

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

NO. SJC- _____

J.F. WHITE CONTRACTING COMPANY,

Plaintiff-Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS, ACTING BY AND
THROUGH ITS DEPARTMENT OF TRANSPORTATION, RAIL
AND TRANSIT DIVISION,

Defendant-Appellee.

APPEALS COURT NO. 2026-P-0693

ON APPEAL FROM A SUMMARY JUDGMENT OF
THE SUFFOLK SUPERIOR COURT
Civil Action No. 2184CV01172

**PLAINTIFF-APPELLANT'S
APPLICATION FOR DIRECT APPELLATE REVIEW**

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Date: June 8, 2026

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 1:21 of the Rules of the Massachusetts Supreme Judicial Court, the Plaintiff-Appellant states as follows:

J.F. White Contracting Company

J.F. White Contracting Company is a wholly owned subsidiary of Flatiron Dragados Construction Holding LLC.

TABLE OF CONTENTS

	<u>Page</u>
1. <u>INTRODUCTION: REQUEST FOR DIRECT APPELLATE REVIEW</u> ..	9
2. <u>STATEMENT OF PRIOR PROCEEDINGS</u>	14
<i>The Action and Phase 1: Fact Discovery</i>	14
<i>MassDOT Moves for Summary Judgment</i>	14
<i>J.F. White Opposes Summary Judgment</i>	14
<i>The Summary Judgment Hearing</i>	17
<i>Dismissal of the Action on Summary Judgment</i>	17
<i>J.F. White Appeals and Seeks Direct Appellate Review</i>	19
3. <u>STATEMENT OF RELEVANT FACTS</u>	20
<i>The “Early Action Culverts” Project</i>	20
<i>Overview: The Project Scope of Work</i>	20
<i>Culvert Removal and Replacement</i>	21
<i>MassDOT-Imposed Constraints on Performance of the Work</i>	21
<i>MassDOT Makes Representations in its Contract Documents Regarding Subsurface Soils</i>	22
<i>The Differing Subsurface Conditions Provision</i>	23
<i>May 24, 2019: J.F. White’s Formal Written “Notice of Differing Site Conditions – Excavated Materials”</i>	24
<i>MassDOT Acknowledges “Merit Here Big Picture”</i>	25
<i>June 6, 2019: Differing Subsurface Conditions Meeting</i>	26

	<u>Page</u>
<i>MassDOT Instructs J.F. White to Provide Data to Support a Finding of Differing Subsurface Conditions</i>	26
<i>J.F. White Presents MassDOT with Data, Evidence, and Requests for Guidance and Approval with Respect to Recurring Differing Subsurface Conditions at Subsequent Culvert Locations.</i>	27
<i>May 14, 2020: MassDOT Denies J.F White’s Request for Equitable Adjustment of the Contract Price</i>	29
<i>September 2, 2020: MassDOT Denies J.F. White’s Supplemental REA</i>	30
4. <u>STATEMENT OF THE ISSUES OF LAW FOR WHICH DIRECT APPELLATE REVIEW IS SOUGHT.</u>	31
5. <u>ARGUMENT</u>	33
I. <u>The Purpose of the “Equitable” Differing Subsurface Conditions Statute.</u>	33
II. <u>An Awarding Authority’s Two-Fold Statutory Obligations Under G. L. c. 30, § 39N.</u>	35
III. <u>MassDOT Failed to Perform its Statutory Obligations Under G. L. c. 30, § 39N.</u>	36
IV. <u>The Superior Court Erred in Concluding that J.F. White’s May 24, 2019 “Notice of Differing Site Conditions – Excavated Materials” was “Ineffective” Notice of Recurring Differing Subsurface Conditions.</u>	38
V. <u>The Superior Court Erred by Concluding that MassDOT was Under “No Obligation” to “Scrutinize” Evidence Provided by J.F. White.</u>	40
VI. <u>The Superior Court Erred in Concluding that J.F. White was Required to “Cease Operations.”</u>	41

	<u>Page</u>
VII. <u>The Superior Court Erred in Concluding that J.F. White was Required to Follow Contractual Change Order Provisions Applicable to Extra Work.</u>	42
6. <u>STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE</u>	44
I. <u>Differing Subsurface Conditions: "Construction Industry's 'Great Risk.'"</u>	44
II. <u>An Awarding Authority's Failure to Perform its § 30N Obligations Presents a Fundamental Risk of Harm to the Public Interest.</u>	45
A. <u>The Awarding Authority is Responsible to Investigate Differing Subsurface Conditions to Control the Costs of Performance.</u>	46
B. <u>The Awarding Authority is Responsible to Make Downward Adjustments to the Contract Price Where Differing Subsurface Conditions Decrease the Costs of the Performance.</u>	48
III. <u>There is a Gap in Appellate Caselaw Regarding an Awarding Authority's Duties under § 39N.</u>	49
IV. <u>G. L. c. 30, § 39N Does Not Require a Contractor to "Cease Operations" and is Not Subject to Contractual Change Order Provisions Applicable to Extra Work.</u>	52
7. <u>CONCLUSION</u>	53
Mass. R. A. P. 11(b) Certification.....	55
Mass. R. A. P. 11(d), 13(d) Certificate of Service.....	56
Mass. R. A. P. 11(b) Addendum Table of Contents.....	57

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Ace Constructors, Inc. v. United States</u> , 70 Fed. Cl. 253 (2003) aff'd 499 F.3d 1357 (Fed. Cir. 2007).....	50
<u>Allied Contractors, Inc. v. United States</u> , 149 Ct. Cl. 671 (1960).....	40
<u>Alpert v. Commonwealth</u> , 357 Mass. 306 (1970).....	16, 34
<u>Celco Construction Corp. v. Avon</u> , 87 Mass. App. Ct. 132 (2015).....	34, 35
<u>D. Federico Co. v. New Bedford Redevelopment Auth.</u> , 9 Mass. App. Ct. 141 (1980).....	40
<u>D. Federico Co., Inc. v. New Bedford Redevelopment Auth.</u> , 723 F.2d 122 (1st Cir. 1983).....	39
<u>Fortune v. National Cash Register Co.</u> , 373 Mass. 96 (1977).....	40
<u>Glynn v. Gloucester</u> , 9 Mass. App. Ct. 454 (1980).....	34, 35
<u>Interstate Eng'g Corp. v. Fitchburg</u> , 367 Mass. 751 (1975).....	34
<u>Lamb Eng'g & Constr. Co.</u> , EBCA No. C-9304172, 97-2 B.C.A. ¶ 29,207 (July 28, 1997).....	51
<u>Metcalf Constr. Co. v. United States</u> , 102 Fed. Cl. 334 (2011) overruled on other grounds by <u>Metcalf Constr. Co. v. United States</u> , 742 F.3d 984 (Fed. Cir. 2014).....	51
<u>Morrison-Knudsen Co. v. United States</u> , 184 Ct. Cl. 661 (1968).....	40

	<u>Page</u>
<u>Renda Marine, Inc. v. United States</u> , 66 Fed. Cl. 639 (2005).....	40
<u>Reynolds Bros. v. Commonwealth</u> , 412 Mass. 1 (1992).....	43
<u>Simeone Corp. v. Commonwealth</u> , Super. Ct. No. 63042 (Suffolk Cnty, Feb. 26, 1986).....	39
<u>Sutton Corp. v. Metropolitan Dist. Comm’n</u> , 423 Mass. 200 (1996).....	passim
<u>Trustees of Boston & Maine Corp. v.</u> <u>Massachusetts Bay Transp. Auth.</u> , 367 Mass. 57 (1975).....	40
<u>U.S. v. Spearin</u> , 248 U.S. 132 (1918).....	16, 34
 <u>Statutes</u>	
G. L. c. 30, § 39M.....	20, 33-34
G. L. c. 30, § 39N.....	passim
 <u>Regulations</u>	
350 Code Mass. Regs. § 13.01 (1993).....	42
48 C.F.R. 52.236-2 (2026).....	50, 51
 <u>Other Authorities</u>	
811 Mass. Reg. 114 (Feb. 21, 1997).....	42
5 P.L. Bruner, P.J. O’Connor, Construction Law § 14.1 (2026).....	44
Greiman, The Big Dig: Learning from a Mega Project, NASA Academy Sharing Knowledge (“ASK”) Magazine (Sept. 2025) (available at: https://www.nasa.gov/wp-content/uploads/2025-09/appel-the-big-dig.pdf?emrc=ee2fad) (last visited June 8, 2026).....	45

	<u>Page</u>
Palmer, Sennott, Big Dig Manager Faces Evaluation: State to Hire Consultants to Review Soil Mistake, Boston Globe (Aug. 16, 1994).....	45

EXPLANATION OF ABBREVIATIONS

The following abbreviations are used throughout this brief:

"A." Refers to the Addendum. Citations to the Addendum are as follows: "A.[page number]."

"Contract" refers to the public infrastructure contract between J.F. White and MassDOT in connection with the Project.

"General Conditions" refers to the General Conditions of the Contract between J.F. White and MassDOT in connection with the Project.

"Geotechnical Report" refers to the Early Action Culverts Geotechnical Report included in the Contract documents.

"J.F. White" refers to the Plaintiff-Appellant, J.F. White Contracting Company.

"MassDOT" refers to the Defendant-Appellee, Commonwealth of Massachusetts, Acting by and Through its Department of Transportation, Rail and Transit Division.

"Project" refers to the South Coast Rail Early Action Culverts, Middleborough Secondary, New Bedford Main Line, Fall River Secondary, MassDOT Contract No. 106341.

"SJC" refers to the Massachusetts Supreme Judicial Court.

1. INTRODUCTION: REQUEST FOR DIRECT APPELLATE REVIEW

It has been 30 years since the SJC addressed one of the most important statutes in Massachusetts public infrastructure construction: the differing subsurface conditions statute, G. L. c. 30, § 39N. See Sutton Corp. v. Metropolitan Dist. Comm'n, 423 Mass. 200 (1996).

The Plaintiff-Appellant, J.F. White, encountered differing subsurface soil conditions when performing its scope of work on a railroad infrastructure project for MassDOT. On May 24, 2019, J.F. White sent a letter to MassDOT titled "Notice of Differing Site Conditions – Excavated Materials." In its notice letter, J.F. White:

- specifically referenced G. L. c. 30, § 39N and the applicable Contract provision;
- advised that "[a]ctual conditions encountered at the Project" differ from the information that MassDOT furnished in its "Early Action Culverts Geotechnical Report," preventing the work from being performed as represented in the Contract;
- described the actual conditions encountered (i.e., the soils were siltier than represented, did not drain as quickly, and were unsuitable for re-use as intended);

- asserted that “[t]hese conditions have cost and time impacts to JF White’s work”;
- described the nature of these impacts on J.F. White’s performance of the work and identified an example;
- “request[ed] a meeting at [MassDOT’s] earliest convenience to discuss the merits of this claim, and more importantly, a strategy for how JF White and MADOT can effectively and efficiently manage this issue if unsuitable material is again encountered at the Project”; and concluded by stating:
- “[a]ll rights are reserved regarding this issue.”

The Defendant-Appellee, MassDOT: acknowledged that existing soils may not be suitable for reuse; requested that J.F. White “notify MassDOT immediately with the proper and complete data to support such an interpretation”; internally acknowledged “merit here big picture” under well-established public contracting principles, but developed a “master plan” to reject J.F. White’s claim; and advised a sister agency that additional work was “required” in light of the actual subsurface soil conditions.

The conditions described in J.F. White’s notice recurred throughout the duration of the Project. As directed by MassDOT, J.F. White continuously supplied

MassDOT with evidence to support a conclusion that the subsurface soil materials encountered at subsequent culvert locations constituted "differing" conditions under § 39N. J.F. White: provided soil testing results and sieve analyses; explicitly advised that the soil conditions did not meet the specifications; requested direction from MassDOT; and sought and obtained authorization to perform excavation work in accordance with work plans that contained soils data and greater volumes of excavation work.

Despite J.F. White's submission of this contemporaneous evidence, and its requests for guidance and approval, MassDOT did not investigate the reported conditions or equitably adjust the parties' Contract as required under G. L. c. 30, § 39N.

Dismissing this case on summary judgment, the Superior Court concluded that J.F. White's notice was "ineffective" and that "MassDOT had no obligation under the contract to scrutinize every work plan submitted by and other communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing conditions." A.72 & A.75.

This was a clear, reversible error that profoundly misconstrues MassDOT's unequivocal and express statutory obligations under § 39N. The lower court made related erroneous rulings with respect to § 39N.

This appeal presents critical questions concerning the government's mandatory statutory obligation to: (1) conduct an "investigation" when presented with concrete evidence demonstrating that subsurface soil conditions constitute "differing" conditions within the meaning of the statute; and (2) "equitabl[y]" adjust the price of a public construction contract upwards or downwards to account for the impacts that such differing conditions have on the costs of performance of the construction work. G. L. c. 30, § 39N.

The government's performance of this explicit statutory duty is absolutely essential to fulfill the well-established and equitable purposes of § 39N: (1) to protect the public fisc with respect to public infrastructure construction projects; and (2) fairly compensate affected contractors that encounter differing subsurface conditions. In this case, MassDOT failed to perform its vital statutory duties under § 39N.

J.F. White respectfully requests - and justice requires - direct appellate review to enable the full

SJC to address the substantial public interest concerns triggered by an awarding authority's failure to perform its obligations under G. L. c. 30, § 39N and novel questions concerning when the awarding authority's obligations under the statute arise.

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2. STATEMENT OF PRIOR PROCEEDINGS

The Action and Phase 1: Fact Discovery

J.F. White commenced this action on May 20, 2021 and demanded a jury. MassDOT filed an answer and the parties undertook fact discovery. By agreement of the parties and Order of the Superior Court, fact discovery was to be completed before expert and damages discovery.

MassDOT Moves for Summary Judgment

On October 10, 2025 - after the parties completed phase 1 fact discovery and before they commenced phase 2 expert and damages discovery - MassDOT moved for summary judgment seeking dismissal of the action.¹

J.F. White Opposes Summary Judgment

J.F. White submitted briefing, affidavits, and exhibits in opposition. Citing record references, J.F. White argued that it:

- “gave MassDOT notice of the differing site conditions encountered on the Project by way of formal letters (e.g., the May 24, 2019 Letter, the May 2, 2020 Request for Equitable Adjustment, and the July 24, 2020 Supplemental Request for Equitable Adjustment), on-site meetings, at least one formal meeting on June 6, 2019, weekly Work Plans, regular Requests for Information (“RFIs”) containing soil data and test reports, and other communications with MassDOT relaying concerns with the Project conditions and [J.F. White’s] inability to perform the Work within

¹ The parties had sought and obtained several extensions of the tracking order deadlines.

the Project limits due to the inaccurate Contract Drawings and Geotechnical Report"²;

- provided MassDOT with subsurface soils data "demonstrating its need to work outside of the Contract Drawings' limits of excavation and the unexpected composition of existing soils";
- "kept MassDOT fully apprised of the conditions encountered on the Project site, and proposed modifications to accommodate the differing site conditions encountered";
- sought "guidance" from MassDOT with respect to "materials management";
- "continued notifying MassDOT of differing site conditions . . . thereby complying with MassDOT's directions in its June 12, 2019 Letter, the statutory requirements of G. L. c. 30, § 39N, and the Contract's procedure under Article 8.5"; and
- "MassDOT had contemporaneous knowledge of all of [J.F. White]'s work, and was on notice of the differing site conditions [J.F. White] encountered."

J.F. White also presented arguments and record citations demonstrating that MassDOT:

- "*acknowledged* that [J.F. White] may encounter soils that differed from those in the Geotechnical Report that were 'not geotechnically suitable for reuse at some locations'";
- "ordered [J.F. White] to notify MassDOT 'immediately with the proper and complete data' to support any claim that the soils encountered as the Work progressed were not geotechnically suitable for reuse";
- "*expected* a claim from [J.F. White] for its costs resulting from the differing site conditions it encountered throughout the Project";

² The soil conditions encountered at the culvert sites rendered the Contract limits of excavation inaccurate.

- “knew [the claim] was brewing”: “I’ve filed that claim myself from the other side and made a lot of easy money off of it”;
- acknowledged that the contract “helps” J.F. White “since the geotechnical report is part of the contract” under “Spearin Doctrine 101” and that J.F. White has “merit here big picture”³; and
- developed an internal “master plan” to “survive” the claim, stating that “we can go back and issue even more [Non-Conformance Reports to J.F. White] and put them on notice for not meeting the specs, failure to provide timely submittals, etc.”

J.F. White argued that: MassDOT received the evidence provided by J.F. White, responded to requests for direction, authorized excavation work required by the differing subsurface conditions, and advised the Massachusetts Department of Environmental Protection (“MassDEP”) that additional work was “required” for J.F. White to complete the Contract.

J.F. White argued that “MassDOT was obligated by Contract and statute to promptly investigate ‘the conditions’ and either make an equitable adjustment to the Contract or reject [J.F. White]’s statement of the conditions.” J.F. White added that MassDOT “never

³ “Spearin Doctrine 101” refers to the implied warranty that the plans and specifications MassDOT provided to J.F. White would be sufficient for their purpose. See Alpert v. Commonwealth, 357 Mass. 306, 320-321 (1970) (adopting U.S. v. Spearin, 248 U.S. 132, 136 (1918)).

indicated it had completed its investigation as to the entire Project” and “did not offer an equitable adjustment as required by . . . G. L. c. 30, § 39N.”

J.F. White requested that the Superior Court “deny Defendant’s Motion for Summary Judgment and allow this matter to proceed to expert discovery and Phase II discovery of damages.”

The Summary Judgment Hearing

On February 12, 2026, the Superior Court held a hearing. J.F. White argued the “crux of the case,” namely: that the plain “language” of G. L. c. 30, § 39N placed the “burden” on MassDOT to “investigate[]” the conditions and equitably adjust the Contract. The Superior Court took the matter under advisement.

Dismissal of the Action on Summary Judgment

The Superior Court granted MassDOT’s motion on March 9, 2026. Among other things, the Superior Court concluded that J.F. White’s written “Notice of Differing Site Conditions – Excavated Materials” was “ineffective” to provide notice of differing subsurface conditions that recurred on the Project. A.72. In contrast to the language of G. L. c. 30, § 39N, the Superior Court also ruled that “MassDOT had no obligation under the contract to scrutinize every work plan submitted by and other

communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing conditions.”⁴ A.75. The Superior Court entered summary judgment dismissing the action on March 10, 2026. A.82.

⁴ G. L. c. 30, § 39N provides:

Every contract subject to section forty-four A of chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in

J.F. White Appeals and Seeks Direct Appellate Review

On April 6, 2026, J.F. White filed a timely notice of appeal. The Appeals Court issued a Notice of Entry of the Appeal on May 18, 2026. J.F. White now timely seeks Direct Appellate Review.

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the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

3. STATEMENT OF RELEVANT FACTS⁵

The “Early Action Culverts” Project

The Project was a design-bid-build public infrastructure project subject to the competitive bidding requirements of G. L. c. 30, § 39M.⁶ MassDOT awarded the Contract for the Project to J.F. White in the Initial Contract Amount of \$18,347,000.00. The Contract was comprised of J.F. White’s bid, together with MassDOT’s bid documents, including the General Conditions, Technical Specifications, and the Geotechnical Report. Time was of the essence.

Overview: The Project Scope of Work

The Project was one part of a larger “South Coast Rail Phase 1 Program” for “major improvements” to 37 miles of freight railroad lines to allow for diesel-powered commuter rail service in southeastern Massachusetts. The Project required work in rural and remote forested locations adjacent to streams and wetlands in Berkley, Fall River, Freetown, Lakeville, Middleborough, New Bedford, Raynham, and Taunton.

⁵ This statement focuses on facts relevant to this Application for Direct Appellate Review, and does not address all facts relevant to all issues on appeal.

⁶ The Project was not a “design-build” project as stated by the Superior Court. A.80.

Culvert Removal and Replacement

One of the “four major elements” of the work entailed the removal and replacement of 46 culverts running beneath active commercial railroad lines and crossing railroad rights of way. The existing culverts – box-like structures which allow water to flow underneath the rail lines as illustrated in the photos below – were old and required replacement to properly support commuter train traffic:



J.F. White’s claims are focused on the culvert removal and replacement work, which required excavation in areas specified by MassDOT (i.e., the “limits of excavation”) and re-use of suitable soil materials at each of the various culvert locations.

MassDOT-Imposed Constraints on Performance of the Work

Because the rail lines were to remain active during the Project, MassDOT advised that the “work of the Early Action Culverts construction packages shall be

accomplished with limited interruptions to freight traffic and in close coordination with the operating railroads." To achieve this goal, culvert removal and replacement work could only be performed during certain limited, 55-hour weekend track outage windows.

As it relates specifically to earthwork, MassDOT required J.F. White to submit work plans "prior to the excavation of earthwork activities," and stated that "[n]o work shall be performed until this plan has been approved by the Engineer."

MassDOT imposed strict performance deadlines and could assess liquidated damages at the rate of \$1,000.00 per day for each day of unexcused performance delays.

MassDOT Makes Representations in its Contract Documents Regarding Subsurface Soils

In its Contract documents, MassDOT included a Geotechnical Report and boring logs representing that subsurface soils at culvert locations were suitable for reuse on site and only contained "trace to little silt." These are defined, scientific terms: the boring logs defined "trace" silt to mean 0-10% by weight, and "little" silt to mean 10-20% by weight. Based on these boring logs, J.F. White reasonably expected that a high percentage of the soils would contain "trace" or

“little” silt and would therefore be sandy, free-draining, and suitable for reuse as both “Gravel Borrow” (required within three feet of all culvert walls and wingwalls) and “Ordinary Borrow.” Only soil with “trace” silt qualified as “Gravel Borrow.”⁷ If the soils did not meet the requirements for reuse, that would impact the contractor’s costs of performance, such as by requiring the contractor to import suitable soils, lessen the steepness of slopes, and increase excavation areas.

The Differing Subsurface Conditions Provision

The General Conditions incorporated the statutorily required provision set forth in G. L. c. 30, § 39N. Article 8.5 of the General Conditions added that J.F. White must notify MassDOT of the differing conditions in writing promptly and before disturbing them.

Echoing the language of § 39N, Article 8.5 also explicitly mandated that MassDOT “shall promptly investigate the conditions, and if [MassDOT] finds that such conditions do materially so differ and cause an increase or decrease in Contractor’s cost of, or time

⁷ The Contract imposed “gradation” requirements to determine whether soil qualified as Gravel Borrow (no more than 0-10% of soil by weight passing through a #200 sieve) and Ordinary Borrow (no more than 10-20% of soil by weight passing through a #200 sieve).

required for performance of this Contract, an equitable adjustment shall be made, and the Contract shall be modified accordingly" (emphasis added).

The Contract prohibited J.F. White from unilaterally ceasing performance of its operations, instead requiring J.F. White to continue performance notwithstanding the pendency of any claims or disputes.

May 24, 2019: J.F. White's Formal Written "Notice of Differing Site Conditions - Excavated Materials"

As of May 24, 2019, J.F. White had completed its work on two culverts. By this time, J.F. White had actually encountered subsurface soil conditions that were materially different from what MassDOT had represented in the Contract. The higher silt content prevented the soil from draining or drying as quickly as anticipated and inhibited compaction. Practically speaking, this meant that J.F. White could not use its planned means and methods for performing the work within the various contractual limitations and constraints, including the limits of excavation. The differing composition of the soils forced J.F. White to expand the limits of excavations horizontally and lessen the steepness of slopes to safely perform the work. This

required more excavation work using different and more expensive methods.⁸

By letter dated May 24, 2019, J.F. White provided formal written notice of the differing subsurface soil conditions to MassDOT. J.F. White's notice included the elements described supra at pp. 9-10.

MassDOT Acknowledges "Merit Here Big Picture"

On May 25, 2019, MassDOT's "Owner Contract Manager" responsible for the Project, Ms. Kimberly Dobosz, acknowledged that because MassDOT had made representations regarding the soil conditions in its Geotechnical Report, J.F. White "do[es] have merit here big picture." Ms. Dobosz conceded that the Contract "helps [J.F. White's] case since the geotechnical report is part of the contract." According to Ms. Dobosz, this is "Spearin Doctrine 101."⁹ Ms. Dobosz understood that J.F. White sought additional payment, stating: "I've filed that claim myself from the other side and made a lot of easy money off of it." Ms. Dobosz concluded that

⁸ For example, J.F. White could not use an excavator to perform excavation work as planned. Instead, J.F. White had to mobilize a crane and crane pads to remote locations due to increased areas of excavation.

⁹ See supra n. 3.

J.F. White “definitely has us if the soil conditions are different.”

Undeterred, Ms. Dobosz stated that she had a “master plan to survive the culverts”: “we can go back and issue even more [Non-Conformance Reports to J.F. White] and put them on notice for not meeting the specs, failure to provide timely submittals, etc.” In other words, MassDOT projected into the future a “master plan” designed to undermine J.F. White’s right to recovery.

June 6, 2019: Differing Subsurface Conditions Meeting

On June 6, 2019, the parties met at MassDOT’s Boston Office to discuss the issues that J.F. White described in its notice. MassDOT understood the issues, including the fact that the specific culvert referenced in J.F. White’s notice (CV-BK-6) was an “example” only.

MassDOT Instructs J.F. White to Provide Data to Support a Finding of Differing Subsurface Conditions

By letter dated June 12, 2019, MassDOT responded to J.F. White’s May 24, 2019 notice. MassDOT opined that differing subsurface conditions were not encountered at the culverts as of that date because J.F. White did not control water at those locations.¹⁰ However, MassDOT

¹⁰ J.F. White ultimately agreed that it did not sufficiently control water at those specific locations.

recognized that “we may find that existing soils are not geotechnically suitable for reuse at some locations” and instructed J.F. White to “notify MassDOT immediately with the proper and complete data to support such an interpretation” “should this occur.”

J.F. White Presents MassDOT with Data, Evidence, and Requests for Guidance and Approval with Respect to Recurring Differing Subsurface Conditions at Subsequent Culvert Locations

The issues identified in J.F. White’s May 24, 2019 notice recurred throughout the Project. For example, due to higher silt, the soils met the specified requirements for Gravel Borrow at only 4 of 46 culvert locations.

Consistent with G. L. c. 30, § 39N and the directive in MassDOT’s June 12, 2019 letter, J.F. White supplied MassDOT with data and evidence supporting a conclusion that the subsurface soils conditions at subsequent locations did not meet the specifications and constituted differing conditions. J.F. White also requested guidance, direction, and approval to perform excavation work. With respect to the majority of each such culvert locations, and before excavating or disturbing conditions at such locations, J.F. White:

(1) engaged a third-party engineering firm, Thielsch Engineering (“Thielsch”), to test soil conditions;

- (2) provided MassDOT with Thielsch's data/test results and sieve analyses demonstrating that actual soil conditions at each location did not meet the specifications, including because the soils contained more than "trace" or "little" silt;
- (3) made submissions to MassDOT (supported with back-up data, including sieve analyses and soil testing results) specifically advising that the soil conditions did not meet the specifications and requesting direction from MassDOT (referred to as "Requests for Information" or "RFIs"); and
- (4) consistent with the requirements of the Earthwork Specification, § 1.6D, submitted a site-specific work plan to MassDOT that contained additional information regarding the scope of the work to be performed at the location, and did not execute the work plan until after it received approval to do so from MassDOT.

At all times, J.F. White proceeded under the knowledge, direction and/or approval of MassDOT.

MassDOT provided direction to J.F. White in responses to RFIs and approved J.F. White's work plans. J.F. White proceeded as directed. At no time did J.F. White withdraw its "Notice of Differing Site Conditions - Excavated Materials."

MassDOT does not contend that it was unaware of the differing subsurface conditions or the obvious additional work those conditions necessitated. In fact, MassDOT informed MassDEP that J.F. White was “required” to perform additional excavation work in light of the actual conditions in order to “complete the project.”¹¹

May 14, 2020: MassDOT Denies J.F. White’s Request for an Equitable Adjustment of the Contract Price

J.F. White timely completed the culvert work by January 18, 2020. The differing subsurface conditions had a transformative effect on the Project: for approximately 90% of the culverts, the total excavation quantity increased by more than 50%. After evaluating the cumulative cost impacts of the actual conditions encountered throughout the Project, J.F. White submitted a comprehensive “Request for Equitable Adjustment” (“REA”) on May 4, 2020. The REA was based on the same issues that J.F. White identified in its initial notice and throughout the course of the Project. J.F. White’s

¹¹ That is, the differing soil conditions required expansion of the limits of existing MassDEP permits. MassDOT described impacts of this issue in applications to MassDEP to amend MassDEP’s permits for the Project, stating that “[b]ased on recent field investigation of culvert replacement locations . . . MassDOT, with input from J.F. White Contracting Company, has determined that additional clearly and temporary impacts are required in wetlands to complete the project.”

REA identified an "Order of Magnitude Cost" of \$11,494,000, or 63% of the Initial Contract Amount. MassDOT denied the REA on May 14, 2020 and J.F. White appealed.

September 2, 2020: MassDOT Denies J.F. White's Supplemental REA

J.F. White supplemented its REA on July 24, 2020. On September 2, 2020, MassDOT again denied the REA. MassDOT acknowledged that J.F. White had submitted "soil gradation and compaction testing information at this and other culvert replacement locations," but contended that J.F. White had not provided "any prior notice stating that additional costs would be incurred due to any of the soil properties indicated or test results provided."¹² MassDOT further contended that "no such request or notification was received from JFW by MassDOT."

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¹² MassDOT did not suggest that it was unaware of the actual conditions encountered or that J.F. White was incurring obvious additional costs as a result of the differing subsurface conditions.

4. STATEMENT OF THE ISSUES OF LAW FOR WHICH DIRECT APPELLATE REVIEW IS SOUGHT

J.F. White seeks direct appellate review with respect to the following issues:

Differing Subsurface Conditions

I. Whether the Superior Court erred by concluding, on this record, that J.F. White's written notice dated May 24, 2019 was "ineffective" to provide notice of differing subsurface conditions that recurred during the course of the Project, and that, despite J.F. White's ongoing submission of additional evidence of actual conditions encountered at subsequent culvert locations and requests for direction and approval from MassDOT, "MassDOT had no obligation under the contract to scrutinize every work plan submitted by and other communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing conditions."

II. Whether the Superior Court erred by concluding that J.F. White was required to "cease operations" upon discovery of recurring differing subsurface conditions at each culvert location despite no statutory or

contractual requirement to do so and a contractual requirement to continue performance.

III. Whether the Superior Court erred by concluding that J.F. White was required to follow the change order provisions for extra work with respect to its differing subsurface conditions claim despite the SJC's decision in Sutton Corp. v. Metropolitan Dist. Comm'n, 423 Mass. 200 (1996).

This application focuses on the issues identified above, but the Superior Court's decision also presents the following additional issues on appeal:

Unit Price Work

IV. Whether the Superior Court erred by concluding that J.F. White was required to follow the change order provisions of the Contract for out-of-scope extra work or notice requirements applicable to differing subsurface conditions to be paid for its performance of Unit Price Work within its base scope of work.

V. Whether the Superior Court erred in granting summary judgment despite a factual dispute concerning the actual quantities of the Unit Price Work performed.

Each of the issues identified above were properly preserved in the Superior Court and may be addressed on appeal.

5. ARGUMENT¹³

J.F. White notified MassDOT of differing subsurface conditions and submitted evidence of the recurring conditions throughout the Project. G. L. c. 30, § 39N states that: (1) if “during the progress of the work,” “[MassDOT] discovers” differing conditions, MassDOT, upon receipt of a “claim” or “upon its own initiative,” “shall make an investigation;” and (2) “shall make an equitable adjustment in the contract price” for the cost impacts of the conditions. G. L. c. 30, § 39N. The lower court committed grave error by concluding that J.F. White’s notice was “ineffective” and that “MassDOT had no obligation under the contract to scrutinize every work plan submitted by and other communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing conditions.” A.72 & 75.

I. The Purpose of the “Equitable” Differing Subsurface Conditions Statute.

Under the Commonwealth’s competitive bidding laws, public infrastructure projects must be awarded to the lowest responsible and eligible bidder. G. L. c. 30, §

¹³ As noted, this application focuses on issues pertaining to G. L. c. 30, § 39N. Therefore, this argument section does not address all issues on appeal.

39M. The purpose of this procedure is to obtain the lowest prices that fair and open competition can secure. Interstate Eng'g Corp. v. Fitchburg, 367 Mass. 751, 757-758 (1975). Bidders are entitled to rely on the accuracy and sufficiency of the contract documents provided to them by public awarding authorities. Alpert v. Commonwealth, 357 Mass. 306, 320-321 (1970) (adopting U.S. v. Spearin, 248 U.S. 132, 136 (1918)).

However, public infrastructure projects frequently entail excavation below the surface of the ground. Thus, actual subsurface conditions are often not fully known prior to excavation work and may be materially different from what is indicated in the contract documents. As a result, consistent with the purposes of competitive bidding, the Legislature carefully crafted G. L. c. 30, § 39N to: (1) safeguard the public fisc with respect to public infrastructure projects; and (2) assure that contractors receive fair compensation if they encounter differing subsurface conditions that affect performance costs. See Glynn v. Gloucester, 9 Mass. App. Ct. 454, 461 n. 9 (1980); Celco Construction Corp. v. Avon, 87 Mass. App. Ct. 132 (2015). The statute protects: (1) the taxpaying public against inflated bid prices by enabling contractors to submit bid prices based on the

information provided to them and “stripped” of the risks of unknown conditions; and contractors by “assuring” that they will be fairly compensated under the “equitable adjustment” requirements of § 39N if they encounter differing conditions that impact the costs of performance. Glynn, 9 Mass. App. Ct. at 461 n. 9; Celco Construction Corp., 87 Mass. App. Ct. at 134.¹⁴

II. An Awarding Authority’s Two-Fold Statutory Obligations Under G. L. c. 30, § 39N.

To achieve its purpose, § 39N imposes two critical, mandatory duties on a public awarding authority: (1) to conduct an investigation “upon its own initiative” after the authority “discovers that the actual subsurface” conditions are different; and (2) to “equitabl[y]” adjust the contract price (upward or downward) to account for the cost impacts of the conditions. G. L. c. 30, § 39N. Awarding authorities are required to address differing subsurface conditions claims in good faith. See Sutton, 423 Mass. at 205.

A public awarding authority’s performance of these two statutory obligations is essential to protect the

¹⁴ Cf. Sutton, 423 Mass. at 207 n. 13 (contractor “not required to conduct independent tests of the subsurface conditions at the site. Demanding such tests would frustrate the policy of G. L. c. 30, c. 39N.”).

public interest: (1) by controlling the risks and costs of differing conditions, including by pursuing alternative, more cost-effective methods of performance; and (2) by reducing the contract price where differing conditions result in decreased performance costs. See, e.g., G. L. c. 30, § 39N; Sutton, 423 Mass. at 202-203.

III. MassDOT Failed to Perform its Statutory Obligations Under G. L. c. 30, § 39N.

The record demonstrates that MassDOT failed to perform its statutory obligations under § 39N. There is no dispute that J.F. White provided formal, written, detailed notice of differing subsurface conditions to MassDOT early in the Project. J.F. White's notice: made explicit reference to G. L. c. 30, § 39N, described the "actual" conditions it had encountered and their impacts on the performance of the work; advised that the differing conditions have "time and cost impacts" on J.F. White's work; requested a meeting with MassDOT to develop a plan to manage this issue if encountered at subsequent culvert locations; and reserved all rights.

MassDOT received and responded to J.F. White's notice, directing J.F. White to "notify MassDOT immediately with the proper and complete data to support such an interpretation" with respect to subsequent

culvert locations. Meanwhile, MassDOT had internally acknowledged “merit here big picture” with respect to J.F. White’s differing subsurface conditions claim under well-established public contracting principles, but developed a “master plan” to reject J.F. White’s claim.

J.F. White kept MassDOT apprised of actual conditions encountered at subsequent locations as directed. J.F. White supplied MassDOT with third-party test results explicitly stating that the subsurface soils did not meet the specifications. J.F. White sought guidance from MassDOT with respect to these materials and approval of proposed work plans with adjusted excavation scopes in light of the actual conditions.

There is no question that MassDOT had knowledge of the differing conditions and their obvious impacts on the work. Indeed, MassDOT advised MassDEP that the additional excavation work was “required” for J.F. White to complete its scope of work under the Contract.

Yet, MassDOT did not investigate the evidence J.F. White provided with respect to each of the culverts. Nor did MassDOT propose other performance or cost control measures. Even assuming, arguendo, that J.F. White’s notice was not sufficient or timely, the evidence that J.F. White provided to MassDOT (i.e., data, test

results, sieve analyses, plans, increased quantities) was sufficient to trigger MassDOT's § 39N duty to investigate and evaluate the evidence, and make an equitable adjustment. Instead, MassDOT approved J.F. White's proposed plans but denied J.F. White's REA.¹⁵ The record, when viewed in the light most favorable to J.F. White, demonstrates that MassDOT failed to perform its statutory duties under § 39N and the lower court improperly dismissed J.F. White's claims.

IV. The Superior Court Erred in Concluding that J.F. White's May 24, 2019 "Notice of Differing Site Conditions - Excavated Materials" was "Ineffective" Notice of Recurring Differing Subsurface Conditions.

The lower court determined that J.F. White "failed to provide timely notice" of its differing subsurface conditions claim. A.68. The court held that J.F. White's May 24, 2019 notice was "ineffective" to serve as notice of the same conditions that recurred throughout the duration of the Project. A.72. This was clear error.

J.F. White's notice contained all the ingredients necessary to notify MassDOT of J.F. White's claim and trigger MassDOT's statutory and contractual duties. J.F.

¹⁵ Even when it denied J.F. White's REA on purported notice grounds, MassDOT conceded that J.F. White had supplied MassDOT with contemporaneous test data concerning the composition of the soils.

White described the issue in detail, made clear that this issue has cost impacts, and reserved all rights. MassDOT "had actual knowledge of the conditions involved on a timely basis." Simeone Corp. v. Commonwealth, Super. Ct. No. 63042, p. 26 (Suffolk, Feb. 26, 1986); Sutton, 423 Mass. at 208. On this record, J.F. White's notice "cannot be characterized as inadequate." D. Federico Co., Inc. v. New Bedford Redevelopment Auth., 723 F.2d 122, 127 (1st Cir. 1983) (contractor identified underwater obstructions in September 1975 and parties were in "constant communication" through June 1976).

The Superior Court improperly concluded that J.F. White's notice could not apply to subsequent culvert locations. A.72-73. In so ruling, the court faulted J.F. White – not for lack of notice – but for providing notice too early. According to the court, J.F. White was required to provide separate notice letters for each subsequent individual culvert, even though the issue of silty, unsuitable soils remained the same at those locations. A.71. Neither the statute (nor the Contract) required J.F. White to submit a series of redundant notices of the same recurring issue, particularly where – as here – J.F. White regularly provided evidence of actual conditions encountered at those locations as

requested by MassDOT. The law does not require useless acts.¹⁶ Fortune v. National Cash Register Co., 373 Mass. 96, 107 (1977). Indeed, the U.S. Court of Federal Claims (and its predecessor) has recognized that “[i]t is not necessary for a contractor to repeatedly give notice of the same physical factors which were made the basis of an initial notice if such conditions continue to recur.” Morrison-Knudsen Co. v. United States, 184 Ct. Cl. 661, 702 (1968) (citing Allied Contractors, Inc. v. United States, 149 Ct. Cl. 671, 675 (1960)); Renda Marine, Inc. v. United States, 66 Fed. Cl. 639, 650 (2005). The lower court erred in concluding otherwise.

V. The Superior Court Erred by Concluding that MassDOT was under “No Obligation” to “Scrutinize” Evidence Provided by J.F. White.

The lower court concluded that, despite the evidence provided by J.F. White, “MassDOT had no obligation under the contract to scrutinize every work

¹⁶ There is evidence in the record to support a conclusion that further notice would have been futile, given MassDOT’s “master plan” to attack J.F. White despite acknowledging “merit [] big picture” under “Spearin Doctrine 101” with respect to J.F. White’s notice that the soils were siltier than represented and unsuitable for re-use, and MassDOT’s denial of J.F. White’s claims. See D. Federico Co. v. New Bedford Redevelopment Auth., 9 Mass. App. Ct. 141, 143-144 (1980) (citing Trustees of Boston & Maine Corp. v. Massachusetts Bay Transp. Auth., 367 Mass. 57, 61 n. 2 (1975)).

plan submitted by and other communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing conditions." A.75. This conclusion: (1) violates the summary judgment standards; (2) profoundly misconstrues the plain language of § 39N; and (4) excises MassDOT's duties from § 39N altogether in violation of well-established principles of statutory construction. If upheld, this case will be used to support the fallacy that an awarding authority may act like the proverbial ostrich with its head buried in the sand when presented with evidence of differing subsurface conditions and their impacts. This approach seriously undermines the public interest and penalizes contractors in violation of the express terms of § 39N.

VI. The Superior Court Erred in Concluding that J.F. White was Required to "Cease Operations."

The lower court improperly ruled that J.F. White was required to "'cease operations'" upon discovering differing conditions. A.71. It appears the lower court borrowed this phrase from Sutton in which the contractor had "ceased operations" after discovering changed conditions. See Sutton, 423 Mass. at 205. But there was a Metropolitan District Commission ("MDC") regulation in

effect at that time explicitly requiring contractors to “promptly cease operations” upon discovery of differing conditions. Id. at 205 n. 12 (citing 350 Code Mass. Regs. § 13.01 (1993)). That regulation has not been in effect since 1996 and J.F. White is unaware of any statute or regulation imposing such a requirement.¹⁷

The Contract required J.F. White to complete its work in a limited time period, subject to performance constraints, and at the risk of substantial liquidated damages for delays. The Contract did not permit J.F. White to cease performance; it explicitly required J.F. White to continue performance despite claims or disputes. No reasonable contractor in J.F. White’s position could have “ceased operations” every weekend at the risk of breaching the express terms of the Contract and subjecting itself to liquidated damages and invocation of its performance bond. See, e.g., Discount Co. v. United States, 213 Ct. Cl. 567, 573 (1977).

VII. The Superior Court Erred in Concluding that J.F. White was Required to Follow Contractual Change Order Provisions Applicable to Extra Work.

A claim under G. L. c. 30, § 39N is not a claim subject to contractual change order provisions

¹⁷ See 811 Mass. Reg. 114 (Feb. 21, 1997).

applicable to extra work. Sutton, 423 Mass. at 207. The Superior Court erred in concluding otherwise.

The lower court's ruling impermissibly conflicts with J.F. White's rights under § 39N and is contrary to Sutton.¹⁸ The contractor in Sutton provided notice of differing conditions. The MDC was aware of the additional work the contractor was performing at obvious additional expense, but never requested a statement of costs. There was no evidence that the MDC was prejudiced. The MDC's refusal to pay the contractor's additional expenses was "improper." Sutton, 423 Mass. at 207-208. The facts of this case are squarely aligned with those of Sutton. As in Sutton, J.F. White's differing conditions claim is not governed by contract provisions pertaining to change order claims for extra work.

J.F. White fulfilled its obligations. MassDOT did not. By dismissing J.F. White's claims on this record, the Superior Court unfairly penalized J.F. White for MassDOT's non-performance of its vital statutory (and contractual) obligations under G. L. c. 30, § 39N.

¹⁸ Sutton, 423 Mass. at 207 n. 14 ("to the extent there may be conflict between the expressed contract and the statutorily required provision, the required provision controls") (citing Reynolds Bros. v. Commonwealth, 412 Mass. 1, 5 (1992)).

6. **STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

I. **Differing Subsurface Conditions: "Construction Industry's 'Great Risk.'"**

As one leading commentator has explained, the possibility that a contractor encounters differing subsurface conditions represents the "construction industry's 'great risk'":

The extraordinary variability of soils with respect to soil bearing capacity, density, compressibility, water retention, grain size, chemical reaction to heat and water, mineral content, and other physical properties, combined with the influence of groundwater and the general lack of uniformity in deposition throughout the earth's crust, has made the practical understanding of soils mechanics especially complex. Adding to the variability of native soils are mankind's own contributions over the millennia, ranging from buried stone foundations for buildings and roads, buried water and sewer lines, garbage dumps, chemical pollution, surface water drainage control, and alteration of groundwater levels.

The uncertainty inherent in the variability of underground soil conditions, and of subjective human judgments and interpretations about those conditions made on the basis of limited soils tests and site investigations is the construction industry's "great risk." For even today "no one can ever know with certainty what will be found during subsurface operations."

5 P.L. Bruner, P.J. O'Connor, Construction Law § 14.1 (2026) (internal citations omitted).

The SJC need look no further than Boston's own Central Artery/Tunnel Project (the "Big Dig") to appreciate the monumental cost and schedule impacts that

differing subsurface conditions can have on public infrastructure projects.¹⁹

True to form, differing subsurface conditions substantially impacted this Project, with a total excavation quantity increase of more than 50% at approximately 90% of culvert locations and cost impacts of 63% of the Initial Contract Amount. Clear guidance from the SJC with respect to the Massachusetts differing subsurface conditions statute is therefore critical, particularly in light of major upcoming public infrastructure projects in the Commonwealth.

II. An Awarding Authority's Failure to Perform its § 39N Obligations Presents a Fundamental Risk of Harm to the Public Interest.

As detailed above, § 39N strikes a careful balance to facilitate the purposes of competitive bidding, while protecting the public interest and assuring fair compensation to contractors. This equilibrium is

¹⁹ See, e.g., Greiman, The Big Dig: Learning from a Mega Project, NASA Academy Sharing Knowledge ("ASK") Magazine (Sept. 2025) (available at: <https://www.nasa.gov/wp-content/uploads/2025-09/appel-the-big-dig.pdf?emrc=ee2fad>) (last visited June 8, 2026); Palmer, Sennott, Big Dig Manager Faces Evaluation: State to Hire Consultants to Review Soil Mistake, Boston Globe (Aug. 16, 1994) (reporting that "federal officials have said that the project could face up to \$500 million in added costs and a two-year delay in the connection of the I-90 to the Third Harbor Tunnel").

destroyed where, as here, a public awarding authority abdicates its statutory responsibility to investigate differing subsurface conditions and equitably adjust public infrastructure contracts as required under § 39N.

A. The Awarding Authority is Responsible to Investigate Differing Subsurface Conditions to Control the Costs of Performance.

The statutory duty to investigate is necessary to enable the awarding authority to control the risk of increased costs due to differing subsurface conditions. This statutory investigation also enables an awarding authority to evaluate less-expensive alternative methods of addressing differing subsurface conditions.

For example, the contractor in Sutton attempted to install sand drains using a specific method identified in the specifications on a bridge replacement project for the MDC. Sutton, 423 Mass. at 202-203. However, the contractor encountered indisputably “unusual” conditions that resulted in unacceptable sand drains. Id. The contractor advised the MDC of a “changed condition” and “requested permission to use a substitute system.” Id. at 203. The MDC declined this request. Id. The contractor proceeded with another method “but only at much greater cost and time than anticipated.” Id. at 203. The Court concluded that the MDC “improper[ly]”

refused to pay for the additional installation expenses stemming from the differing conditions. Id. at 207-208.

Had the MDC in Sutton granted the contractor's substitution request, it is likely that the MDC would have spared the taxpaying public from the "much greater cost and time" burdens created by the differing subsurface conditions. Sutton, 423 Mass. at 203. This scenario illustrates the importance of the statutory investigation under § 39N.

When awarding authorities like MassDOT are presented with notice, data, and evidence demonstrating differing subsurface conditions, they owe the public a clear statutory duty to investigate those conditions. G. L. c. 30, § 39N. The statute explicitly contemplates that differing subsurface conditions may necessitate "a change in the construction methods required for the performance of the work." Id. Therefore, once an awarding authority concludes that the conditions are different within the meaning of the statute, it is incumbent on the awarding authority to evaluate cost effective means and alternative construction methods to address those conditions, and then equitably adjust the contract price. Id.

This is exactly what J.F. White suggested to MassDOT when it requested a meeting with MassDOT “to discuss the merits of the claim, and more importantly, a strategy for how JF White and MADOT can effectively and efficiently manage this issue” It is critical for the SJC to underscore the need for awarding authorities to perform these statutory obligations to avoid scenarios where the public is required to pay more than is necessary for the performance of public infrastructure work.

B. The Awarding Authority is Responsible to Make Downward Adjustments to the Contract Price Where Differing Subsurface Conditions Decrease the Costs of Performance.

Of course, not all differing subsurface conditions result in increased costs of performance. The fact that § 39N expressly recognizes that differing subsurface conditions can result in “decrease[d]” performance costs highlights the importance of the awarding authority’s statutory duty to investigate. G. L. c. 30, § 39N. An awarding authority’s failure to discharge its statutory obligation to investigate in these circumstances would result in a clearly unacceptable disservice to the taxpaying public. Thus, the statutory obligation to investigate and equitably adjust the contract price is

fundamental. Indeed, the language of the statute itself supports a conclusion that a public awarding authority is required to investigate if it “discovers” differing subsurface conditions, even absent any notice, claim, or request for equitable adjustment from the contractor. G. L. c. 30, § 39N.

An awarding authority is not permitted to pick-and-choose when it performs its statutory investigation and equitably adjust the contract. Accordingly, an awarding authority cannot abandon its statutory obligation where it may result in an upward adjustment to the contractor. As illustrated above, doing so deprives the public of the opportunity to control cost increases, including by alternative methods of performance. It also clearly undermines the expressly “equitable” nature of the statute by depriving contractors of the opportunity to recover increased performance costs that they could not include in their bid prices.

III. There is a Gap in Appellate Caselaw Regarding an Awarding Authority’s Duties Under § 39N.

Unfortunately, it does not appear that the Massachusetts appellate courts have addressed the awarding authority’s statutory obligations under G. L. c. 30, § 39N in detail, including when those obligations

are triggered. Beyond quoting the statutory language and stating that awarding authorities must address contractors' differing subsurface claims in "good faith," the published appellate-level cases do not shed further insight on an awarding authority's two-fold statutory obligations under § 39N.

G. L. c. 30, § 39N imposes a clear duty on the government to investigate and make an equitable adjustment. G. L. c. 30, § 39N. This is a substantive requirement triggered after either the contractor or the awarding authority "discovers" differing conditions. Id. The federal differing subsurface conditions provision also imposes a duty on the government to investigate, albeit after notice by the contractor. 48 C.F.R. 52.236-2. The contractor's "notice need not follow any specific format, but must merely make the Contracting Officer aware of the differing site condition."²⁰ Ace Constructors, Inc. v. United States, 70 Fed. Cl. 253,

²⁰ Consistent with the SJC's conclusion in Sutton that "there was no evidence that the MDC was prejudiced in any way by the lack of an itemized statement of damages" from the contractor, federal cases apply a notice-prejudice rule. Sutton, 423 Mass. at 208; Ace Constructors, Inc. v. United States, 70 Fed. Cl. 253, 272 (2003) aff'd 499 F.3d 1357 (Fed. Cir. 2007) ("a contractor that fails to provide adequate notice will not be barred from recovery unless the government is prejudiced by the lack of notice").

273 (2003) aff'd 499 F.3d 1357 (Fed. Cir. 2007). The government's failure to perform the required investigation constitutes a violation of the federal regulation and a breach of contract. See Metcalf Constr. Co. v. United States, 102 Fed. Cl. 334, 348-355, 370-371 (2011) ("the court has determined that the Navy's failure to investigate the substantial differences regarding the soil conditions on a prompt basis violated FAR 52.236-2(b)") overruled on other grounds by Metcalf Constr. Co. v. United States, 742 F.3d 984 (Fed. Cir. 2014); cf. Lamb Eng'g & Constr. Co., EBCA No. C-9304172, 97-2 B.C.A. ¶ 29,207 (July 28, 1997) (government "closed its collective eyes" to differing conditions).

This is not a case in which J.F. White failed to give any notice of differing subsurface conditions to MassDOT. J.F. White gave early notice, and then supplied MassDOT with a steady stream of data and evidence to support a conclusion that actual subsurface conditions were recurring differing conditions under the statute. The record evidence supported a finding that J.F. White is entitled to a trial on the merits to determine the scope of MassDOT's duty to investigate and whether MassDOT breached that duty entitling J.F. White to an equitable adjustment. The lower court's decision

precluded J.F. White from litigating these important issues under § 39N.

The lower court's ruling that MassDOT was under "no obligation" to "scrutinize" the information that J.F. White provided fundamentally misapplies the plain language of § 39N and enables awarding authorities to adopt a lay-in-wait approach when it comes to differing subsurface conditions claims in violation of the letter and purpose of the statute. J.F. White is unaware of a Massachusetts appellate case holding that a contractor in J.F. White's position must submit redundant notices of recurring conditions at each culvert location. Direct appellate review is necessary to enable the SJC to provide critical guidance as to when an awarding authority is required to perform its investigation and equitably adjust a public construction contract, and resolve these questions of first impression.

IV. G. L. c. 30, § 39N Does Not Require a Contractor to "Cease Operations" and is Not Subject to Contractual Change Order Provisions Applicable to Extra Work.

This appeal also presents an opportunity for the SJC to clarify two issues that repeatedly arise with respect to differing subsurface conditions.

First, nothing in § 39N requires contractors to “cease operations” upon discovery of differing subsurface conditions. Like the Contract in this case, most construction contracts require contractors to continue performance despite the pendency of claims and disputes. Thus, a contractor that ceases performance runs the risk that an awarding authority will declare the contractor to be in default under its contract and call upon its performance bond surety to perform the work. This is a critical event that contractors would likely need to report when bidding public jobs.

Second, differing subsurface conditions claims are not subject to contractual change order provisions applicable to extra work. Sutton, 423 Mass. at 207. To conclude otherwise would enable awarding authorities to evade their obligations under G. L. c. 30, § 39N under the guise of a contractor’s non-compliance with inapplicable contractual requirements that are inconsistent with the statute and undermine contractors’ statutory rights. That is exactly what happened here.

7. CONCLUSION

For these reasons, the Plaintiff-Appellant respectfully requests that the SJC grant this Application for Direct Appellate Review.

Respectfully submitted,

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DATED: June 8, 2026

Mass. R. A. P. 11(b) CERTIFICATION

I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of Applications for Direct Appellate Review, including, but not limited to: Mass. R. A. P. 11 and Mass. R. A. P. 20, as appearing in 481 Mass. 1620 and 1646 (2019).

I further certify that this Application for Direct Appellate Review complies with the font, length, and margin limitations set forth in Mass. R. A. P. 11(b), as appearing in 481 Mass. 1620 (2019) and Mass. R. A. P. 20(a), as appearing in 481 Mass. 1646 (2019) and Mass. R. A. P. 20(a)(4)(c), as amended, 487 Mass. 1602 (2021), because it is produced, double spaced (except where permitted otherwise) in a monospaced font (Courier New, size 12), the top and bottom margins are 1 inch, the left and right margins are 1.5 inches, and the argument section is no more than 10 pages in length.

I further attest that this Application for Direct Appellate Review is being filed electronically under Mass. R. A. P. 13(a), as appearing in 481 Mass. 1624 (2019) and that the day of electronic filing or mailing is within the time fixed for filing by the Court.

Sworn under the penalties of perjury this 8th day of June, 2026.

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Mass. R. A. P. 11(d), 13(d)
Certificate of Service

I, Robert T. Ferguson, Jr., counsel for the Plaintiff/Appellant, J.F. White Contracting Company, hereby certify under the penalties of perjury that on this 8th day of June, 2026, I caused a true and accurate copy of the foregoing Application for Direct Appellate Review to be served electronically on all parties who are registered participants of the Court's electronic filing system, and by email to the following counsel of record:

Joel Quick, Esq. (joel.quick@mass.gov)
Joseph Lucia, Esq. (joseph.lucia@mass.gov)
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/s/ Robert T. Ferguson, Jr.
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Mass. R. A. P. 11(b) Addendum Table of Contents

<u>Title</u>	<u>Page</u>
Certified Copy of the Docket.....	A.58
Decision and Order Allowing Defendants' Motion for Summary Judgment (dated March 9, 2026) (Salinger, J.) (Docket No. 27).....	A.68
Summary Judgment (Docket No. 28).....	A.82



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

**2184CV01172 JF White Contracting Company vs. Commonwealth of Massachusetts acting by and through its
Department of Transportation Rail and Transit Division**

CASE TYPE: Business Litigation	FILE DATE: 05/20/2021
ACTION CODE: BK1	CASE TRACK: B - Special Track (BLS)
DESCRIPTION: Other Complex Commercial Actions	
CASE DISPOSITION DATE: 03/11/2026	CASE STATUS: Open
CASE DISPOSITION: Dismissed	STATUS DATE: 05/20/2021
CASE JUDGE:	CASE SESSION: Business Litigation 2

PARTIES

Plaintiff

JF White Contracting Company

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**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	Attorney 673138 Joseph P Lucia Massachusetts Attorney General's Office Massachusetts Attorney General's Office One Ashburton Place Suite 1805 Boston, MA 02108 Work Phone (617) 963-2806 Added Date: 04/06/2022
	Attorney 694265 Joel Quick Massachusetts Attorney General's Office Massachusetts Attorney General's Office 1 Ashburton Place 18th Floor Boston, MA 02108 Work Phone (617) 963-2592 Added Date: 08/02/2023
	Attorney 693847 Deborah Frisch Office of the Attorney General Office of the Attorney General 1 Ashburton Place Boston, MA 02108 Work Phone (617) 963-2340 Added Date: 09/03/2024



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
05/20/2021		Attorney appearance On this date Eric Franklin Eisenberg, Esq. added for Plaintiff JF White Contracting Company	
05/20/2021		Early Case Management Conference Pilot Program.	
05/20/2021		Case assigned to: DCM Track A - Average was added on 05/20/2021	
05/20/2021	1	Original civil complaint filed.	
05/20/2021	2	Civil action cover sheet filed.	
05/20/2021		Demand for jury trial entered.	
05/20/2021		EDocument sent: A Tracking Order was generated and sent to: Plaintiff, Attorney: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com	
05/20/2021		EDocument sent: Tracking Order Sent On: 05/20/2021 16:06:24	
09/10/2021	3	Answer to original complaint Applies To: Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division (Defendant)	
09/13/2021		Attorney appearance On this date Jeffrey Thomas Collins, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
10/18/2021		Attorney appearance electronically filed.	
10/18/2021		Attorney appearance electronically filed.	
10/18/2021		Attorney appearance On this date Jeffrey Thomas Collins, Esq. dismissed/withdrawn for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
10/18/2021		Attorney appearance On this date Dennis N D'Angelo, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
10/29/2021	4	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Transfer to Business Litigation Session	
10/29/2021		Attorney appearance On this date Alexandra Gordon, Esq. added for Plaintiff JF White Contracting Company	



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

11/09/2021		Endorsement on Motion to Transfer to BLS (#4.0): Other action taken The court agrees that this should be reviewed by BLS to see if a transfer is appropriate (dated 11/4/21) notice sent 11/8/21	Connolly
11/15/2021	5	General correspondence regarding Notice of Acceptance into Business Litigation Session 2 Date 11/4/21 Notice 11/10/21	Salinger
11/15/2021		Civil action cover sheet mailed re: BLS	
11/24/2021	6	Civil action cover sheet filed. Returned re: BLS (n/a)	
11/29/2021	7	Service Returned for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division: Service through person in charge / agent; (E-filed 11/29/2021)	
12/28/2021		Attorney appearance On this date Howard Meshnick, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
04/06/2022		Attorney appearance On this date Joseph P Lucia, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
06/27/2022		Attorney appearance On this date Howard Meshnick, Esq. dismissed/withdrawn for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
11/01/2022	8	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Motion for Case-Specific Management & Proposed Tracking Order	
11/22/2022		The following form was generated: Notice to Appear - BLS Sent On: 11/22/2022 12:42:37	
11/29/2022	9	Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Assented to Motion to continue / reschedule an event 12/13/2022 02:00 PM BLS Rule 16 Litigation Control Conference	
12/01/2022		Endorsement on Motion for (Joint) Case Specific Management & Proposed Tracking Order. (#8.0): Other action taken Clerk Shall Schedule the Requested Rule 16 Conference. (11/03/2022) See paper: 8 (Notice Sent: 12/01/2022)	Ricciuti



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

12/04/2022		The following form was generated: Notice to Appear - BLS Sent On: 12/04/2022 20:55:37	
12/12/2022		Event Result:: BLS Rule 16 Litigation Control Conference scheduled on: 12/13/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Michael D Ricciuti, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate	Ricciuti
01/11/2023		Event Result:: BLS Rule 16 Litigation Control Conference scheduled on: 01/30/2023 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Kenneth W Salinger, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate	Salinger
01/11/2023		The following form was generated: Notice to Appear - BLS Sent On: 01/11/2023 12:27:23	
01/11/2023		The following form was generated: Notice to Appear - BLS Sent On: 01/11/2023 12:36:02	
01/12/2023		Endorsement on Motion to continue Rule 16 Litigation Control Conference (Assented to) (#9.0): ALLOWED 12/8/22. Notice Sent 1/12/23	Ricciuti
01/23/2023	10	Plaintiff JF White Contracting Company's Assented to Request for Scheduling Conference Via Zoom	
01/23/2023		Affidavit of Alexandra A. Briggs	
01/30/2023		Proposed Filings/Orders Parties' Proposed Agenda for Rule 16 Litigation Conference	
01/30/2023		Endorsement on Request for Scheduling Conference Via Zoom (#10.0): Other action taken No action required. The notice to appear mailed out 1/11/23 included zoom credentials. dated (1/25/23) notice sent (1/27/23)	Salinger
01/31/2023		Event Result:: BLS Rule 16 Litigation Control Conference scheduled on: 01/31/2023 02:00 PM Has been: Held as Scheduled Hon. Kenneth W Salinger, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate	Salinger



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

01/31/2023		The following form was generated: Notice to Appear Sent On: 01/31/2023 14:46:32	
02/03/2023	11	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Submission of Parties' Proposed Agenda For Rule 16 Litigation Control Conference	
02/06/2023		Attorney withdrawn electronically filed. On this date Dennis N D'Angelo, Esq. dismissed/withdrawn for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
02/07/2023	12	ORDER: Scheduling Order (See complete order paper #12) 1/31/23. Notice Sent 2/7/23 Judge: Salinger, Hon. Kenneth W	Salinger
06/13/2023		Attorney appearance electronically filed. On this date Howard Meshnick, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
06/23/2023	13	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Extend Pretrial Deadlines	
07/10/2023		Endorsement on Motion to Extend Pretrial Deadlines (#13.0): ALLOWED ALLOWED as revised. See pg. 5 (Dated: 7/10/23) Notice Sent 07/11/23	Ricciuti
08/02/2023		Attorney appearance electronically filed.	
08/02/2023		Attorney appearance On this date Joel Quick, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
11/09/2023	14	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Extend Pre-Trial Deadlines	
11/13/2023		Event Result:: Conference to Review Status scheduled on: 11/15/2023 02:00 PM Has been: Rescheduled For the following reason: Court Order Comments: Order Allowed Mtn to Extend Pretrial Deadlines. Hon. Michael D Ricciuti, Presiding	Ricciuti
11/13/2023		The following form was generated: Notice to Appear - BLS Sent On: 11/13/2023 11:00:59	
11/13/2023		Endorsement on Motion to Extend Pre-Trial Deadlines (#14.0): ALLOWED (Dated: 11/10/23) Notice sent 11/17/2023.	Ricciuti



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

11/13/2023	15	ORDER: Order Having reviewed the Joint Motion to Extend Pre-Trial Deadlines submitted in this matter, and/or heard argument thereon, the Court hereby orders the dates for all pre-trial events be extended as follows: (Dated: 11/10/23) Notice sent 11/17/2023.	Ricciuti
05/02/2024	16	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Pre-Trial Deadlines	
05/03/2024		Event Result:: BLS Rule 16 Litigation Control Conference scheduled on: 05/09/2024 02:00 PM Has been: Canceled For the following reason: Joint request of parties Hon. Kenneth W Salinger, Presiding	Salinger
05/03/2024		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com Plaintiff: Alexandra A Briggs, Esq. abriggs@hinckleyallen.com Defendant: Howard Meshnick, Esq. howard.meshnick@mass.gov Defendant: Joseph P Lucia, Esq. joseph.lucia@mass.gov Notice to Appear was generated and sent to: Plaintiff: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com Plaintiff: Alexandra A Briggs, Esq. abriggs@hinckleyallen.com Defendant: Howard Meshnick, Esq. howard.meshnick@mass.gov Defendant: Joseph P Lucia, Esq. joseph.lucia@mass.gov Defendant: Joel Quick, Esq. joel.quick@mass.gov Sent On: 05/03/2024 10:09:53	
05/07/2024		Endorsement on Motion to extend Pre-Trial Deadlines (#16.0): ALLOWED Allowed. The May 9 Rule 16 Conference is cancelled. A further Status Conference will be held on December 17, 2024, at 2 pm. (dated 5/2/2024) Notice Sent 5/7/24	Salinger
05/07/2024	17	ORDER: Revised Scheduling Order See p#17 for full Order. (dated 5/2/2024) Notice Sent 5/7/24	Salinger
09/03/2024		Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Notice of Appearance	
09/03/2024		Attorney appearance On this date Deborah Frisch, Esq. added for Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	
09/17/2024		Attorney appearance electronically filed.	
11/08/2024		Attorney appearance electronically filed.	
12/16/2024	18	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Extend Pre-Trial Deadlines	



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

12/17/2024		Event Result:: Conference to Review Status scheduled on: 12/17/2024 02:00 PM Has been: Held via Video/Phone Hon. Debra A Squires-Lee, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate	Squires-Lee
12/17/2024		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com Plaintiff: Alexandra A Briggs, Esq. abriggs@hinckleyallen.com Plaintiff: Rachel E Greenberg, Esq. rgreenberg@hinckleyallen.com Defendant: Joseph P Lucia, Esq. joseph.lucia@mass.gov Defendant: Joel Quick, Esq. joel.quick@mass.gov Defendant: Deborah Frisch, Esq. deborah.frisch@mass.gov Sent On: 12/17/2024 14:38:01	
12/18/2024		Endorsement on Motion to Extend Pre-Trial Deadlines (#18.0): ALLOWED Clerk has scheduled SJ hearing for July 22, 2025 at 2PM. dated (12/16/24) Notice Sent 12/18/24	Squires-Lee
05/02/2025	19	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Joint Motion to Extend Pre Trial Deadlines	
05/06/2025		Event Result:: Rule 56 Hearing scheduled on: 07/22/2025 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Kenneth W Salinger, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate	Salinger
05/06/2025		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com Plaintiff: Alexandra A Briggs, Esq. abriggs@hinckleyallen.com Plaintiff: Rachel E Greenberg, Esq. rgreenberg@hinckleyallen.com Defendant: Joseph P Lucia, Esq. joseph.lucia@mass.gov Defendant: Joel Quick, Esq. joel.quick@mass.gov Defendant: Deborah Frisch, Esq. deborah.frisch@mass.gov Sent On: 05/06/2025 11:51:57	
05/06/2025		Endorsement on Motion to Extend Pre Trial Deadlines (#19.0): ALLOWED Allowed. The summary judgment hearing is continued to October 28, 2025, at 2pm. (dated 5/5/25) Notice sent by email	Salinger
10/10/2025	20	Defendant Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Motion for Summary Judgment	



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

10/10/2025	21	Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Memorandum in support of Defendant's Motion for Summary Judgment	
10/10/2025	22	Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Memorandum in opposition to Defendant's Motion for Summary Judgment	
10/10/2025	23	Reply/Sur-reply Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment	
10/10/2025	24	Plaintiff, Defendant JF White Contracting Company, Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division's Statement of Facts (Consolidated)	
10/10/2025	25	Defendant's Superior Court Rule 9C Certification	
10/10/2025	26	Defendant's Notice of Filing of Summary Judgment Motion Package Under Superior Court Rule 9A	
10/28/2025		Event Result:: Rule 56 Hearing scheduled on: 10/28/2025 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Debra A Squires-Lee, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate	Squires-Lee
11/03/2025		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Eric Franklin Eisenberg, Esq. eeisenberg@hinckleyallen.com Plaintiff: Alexandra A Briggs, Esq. abriggs@hinckleyallen.com Plaintiff: Rachel E Greenberg, Esq. rgreenberg@hinckleyallen.com Defendant: Joseph P Lucia, Esq. joseph.lucia@mass.gov Defendant: Joel Quick, Esq. joel.quick@mass.gov Defendant: Deborah Frisch, Esq. deborah.frisch@mass.gov Sent On: 11/03/2025 11:31:02	
02/12/2026		Matter taken under advisement: Rule 56 Hearing scheduled on: 02/12/2026 02:00 PM Has been: Held - Under advisement Hon. Kenneth W Salinger, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate	Salinger
03/10/2026	27	MEMORANDUM & ORDER: Decision and Order Allowing Defendant's Motion for Summary Judgment: Defendant's Motion for Summary Judgment is ALLOWED. Final Judgment shall enter dismissing all claims with prejudice and stating that Plaintiff shall recover nothing from Defendant. Judge: Salinger, Hon. Kenneth W (see p#27 for full decision and order) (dated 3/9/26) notice sent by email	Salinger



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Docket Report**

03/10/2026		Endorsement on Motion for Summary Judgment (#20.0): ALLOWED See Decision and Order. (dated 3/9/26) notice sent by email	Salinger
		Judge: Salinger, Hon. Kenneth W	
03/10/2026	28	SUMMARY JUDGMENT for Defendant(s), Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division against Plaintiff(s), JF White Contracting Company, without statutory costs. It is ORDERED and ADJUDGED: Defendant's motion for summary judgment having been ALLOWED, final judgment is entered for Defendant. All claims are DISMISSED with prejudice and Plaintiff shall recover nothing from Defendant. entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d) notice sent 3/11/26	Salinger
03/11/2026		Disp for statistical purposes	
04/06/2026	29	Plaintiff JF White Contracting Company's Notice of Appeal	
04/06/2026		Notice of appeal filed. (See p#29) Notice sent 4/9/26 Applies To: JF White Contracting Company (Plaintiff)	
04/06/2026		Attorney appearance electronically filed.	
04/10/2026	30	Plaintiff JF White Contracting Company's Submission of Certification Regarding Transcripts Transcript of 1/31/23, 12/17/24, 2/12/26 ordered	
04/15/2026		Transcript of 1/31/23 12/17/24 & 2/12/26 received from transcriber Christine Fiore (via email)	
05/04/2026		Appeal: Statement of the Case on Appeal (Cover Sheet).	
05/04/2026		Notice of assembly of record sent to Counsel	
05/04/2026		Notice to Clerk of the Appeals Court of Assembly of Record	
05/19/2026	31	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2026-P-0693) was entered in this Court on May 18, 2026.	

I HEREBY ATTEST AND CERTIFY ON
May 26, 2026, THAT THE
FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

John E. Powers, III
Clerk Magistrate

**SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT**

BY: *Margaret Buckley*
First Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS
 SUFFOLK, ss. SUPERIOR COURT
 2184CV01172-BLS2

J.F. WHITE CONTRACTING COMPANY

v.

COMMONWEALTH OF MASSACHUSETTS, ACTING BY AND THROUGH ITS
 DEPARTMENT OF TRANSPORTATION, RAIL AND TRANSIT DIVISION

**DECISION AND ORDER ALLOWING
 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

J.F. White Contracting Company entered into a public construction contract to replace, remove, or clean culverts running beneath active commercial rail lines in preparation for South Coast Rail commuter train traffic. The contract with the Massachusetts Department of Transportation ("MassDOT") had an amended maximum obligation amount of \$20.3 million. After essentially completing its work, J.F. White sought an additional \$11.5 million for extra costs it claims to have incurred due to unanticipated site conditions and allegedly defective contract documents. It then brought suit asserting various claims for breach of contract or, in the alternative, for recovery on a quantum meruit (or unjust enrichment) theory.

The Court will **allow** MassDOT's motion for summary judgment on all claims. MassDOT is entitled to judgment in its favor on the differing site conditions claims as a matter of law because the record establishes that J.F. White failed to provide timely notice, as required by the plain language of the written contract, that it was requesting an equitable adjustment as to any of the culverts. MassDOT is similarly entitled to judgment in its favor on the defective contract documents claims because it is undisputed that J.F. White failed to promptly report alleged errors in the contract specifications and did not seek a contract change order before doing the work.

"Summary judgment is appropriate" in this case because "no material facts are in dispute and the moving party," MassDOT, "is entitled to judgment as a matter of law." *Tody's Service, Inc. v. Libert Mut. Ins. Co.*, 496 Mass. 197, 199 (2025). "The purpose of summary judgment is to decide cases where there are no issues of material fact," like this one, and to do so "without the needless expense and delay of a trial followed by a directed verdict." *Correllas v. Viveiros*, 410 Mass. 314, 316 (1991).

Noted
 by email
 3/14/26
 EC

1. Differing Site Conditions Claims. J.F. White claims that, under G.L. c. 30, § 39N, and related contract provisions, it is entitled to an equitable adjustment in the contract price to cover extra costs incurred because conditions at culvert work sites differed substantially or materially from those shown on MassDOT's plans or in other contract documents.

But the record establishes that J.F. White cannot prove that it provided timely advance notice that it was seeking such an equitable adjustment, which is a contractual condition precedent to obtaining such extra payments.

Since J.F. White cannot prove an essential element of these claims, MassDOT is entitled to summary judgment on the breach of contract claim in Count Three of the complaint, the claim for breach of the implied covenant of good faith and fair dealing in Count Four, and the quantum meruit claim in Count Five. See *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 715 (1991) ("If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.") (quoting *Celotex Corp. v. Catret*, 477 U.S. 317, 328 (1986) [White, J., concurring]).

Whether J.F. White would have been entitled to recoup extra costs if it had provided timely written requests for equitable adjustments is thus irrelevant. "A nonmoving party's failure to establish an essential element of her claim 'renders all other facts immaterial' and mandates summary judgment in favor of the moving party." *Roman v. Trustees of Tufts College*, 461 Mass. 707, 711 (2012), quoting *Kourouvacilis, supra*, at 711.

1.1. No Contractual Right to an Equitable Adjustment. J.F. White failed to follow the required procedures for an equitable adjustment in the contract price due to differing site conditions. It is therefore not entitled to obtain any extra compensation on the ground that it encountered differing site conditions. See *Glynn v. City of Gloucester*, 21 Mass. App. Ct. 390, 396 (1986) ("*Glynn II*"); *D. Federico Co., Inc. v. Commonwealth*, 11 Mass. App. Ct. 248, 252–253 (1981); *Skopek Bros., Inc. v. Webster Housing Auth.*, 11 Mass. App. Ct. 947 (1981) (rescript). As the Appeals Court has explained:

On a public construction contract, if actions or requirements of the public agency necessitate changes in the work as it progresses, thereby causing the contractor to perform extra work or incur added expense, ... the contractor must follow the procedures spelled out in the contract

... to adjust the price before unilaterally accruing expenses to be pursued later on breach of contract or quantum meruit theories.

Glynn II, supra, at 394–395, quoting *Glynn v. City of Gloucester*, 9 Mass. App. Ct. 454, 460 (1980).

Since J.F. White failed to follow the procedures mandated by contract and by § 39N, any additional costs due to differing site conditions “were incurred unilaterally at its own expense” and J.F. White has no right to recover them from MassDOT. See *Glynn II, supra*, at 398. MassDOT is therefore entitled to summary judgment on Count Three.

1.1.1. Proper Notice Was a Condition Precedent. As required by G.L. c. 30, § 39N, the parties’ contract provides that if J.F. White discovered “during the progress of the work” that “actual subsurface or latent physical conditions encountered at the site differ substantially or material from those shown on the plans or indicated in the contract documents,” then it could “request an equitable adjustment in the contract price.” See General Conditions § 8.5.1.

Section 39N provides that the contract awarding authority “may adopt reasonable rules or regulations ... concerning the filing, investigation, and settlement” of claims for an equitable adjustment in price due to differing site conditions. MassDOT did so. The contract required J.F. White to provide notice that it was seeking such an equitable adjustment due to differing site conditions “promptly, and before such conditions are disturbed.” *Id.* § 8.5.3.

J.F. White was required to make such a request “in writing” and do so “as soon as possible after such conditions are discovered.” *Id.* § 8.5.1. That would provide MassDOT with the opportunity to “make an investigation of such physical conditions” and make an appropriate equitable adjustment in the contract price if the actual conditions differed substantially “and are of such a nature as to cause an increase or decrease in the cost of performance.

Providing notice that meets these conditions was a contractual condition precedent to J.F. White obtaining any equitable adjustment. The contract states that claims for additional compensation due to differing site conditions “shall not be allowed unless [J.F. White] has first given the notice required” by contract, as discussed above. *Id.* § 8.5.5.

If contracting parties intend “that the giving of notice was a condition precedent” to obtaining some additional payment, they may express that intent by saying that payment may be obtained only “on the condition that,”

“provided that,” or “if” the required notice is given, or by using similarly explicit language to express that intent. *Massachusetts Port Auth. v. Johnson Controls, Inc.*, 54 Mass. App. Ct. 541, 544 (2002); see also *Massachusetts Mun. Wholesale Elec. Co. v. Town of Danvers*, 411 Mass. 39, 46 (1991) (“ ‘Emphatic words’ are generally considered necessary to create a condition precedent that will limit or forfeit rights under an agreement.”).

The contract language stating that a claim for an equitable adjustment “shall not be allowed unless” notice is given as required by the contract created a condition precedent to payment. See *Columbia Pontiac Co., Inc. v. Board of Assessors of Boston*, 395 Mass. 1010 (1985) (rescript) (statutory provision stating that local property tax “shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges,” G.L. c. 59, § 64, makes timely payment in full “a condition precedent” to the Appellate Tax Board exercising jurisdiction over an abatement appeal); *Vasys v. Metropolitan Dist. Comm’n*, 387 Mass. 51, 52 (1982) (provision in Mass. Tort Claims Act stating that action “shall not be instituted ... unless” claim is first timely presented in writing, G.L. c. 258, § 4, made “presentment ... a condition precedent to bringing suit”).

In sum, if J.F. White wished to seeking any equitable adjustments increasing the contract price due to differing conditions at a particular culvert site, it was required to: (1) notify MassDOT in writing that it was “seeking an equitable adjustment;” (2) explain with reasonable specificity how the actual conditions that J.F. White at each site differed from those shown on the plans or indicated in the contract documents; (3) do so before disturbing the actual site conditions; and (4) “cease[] operations” so that MassDOT could examine the actual site conditions and determine whether an equitable adjustment in price was warranted before J.F. White performed the work in question. See *Sutton Corp. v. Metropolitan Dist. Comm’n*, 423 Mass. 200, 205 (1996); General Conditions §§ 8.5.1 to 8.5.6.

1.1.2. No Timely Request for Equitable Adjustments. The culverts that were the subject of J.F. White’s contract with MassDOT are structures that support train tracks while allowing water to flow underneath. J.F. White contracted to remove and replace 46 culverts, remove one culvert without replacing it, and clean out 16 other culverts. It is undisputed that each of the 63 pre-existing culverts was in a unique location with unique topography, surrounding vegetation, and soil mix.

J.F. White contends that at many of the culvert sites it encountered soil that was wetter and siltier than it expected based on its review of the contract documents. It claims that, as a result, J.F. White incurred unexpected costs because it had to excavate beyond the limits shown on the contract documents, could not reuse the soil as backfill in certain areas requiring gravel borrow (a mix of sandy gravel and rock), and could not dry all excavated material to specified moisture levels required for reuse in other areas.

In Count Three, J.F. White claims that MassDOT breached the construction contract by not approving a substantial equitable adjustment increasing the contract price to compensate J.F. White for the additional costs that it claims in incurred because of these differing site conditions.

This claim fails as a matter of law because J.F. White failed to provide the written notice that is a condition precedent to obtaining such an equitable adjustment.

1.1.2.1. The May 2019 Letter. The first written notice of differing site conditions was ineffective because J.F. White completed the work in question before seeking an equitable adjustment.

On May 24, 2019, J.F. White submitted a letter asserting that site conditions differed from the data reported in the Geotechnical Report because excavated material contained higher levels of silt and as a result its "water content is too high to be acceptable as backfill."

In this letter, J.F. White identified one culvert where it had already excavated material that had too high a water content to be used as backfill. J.F. White wrote that it "anticipates" that differing site conditions "may only exist at isolated work zones within the Project," but acknowledged that "further investigation must be performed to confirm this." It did not identify any other specific sites with differing site conditions.

It is undisputed that J.F. White had already completed all work on the one culvert identified in the May 2019 letter by the time it submitted this written notice. Since J.F. White failed to submit this request for an equitable adjustment before the allegedly differing site conditions were disturbed, as required by General Conditions § 8.5.3, it was not entitled to any price increase for this site.

To the extent that J.F. White contends that its May 2019 letter put MassDOT on notice that it would be entitled to unspecified equitable adjustments for culvert

work at other sites that J.F. White had not yet inspected, that assertion is unavailing.

J.F. White acknowledges in its written opposition that, at the time of this letter, it “could only provide limited information about the differing site conditions at the Project because it had only performed two excavations.” But J.F. White argues that, because the letter also “**forecasted the possibility of encountering additional similar conditions** in the remainder of the Project” (emphasis added), it thereby fulfilled the contractual “requirement to promptly notify MassDOT in writing of the existence of differing site conditions on the Project and request an equitable adjustment to the contract price.”

Not so.

By statue and contract, J.F. White was not entitled to any equitable adjustment without giving proper notice that “**actual** subsurface or latent physical conditions encountered at the site” differ in substantial or materials ways from the contract documents. See G.L. c. 30, § 39N (emphasis added); General Conditions § 8.5.1 (emphasis added). A mere prediction that J.F. White may encounter differing conditions at other sites could not support a legally sufficient written notice that J.F. White was requesting equitable adjustments for those sites.

As noted above, J.F. White admits that the soil mix and other conditions at every culvert site were unique. J.F. White concedes it is undisputed, just as its Rule 30(b)(6) witness acknowledged, that J.F. White was not aware of differing site conditions related to the soil until it started excavating at each site.

The May 2019 letter did not, and could not have, requested an equitable adjustment based on “actual conditions” at sites not specified in the letter before J.F. White excavated the site and learned that the unique conditions at a particular site differed from what was described in the contract documents.

1.1.2.2. The May 2020 Letter. After completing all work to replace or clean all of the culverts covered by the contract, J.F. White submitted a written Request for Equitable Adjustment on May 4, 2020, in which it asked MassDOT to pay an additional \$11,494,200 as compensation for extra costs allegedly incurred due to differing conditions at some or all of the culvert sites.

This letter came far too late to satisfy the contractual notice requirements. By waiting until May 2020 to put MassDOT on notice that it was seeking a huge equitable adjustment, J.F. White failed to provide notice that it was seeking a

price increase due to differing site conditions “as soon as possible after such conditions are discovered,” and failed to do so “promptly, and before such conditions are disturbed,” as required by General Conditions §§ 8.5.3 and 8.5.5.

As a result, and as noted above, any additional costs due to differing site conditions “were incurred” by J.F. White “unilaterally at its own expense” and J.F. White has no right to recover them from MassDOT. See *Glynn II*, 21 Mass. App. Ct. at 398.

1.1.2.3. The Work Plans, RFIs, and Other Communications. J.F. White argues that its failure to submit requests for equitable adjustments in the manner required by contract does not matter because it kept MassDOT fully informed about the scope of its excavation work and what it learned about soil composition, MassDOT knew that J.F. White had a potential claim for an equitable adjustment based on differing site conditions, and MassDOT could have but failed to ask what the differing conditions had cost J.F. White.

Once again, not so.

J.F. White notes that each week it submitted detailed work plans that MassDOT routinely approved, “even when the plans proposed limits of excavation that exceeded the Contract’s limits of excavation.” It points to Requests for Information (“RFIs”) that “detailed concerns over soil composition and compactability, and their impact on use as backfill.” And J.F. White says that it “met and corresponded regularly” with MassDOT and its Project consultants “regarding soil conditions.”

None of that evidence supports J.F. White’s claim for breach of contract because none of those communications stated in writing, before work was done on any of the culverts, that J.F. White was seeking an equitable adjustment to cover additional costs that it would have to incur due to differing site conditions. MassDOT correctly notes that “[n]one of these submissions by J.F. White ... were claims that described cost increases due to different site conditions or sought an equitable adjustment in the Contract price.” ¹

¹ The Requests for Information would not have sufficed even if they expressly noted that J.F. White would be seeking an equitable adjustment, which they did not. The contract makes clear that ROIs could be used only to seek “interpretation of the Contract Documents,” and “shall not be used” to request approval to incur additional costs due to claimed “nonconforming conditions.” See Contract § 01300 (“Submittals”), ¶ 1.5.A (at JA 29).

Under the contract, if J.F. White believed that it was encountering soil or other site conditions that differed from the contract documents and that as a result it was entitled to a price increase, the burden was on J.F. White to send express and timely written requests for such equitable adjustments.

J.F. White now tries to shift that burden, arguing that MassDOT should have realized that J.F. White would be seeking an equitable adjustment after completing its work, and that if MassDOT wanted to avoid any surprise then "MassDOT could simply have inquired as to what the work as authorized was costing." But that is not at all what the parties' contract contemplated or required.

MassDOT was entitled to assume that J.F. White was performing its work pursuant to the terms of their contract, under which J.F. White agreed to a maximum total price and also agreed to provide timely notice of any unforeseen condition that could increase the total cost. J.F. White was required to do the things described in its regular work plans within budget, and that any request for a price increase to cover additional costs resulting from differing site conditions "shall not be allowed unless [J.F. White] has first given the notice required" by contract, as discussed above. See General Conditions § 8.5.5. MassDOT had no obligation under the contract to scrutinize every work plan submitted by and other communication with J.F. White and decide whether, perhaps, J.F. White could have submitted an express request for an equitable adjustment based on differing site conditions.

1.2. No Right to Payment under the Earthworks Specifications. J.F. White argues that, even if it is not entitled to recoup all of its claimed extra costs, "at a minimum" it has the contractual right to recover costs incurred to excavate beyond the limits identified in the contract documents or to remove unsuitable soil materials. J.F. White contends that it may do so under the contract's Earthworks Specifications, without having to show that it complied with other contractual notice provision.

This argument is also without merit.

J.F. White relies on two parts of the contractual Earthworks Specifications. One section provides that costs associated with "authorized additional excavation and replacement material will be paid for according to Contract provisions for unit prices;" in this context "authorized additional excavation" means excavation that is "directed by [the] Engineer" to go beyond contract

dimensions. See Section 02300, ¶ 1.3.E.1 (at JA 33). The other section, titled “Unsuitable Excavation,” provides that J.F. White may recover costs incurred to remove unsuitable soil and other materials. See *Id.*, ¶ 4.1.A.2 (at JA 46).

Neither of these provisions in the Earthworks Specifications excused J.F. White from the notice and approval requirements set forth in the contract’s General Conditions. To the contrary, the contract makes clear that the requirements of the General Conditions trump all of the Technical Specifications if there is any conflict or inconsistency. See General Conditions § 3.6.1.

This means that, to the extent J.F. White contends that Authorized Additional Excavation or Unsuitable Excavation became necessary because it turned out that actual site conditions differed from those described in the contract documents, it was required to comply with the equitable adjustment notice procedures described in detail above. Which it failed to do.

And, to the extent J.F. White contends that Authorized Additional Excavation or Unsuitable Excavation became necessary for some other reason, it was required to follow the contractual change order process to obtain additional compensation. The contract provides that “[t]he Contract Amount may only be changed by written Change Order,” and that any claim to increase the Contract Amount “shall not be allowed unless the notice requirements of this Contract are met.” See General Conditions §§ 9.1.1 and 9.1.2. It further provides that—other than for equitable adjustments covered by G.L. c. 30, § 39N—any increase in the total Contract Amount “may be made ... only by Change Order which must be requested and approved in advance of performing any Work,” and (in all caps) that “NO ADDITIONAL WORK SHALL BE UNDERTAKEN [and] NO ADDITIONAL COSTS OR EXTENSIONS OF TIME MAY BE CONSIDERED OR OCCUR WITHOUT OWNER’S EXPRESS WRITTEN AUTHORIATION, IN ADVANCE.” See *Id.*, §§ 8.3.1 and 8.3.3.

Since it is undisputed that J.F. White did not seek or obtain change orders authorizing extra work in advance, and for the reasons discussed above J.F. White also never provided the required advance contractual notice that it was seeking an equitable adjustment based on differing site conditions, J.F. White is not entitled to recover any amounts pursuant to the Earthworks Specifications that it relies upon.

1.3. No Contract Amendment. During oral argument, J.F. White asserted for the first time that MassDOT representatives orally agreed to modify or amend

the contract provisions that govern the requirement of advance written notice that J.F. White would be seeking an equitable adjustment before undertaking work made necessary by differing site conditions. J.F. White now contends that, during a June 6, 2019, meeting to discuss its concerns about the possibility that J.F. White may encounter differing site conditions, MassDOT agreed to modify the contract to eliminate the equitable adjustment notice requirements and permit J.F. White instead to submit work plans and soil data for MassDOT to review and approve.

This argument fails for two, independent reasons.

First, J.F. White waived this argument by failing to raise and develop it in the written opposition. In its memorandum, J.F. White argued that it had complied with all contractual notice requirements for reporting differing site conditions and seeking an equitable adjustment. Nowhere does the written opposition assert that MassDOT agreed to amend the contract to eliminate these requirements. J.F. White proffered that assertion only during oral argument

A party that opposes a motion in the Superior Court must submit a memorandum “that includes a statement of reasons, with supporting authorities, that the motion should not be allowed.” Sup. Ct. Rule 9A(a)(2). This ensures that the opposing party provides sufficient notice of and support for its arguments and that the moving party has the opportunity to respond in writing in a short reply memorandum. One of the purposes of Rule 9A is to prevent motion practice by ambush.

Parties therefore waive issues and arguments that they do not raise and develop in their written memoranda, and instead raise for the first time at oral argument. See *Commonwealth v. Pfeiffer*, 492 Mass. 440, 457 (2023) (argument raised for first time at oral argument, in violation of rule requiring that parties’ contentions must be presented in written brief, is waived); accord, e.g., *Board of Reg. in Med. v. Doe*, 457 Mass. 738, 743 n.12 (2010).

Second, in any case, J.F. White has not mustered any evidence that could support a finding that MassDOT agreed to modify the contract to eliminate equitable adjustment notice requirements that are established in part by G.L. c. 30, § 39N.

“A valid contract modification requires mutual assent and consideration.” *Okerman v. VA Software Corp.*, 69 Mass. App. Ct. 771, 781 (2007). Mutual assent to a contract amendment requires that one party provide notice or otherwise

make clear that it is “extending an offer to modify the existing contract,” followed by an indication of express or implied assent by the other party. *Magliozzi v. P&T Container Service Co., Inc.*, 34 Mass. App. Ct. 591, 595 (1993); accord *Okerman, supra*.

The record includes detailed minutes from the June 9, 2019, meeting. There is no reference in those minutes to anything that could be construed as a discussion about modifying, never mind as an agreement to modify, the explicit contract requirements. The record also includes a follow-up letter that MassDOT sent on June 12, 2019. It also says nothing suggesting that MassDOT had agreed to modify or amend the contract to eliminate the written notice requirements for an equitable adjustment. Nor has J.F. White presented any other evidence suggesting that MassDOT ever proposed or accepted such a contract amendment.

J.F. White cannot defeat summary judgment by asserting that there is a triable issue as to whether MassDOT agreed to amend the contract without providing evidence to back that up. See *Cookson Group plc v. Flynn*, 52 Mass. App. Ct. 909, 911 (2001) (“mere assertions of the existence of disputed facts without evidentiary support cannot defeat [a] summary judgment motion”) (quoting *Bergendahl v. Massachusetts Elec. Co.*, 45 Mass. App. Ct. 715, 718–719, rev. denied, 428 Mass. 1111 (1998), cert. denied, 528 U.S. 929 (1999)).

1.4. No Violation of the Implied Covenant. J.F. White cannot evade its contractual notice obligations by bringing suit under the implied covenant of good faith and fair dealing rather than under the express terms of the contract. MassDOT is therefore also entitled to summary judgment on Count Four.

Every contract includes an implied covenant of good faith and fair dealing, which provides “that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Weiler v. PortfolioScope, Inc.*, 469 Mass. 75, 82 (2014), quoting *Druker v. Roland Wm. Jutras Assocs., Inc.*, 370 Mass. 383, 385 (1976).

“The scope of the covenant is only as broad as the contract that governs the particular relationship.” *Wortis v. Trustees of Tufts College*, 493 Mass. 648, 671 (2024), quoting *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 385 (2005). This implied covenant “does not create rights or duties beyond those the parties agreed to when they entered into the contract.” *Boston Med. Ctr. Corp. v. Secretary of Executive Office of Health & Human Servs.*, 463 Mass. 447, 460 (2012),

quoting *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 680 (2011). Instead, it governs only “the manner in which existing contractual duties are performed.” *Eigerman*, 450 Mass. at 289.

Thus, the implied covenant does not create some new right for J.F. White to obtain an equitable adjustment for differing site conditions without complying with the statutory and contractual notice provisions.

J.F. White does not seem to disagree. Its written opposition does not address the implied covenant claim at all. J.F. White has therefore waived any argument against granting summary judgment in MassDOT’s favor on the implied covenant claim. Cf. *Cary v. New England Organ Bank*, 446 Mass. 270, 285 (2006) (issue waived where “plaintiffs never put the judge on notice that they opposed summary judgment on this theory”); accord *Slater v. Traynor Mgmt., Inc.*, 101 Mass. App. Ct. 705, 715 (2022).

1.5. No Right to Quantum Meruit Compensation. J.F. White’s alternative claim seeking to recover for unjust enrichment on a “quantum meruit” theory fails for much the same reason. MassDOT is therefore entitled to summary judgment on Count Five.

Having failed to comply with the contractual notice provisions, J.F. White is not entitled to recover on a quantum meruit or unjust enrichment theory. See *Glynn II*, 21 Mass. App. Ct. at 394–395.

J.F. White concedes the point, as it has not opposed—and thus has waived any argument against—granting summary judgment on this claim. See *Cary*, 446 Mass. at 285; *Slater*, 101 Mass. App. Ct. at 715.

2. Defective Contract Documents Claims. MassDOT is also entitled to summary judgment in its favor on the claims that it provided defective contract documents and thereby breached the express terms of the contract (Count One) as well as implied warranty of the sufficiency of its plans and specifications (Count Two).

2.1. Breach of Contract Claim. In its complaint, J.F. White alleges that the plans and specifications provided by MassDOT “were defective in that the excavation for the specified culverts could not be achieved in conformity with both the contractually defined limits of excavation ... and the applicable OSHA safety requirements.”

The contract provided that, if J.F. White “finds a conflict, error, discrepancy or omission in the Contract Document, or a discrepancy between the Contract Documents and any standard specification, manual, code, regulatory requirement of other Legal Requirement,” then J.F. White “shall promptly report such discrepancy in writing” to MassDOT. See General Conditions § 3.5.3. Furthermore, J.F. White had a contractual obligation to “obtain a written interpretation or clarification” from MassDOT “before proceeding” with any work affected by an alleged defect in the Contract Documents. *Id.* § 3.5.4.

The summary judgment record establishes that the first time J.F. White provided notice that it believed it received defective contract document was in the May 4, 2020, letter, which was after J.F. White had completed its work to replace or clean the culverts covered by the contract.

J.F. White cannot recover for breach of contract on the basis of allegedly defective contract documents because it failed to provide notice of the alleged defects before doing the work. See *Chiappisi v. Granger Contracting Co.*, 352 Mass. 174, 177–178 (1967).

Furthermore, as discussed above, J.F. White cannot recover on its claim in Count One for the independent reason that it failed to seek and obtain any change orders to increase the contract price to account for extra costs necessary because of defects in any contract documents. See General Conditions §§ 8.3.1, 8.3.3, 9.1.1, and 9.2.2.

2.2. Breach of Implied Warranty Claim. J.F. White’s parallel claim under the implied warranty of the Project plans and specifications fails for the same reasons.

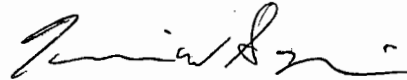
In design-build projects like this one, the party that “furnishes plans and specifications for a contractor to follow – impliedly warrants their sufficiency for the purpose intended.” *Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co.*, 472 Mass. 549, 555–556 (2015), quoting *Albert v. Commonwealth*, 357 Mass. 306, 320 (1970). The parties’ contract therefore includes an implied warranty by MassDOT that the plans and specifications it provided to bidders were sufficient to complete the Project, and accurately described the kind and quantity of work that would be required. *Id.* This means that, if J.F. White can prove that it relied in good faith on the plans and specifications, there was some defect in the plans and specifications, and J.F. White incurred additional costs as a result, that would establish that MassDOT breached the contract by

violating its implied promise that the plans and specifications were sufficient. *Coghlin Elec., supra*, at 556–559.

But J.F. White’s failure to comply with the contractual requirement to “promptly report” any error or discrepancy in the contract documents bars its claim under this implied warranty. *D. Federico Co.*, 11 Mass. App. Ct. at 252–253. And its failure to seek and obtain a change order, which is the only way to increase the contract price for reasons other than differing site conditions, bars this claim as well.

ORDER

Defendant’s motion for summary judgment is **allowed**. Final judgment shall enter dismissing all claims with prejudice and stating that Plaintiff shall recover nothing from Defendant.

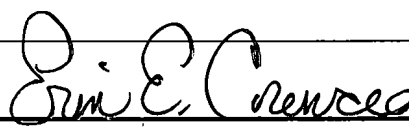


Kenneth W. Salinger
Justice of the Superior Court

9 March 2026

NOTIFY

28

SUMMARY JUDGMENT MASS. R. CIV. P. 56		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER	2184CV01172	John E Powers, III Suffolk County Civil	
CASE NAME	JF White Contracting Company vs. Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division	COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108	
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) Commonwealth of Massachusetts acting by and through its Department of Transportation Rail and Transit Division			
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) JF White Contracting Company			
This action came before the Court, Hon. Kenneth W Salinger, presiding, upon Motion for Summary Judgment of the named above, pursuant to Mass. R. Civ. P. 56. The parties having been heard, and/or the Court having considered the pleadings and submissions, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law. It is ORDERED and ADJUDGED: Defendant's motion for summary judgment having been ALLOWED, final judgment is entered for Defendant. All claims are DISMISSED with prejudice and Plaintiff shall recover nothing from Defendant.			
JUDGMENT ENTERED ON DOCKET <u>3/11/26</u> PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a), AND NOTICE SEND TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS.			
DATE JUDGMENT ENTERED 03/10/2026	CLERK OF COURTS/ ASST. CLERK X		

NOTICE
3/11/26
EFE
AAB
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BF