. The measurement confirmed that the proposed location is adjacent to and within 500 feet of the interchange of I-95 and Roosevelt Avenue.

Murray challenges the measurement methodology used by OOA. Specifically, Murray objects to OOA's consideration of pavement markings to determine "the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way". It argues that the language of the Interchange Rule as it appears in the Federal State Agreement should be read literally, such that the starting point for measuring distances from an interchange should be the point at which the physical pavement or asphalt widens.

This same issue was addressed in a prior final agency decision. *See* Final Agency Decision, *Appeal of W.N. Realty LLC* (October 31, 2023). While this Office acknowledged that an ambiguity exists in the Federal State Agreement concerning the term "pavement widening" as used in the

[11] Testimony of Neil Boudreau.
[12] Testimony of Timothy McCarthy and Christopher Chaves; *also see* Exhibit 09-001.
[13] Testimony of Christopher Chaves; Exhibits 01-010 and 01-013.
[14] *See* https://www.google.com/maps/about
[15] Testimony of Joseph Murray; Exhibits 11-001 through 11-008.

Interchange Rule, the legislative history and policy objective of the Rule resolves any uncertainty as to its intent. For driver safety, there needs to be a buffer area of at least 500 feet that is free from billboard distractions as drivers approach an interchange to exit from or merge onto the highway.[16]

W.N. Realty held that OOA's methodology of measuring distances from interchanges is consistent with the plain language of the Federal State Agreement and its basic purpose to reduce distractions as drivers approach an interchange to turn off an exit ramp or to merge onto the highway. The proposed "widening of the asphalt" approach for measuring distances from interchanges, which Murray advances in this appeal, was rejected as flawed; unworkable at interchange locations where there is no discernable physical widening of the asphalt at an exit or entrance ramp; inconsistent with the safety goals that the Interchange Rule is intended to address; and failing to provide the required minimum 500-foot billboard free buffer to all drivers approaching an interchange.[17]

With respect to the location at 100 Roddy Avenue in Attleboro, OOA determined that "Point C" was the point on the highway at the start of the ramp deceleration taper for Exit 43 at the interchange of I-95 and Roosevelt Avenue. This is consistent with the plain language of the "Interchange Rule" in the Federal State Agreement and the methodology depicted in the guidance document provided by the federal government. The 500-foot buffer around interchanges is to be measured "from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way."[18] In this case, the beginning of the deceleration taper for Exit 43 at the interchange of I-95 and Roosevelt Avenue is precisely that point, because that is when the pavement of the main traveled way widens into the space occupied prior to that point by the breakdown lane or shoulder.

Murray's proposed measurement is inconsistent with the plain language of the Federal State Agreement. Notwithstanding that "road width" is not mentioned as a term or determining factor anywhere in the Agreement, the measurement of "road width" proposed by Murray includes the shoulder of the highway. The Agreement requires that measurements be taken "from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way" and expressly defines the main traveled way as excluding the shoulder.[19] In addition to inconsistencies in the proposed methodology itself, I question whether Murray's virtual measurements from Google Maps are reliable measures of actual distances at the location as compared to field measurements such as those taken by OOA during its on-site inspection.

OOA has demonstrated that there has been reasonable consistency in applying its methodology for measuring distances from interchanges.[20] The methodology is in accordance with guidance provided by the Federal Highway Administration.[21] It is also consistent with federal and state traffic engineering standards and safety measures applicable to highway interchanges.[22] No direct evidence was presented by Murray to support a finding that OOA used a "widening of the

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[16] Final Agency Decision, *Appeal of W.N. Realty LLC,* p. 3-5.
[17] *Id*.
[18] Exhibit 08-007.
[19] *Id*; *also see* Findings of Facts *supra* at 7 ("traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes; "main traveled way" means the traveled way of a highway on which through traffic is carried).
[20] Mr. Chavez testified he has applied this methodology of measuring distances since he joined MassDOT in 2012.
[21] Exhibit 07-002.
[22] Testimony of Neil Boudreau.

asphalt" approach or a different method for measuring distances from interchanges at any time in the past at the 100 Roddy Avenue location or any other location. Murray only offers records of OOA's past permit approvals for static billboards at the location[23] to suggest that OOA used a different methodology and/or made a specific finding of compliance with the Interchange Rule in granting those prior permits. I do not draw such an inference simply from OOA's prior decisions to approve permits. Further, those prior determinations to grant outdoor advertising permits at the location have no bearing on OOA's authority to grant or deny the applications at issue in this appeal.[24]

Finally, with respect to the phrase "pavement widening" upon which Murray relies for its assertion that measurements from interchanges should be made from points where the physical pavement or asphalt widens, any ambiguity that may have existed when *W.N. Realty* was decided has since been resolved. MassDOT's promulgation of new regulations at 700 CMR 3.07(18), effective December 6, 2024, removes the reference to "pavement widening". Considering that *W.N. Realty* upheld OOA's interpretation of the "Interchange Rule", the new regulation appears intended to clarify and confirm OOA's longstanding methodology for measuring distances from interchanges. Regardless, even if *W.N. Realty* were wrongly decided, as Murray contends, the regulation that governs this appeal expressly requires OOA to measure "from the nearest point of the beginning or ending ***of widening of the main traveled way*** at the exit from or entrance to the main traveled way." That is exactly what OOA did with respect to the 100 Roddy Avenue location when it measured from a point on the highway where the main traveled way widens to the ramp deceleration taper at Exit 43.

FINAL AGENCY DECISION

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The proposed location at 100 Roddy Avenue in Attleboro violates the spacing requirements of the Federal State Agreement because it is located adjacent to or within 500 feet of an interchange measured along the Interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

The proposed location at 100 Roddy Avenue in Attleboro also violates the spacing requirements in 700 CMR 3.07(18) because it is located adjacent to or within 500 feet of an interchange on an Interstate Highway or Freeway Primary Highway, measured along the Interstate Highway or Freeway Primary Highway from the nearest point of the beginning or ending of widening of the main traveled way at the exit from or entrance to the main traveled way.

For these reasons, applications 2024D002 and 2024D003 seeking permits to construct a double-sided electronic billboard at 100 Roddy Avenue in Attleboro are DENIED.

March 3, 2025

Albert Caldarelli
Administrative Law Judge

[23] Exhibits 01-060 through 01-152.

[24] *See* 700 CMR 3.03(2)(h), 3.07(1) ("Permits issued by the Director for any sign are revocable, and of limited duration. Such permits do not create property rights. Nothing in 700 CMR 3.00 is intended and nothing should be construed to create vested property rights of any kind."); *also see General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 200 (1935) (the granting of a permit "carrie[s] no implication of law that it [will] be renewed").

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO

massDOT
Massachusetts Department of Transportation

OFFICE OF THE ADMINISTRATIVE LAW JUDGE

August 27, 2025

Gail Miller
for Boston Residents Group
232 Orient Avenue
East Boston, MA 02128

Re: Notice of Claim and Request for Adjudicatory Hearing
423 McClellan Hwy., Outdoor Advertising Permits 2025D008 and 2025D009

Dear Ms. Miller:

On August 6, 2025, this Office received your letter submitting a Notice of Claim and Request for Adjudicatory Hearing on behalf of the Boston Residents Group (BRG). The document states that BRG is "a Commonwealth of Massachusetts Ten Residents Group formed under the provisions of G.L. c. 30A sec. 10A."

BRG claims that "the grant of [the above-referenced] permits by the Office of Outdoor Advertising to Maverick Media LLC was contrary to applicable requirements of the 700 CMR 3.00, G.L. 93D sec. 1-7, and the federal/state agreement for carrying out national policy relative to control of outdoor advertising in Massachusetts." It requests an adjudicatory hearing to determine whether "[t]he grant of permits to Maverick Media should be set aside."

Please be advised that the authority of the hearing examiner to hold hearings concerning outdoor advertising permits is governed by 700 CMR 3.19, which provides in pertinent part: "***Any applicant who is denied*** *a request for a permit or license or whose permit and/or license* ***has been revoked*** *may make a written request for an appeal hearing before a hearing examiner designated by the Department*."

BRG lacks standing to request an adjudicatory hearing pursuant to 700 CMR 3.19 because it is not an applicant for a permit or license for outdoor advertising that has been denied or revoked. Further, BRG's request for a hearing to adjudicate issues that do not pertain to the denial or revocation of a permit or license is outside the jurisdiction of this Office.

To the extent that further review of the issues raised your August 6, 2025 letter is warranted, I am forwarding the information to MassDOT's Office of Outdoor Advertising.

Albert Caldarelli
Administrative Law Judge

cc: Eileen Fenton, Esq., MassDOT
Timothy McCarthy, Director, MassDOT Office of Outdoor Advertising
Taylor Lee, Esq., Phillips & Angley