

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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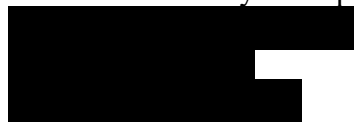
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December 10, 2025

Sent via Electronic Mail

John P. Martin, Esq.
Chief Legal Counsel
Massachusetts Bay Transportation Authority



In re: Contract No. A26CN06 - Foxboro G.L. c. 149A MBTA project

Dear Attorney Martin,

This letter resolves a citizen request filed with the Office of the Attorney General's Public Construction Bid Unit on August 21, 2025 seeking an investigation into certain accessibility improvements being procured by the Massachusetts Bay Transportation Authority (MBTA) at its Foxboro commuter rail station (Foxboro Project). The Office of the Attorney General (OAG) reviewed the citizen complaint, written responses and documents furnished by the MBTA, including a November 19, 2025 memorandum ("Memo"), and publicly available documents related to other accessibility improvement projects recently procured or presently being procured by the MBTA. From this review, the OAG determined no material issues of fact are in dispute, obviating the need for a hearing. Based on the submissions and for the following reasons, we find the MBTA violated the public construction bidding laws in procuring the Construction Manager at risk (CMR) preconstruction services for the Foxboro Project via change order on a similar but unrelated project governed by Contract 02-A26CN06.

The OAG makes the following findings of facts, which together are determinative:

- 1) Foxboro Station was not originally included in the MBTA's Capital Improvement Plan as the decision to fund the accessibility upgrades was contingent upon the results of a pilot commuter rail program begun at Foxboro Station in 2022 and concluded in September 2023. Subsequent to the conclusion of the pilot program, Foxboro Station was added to a list of approximately 20 commuter rail stations the MBTA planned to upgrade.
- 2) The target date for completion of the upgrades to Foxboro Station was June 30, 2027 as a Chapter 149 or G.L. c. 30, § 39M design-bid-build project.

- 3) Upgrading Foxboro Station in time for the FIFA World Cup was not a consideration, as the matches would be played in the Summer of 2026, a year before the contemplated Foxboro completion date.
- 4) On or about September 11, 2024, the MBTA issued a “Readvertisement of Request for Qualifications for Construction Management at Risk Services” (RFQ) for the CMR Symphony Station Improvement Project (Symphony Project) under MBTA Contract No. 02-A26CN06. The RFQ did not reference the Foxboro Project.
- 5) The RFQ stated the Symphony Project was being procured pursuant to G.L. c. 149A (the CMR statute) and estimated the Symphony Project to cost \$71 million.
- 6) The RFQ identified the scope of the Symphony Project as limited to accessibility improvements in and around Symphony Station. The RFQ did not describe any work outside of the city limits of Boston, MA.
- 7) On or about October 21, 2024, the MBTA issued a Request for Proposals (RFP) to prequalified CMR firms pursuant to G.L. c. 149A.
- 8) According to the RFP, the scope of work for the Symphony Project included but was not limited to: installing four elevators, raising existing platforms for level boarding, renovating and expanding inbound and outbound lobbies, constructing two public bathrooms, constructing new egress stairs and headhouses, renovating existing stairs and expanding the mezzanine, upgrading life safety systems, installing lighting, finishes, and wayfinding, making foundation, landscaping, and site improvements, renovating plazas for inbound station entrances, raising bike lanes, replacing sidewalks and the roadway along Massachusetts Avenue, and performing various electrical and communications upgrades. Like the RFQ, the RFP did not reference the Foxboro Project.
- 9) On or about November 26, 2024, the MBTA received responsive proposals for CMR services on the Symphony Project from Suffolk Construction Co., Inc. (Suffolk) (\$200,805), Consigli Construction Co., Inc. (\$522,500), and Judlau Contracting, Inc. (\$999,430),
- 10) In February 2025, the MBTA learned Massachusetts’ ability to successfully host the World Cup was dependent on the MBTA efficiently transporting significantly more spectators to Gillette Stadium via Foxboro Station than it transports to Patriots football games and other special events.
- 11) The MBTA had not expected to transport substantially more spectators for the World Cup than it would normally transport to a football game (~4,000).
- 12) The MBTA determined it could safely transport up to 7,000 spectators per match, assuming it could make the Foxboro Station ADA accessible. The MBTA could not transport more than 7,000 passengers without a second platform on an adjacent parallel “through-track.”

- 13) On or about February 19, 2025, the MBTA and Suffolk executed Contract 02-A26CN06 for the Symphony Project, which like the RFQ and RFP did not reference the Foxboro Project. Exhibit B (“Project Description”) to the contract reproduced verbatim the scope of work from the RFP.
- 14) In March 2025, Fédération Internationale de Football Association (FIFA) requested the MBTA transport ~20,000 spectators to each of the seven matches to be played at Gillette Stadium.
- 15) The MBTA determined it could transport ~20,000 spectators by implementing the accessibility upgrades to Foxboro Station and by constructing the temporary second platform and informed FIFA that it could meet its request.
- 16) To fund the project, the MBTA elected to redirect funds from other MBTA projects to the Foxboro Project.
- 17) The MBTA considered both the design-build and construction manager at-risk alternative delivery methods found at Chapter 149A, but determined neither could deliver the project by June 2026 as part of a new procurement.
- 18) The MBTA determined the logistically feasible way to upgrade Foxboro Station and make it accessible in time to accommodate the World Cup was to avoid a new procurement and instead amend the Symphony Project contract by issuing a change order for the work at Foxboro Station.
- 19) On or about May 12, 2025, the MBTA and Suffolk executed a change order (Change Order) on Contract No. 02-A26CN06. The Change Order increased the contract value from the base contract price of \$200,805 to the adjusted contract price of \$559,084—an increase of \$358,379 or 178% over the original base contract price.
- 20) The Change Order purports to add the entirety of the Foxboro Project to the Symphony Project’s scope of work, stating “This action is to increase preconstruction services to include the construction scope as follows,” then describes the Foxboro project: The scope includes the demolition of the existing mini-high platform, intermittent canopies and other above-grade station related appurtenances. A new 800-foot-long elevated platform will be constructed in approximately the same footprint as the current at-grade platform. ADA compliant ramps and stairs will be constructed to connect the platform to established walking paths leading to/from Gillette Stadium and adjacent properties. The new platform construction will include updated canopy structures, lighting, communication and safety/security equipment in compliance with MBTA standards and applicable codes. The station upgrades will be constructed to meet state and Federal Accessibility Standards as well as the Massachusetts State Building Code.”
- 21) The Change Order identifies the reason for the scope change to be “additional scope identified to be performed,” and asserts work has proceeded in advance of the Change Order “due to schedule.”

- 22) The CMR services for the Foxboro Project were not advertised, nor did the MBTA receive competitive proposals specific to CMR services for the Foxboro Project.
- 23) On July 29, 2025, the MBTA and Suffolk executed an Interim Guaranteed Maximum Price (IGMP) amendment to Contract No. 02-A26CN06. The IGMP amendment was in the amount of \$14,888,383—representing \$358,279 in preconstruction services and \$14,530,104 in construction services on the Foxboro Project. No IGMP amendments were executed on Contract No. 02-A26CN06 prior to July 29, 2025.
- 24) On August 21, 2025, the Bid Unit received a citizen inquiry requesting an investigation into the apparent violation of the public construction bidding laws.
- 25) As of October 2, 2025, the following work on the Foxboro Project has commenced or has been completed:
- a. Preconstruction services provided by the Construction Manager for the Foxboro Project are now complete.
 - b. Tree clearing on Foxboro Project is now complete.
 - c. Temporary fencing on Foxboro Project has been installed.
 - d. Demolition work on Foxboro Project has commenced and is ongoing.
 - e. Erosion controls have been installed on Foxboro Project.
 - f. Building permitting for the Foxboro Project has commenced and is ongoing.
 - g. Construction trailers are being installed on the Foxboro Project.
 - h. National Grid and Verizon work orders are in place and coordination of work has begun.
 - i. Sitework mobilization has occurred, and work is underway.
 - j. Temporary platform preparation work has begun.
 - k. Fabrication of a temporary platform is being performed off-site and will be completed shortly.
 - l. Trade and non-trade subcontractor procurements for the Foxboro Project are in process.

In evaluating any alleged violation of the public construction bidding laws, the OAG maintains its focus on the purposes of those laws, as articulated in *Modern Continental Const. Co., Inc. v. City of Lowell*, namely “to ensure that the awarding authority obtains the lowest price among responsible contractors [and] to establish an open and honest procedure for competition for public contracts.” 391 Mass. 829, 840 (1984). “Toward those ends, these statutes are to be construed strictly.” *Id.* Where, as here, the public bidding statutes do not provide explicit guidance regarding the legality of an awarding authority’s procurement action, we rely upon relevant case law and the twin purposes of the bidding laws to determine whether a violation occurred.

One hundred years ago, the Supreme Judicial Court resolved a matter involving significant changes to an executed construction contract. In *Morse v. City of Boston*, 253 Mass. 247 (1925), the City of Boston executed a contract, dated July 17, 1922, to fill certain land with roughly 171,000 cubic yards of earth, gravel and loam, as advertised. Contract amendments executed on

July 15, 1923 and May 26, 1924 increased the quantities of earth, gravel and loam filling by a total of 214,000 cubic yards, or roughly a 125% increase over advertised amounts. In finding that the contract amendments violated the public bidding laws, the *Morse* Court held:

The design of the Legislature in enacting these provisions was to establish genuine and open competition after due public advertisement in the letting of contracts for city work, to prevent favoritism in awarding such contracts and to secure honest methods of letting contracts in the public interests. The main aim was to protect the public. Full publicity is provided as a means to that end.

Id. at 252. Indeed, “[c]hange orders are intended to be a way of dealing with changes that arise during the progress of a project such as site conditions that differ from those indicated in the bid specifications or circumstances that require the awarding authority to stay, suspend, delay or interrupt all or part of the work requests by the contractor.” *Constr. Indus. of MA v. City of Peabody*, 1997 Mass. Super. LEXIS 496 at *15 (citing *Morse*). Change orders are not intended to be a method for significantly amending the scope of a project that had been the subject of competitive bidding. *Id.* at *15-16.

The instruction of the *Morse* case is that “[a]n alteration which results in a substantially new contract as to a main element is not permissible.” *Morse* at 253. A change order or other contract amendment must “in nature, magnitude and expense [bear] a reasonably subsidiary relation to the work originally covered by the contract.” *See id.* at 253. “When a contract is to be modified so as in substance and effect to be made new and different in main aspects, that cannot be done under the guise of an amendment or alteration.” *Id.* Following the *Morse* guidance, the Attorney General’s Office has held that work procured through a change order must arise out of and be intrinsically related to an ongoing scope of work. *See e.g., Sheet Metal Workers Union, Local 17 v. Town of Carver*, Attorney General Bid Protest Decision (April 6, 2016); *Biszko Contracting Corp. v. City of Fall River*, Attorney General Bid Protest Decision (June 29, 2017); *FFCM v. Mass. State College Building Authority*, Attorney General Bid Protest Decision (July 11, 2008).

The MBTA asserts Contract No. 02-A26CN06 is a single accessibility project, and as such, the Foxboro Project is properly included as an amendment to the Symphony Project. The OAG questions the MBTA’s characterization of the Symphony and Foxboro Projects as being part of a single accessibility project. The above-ground Foxboro Project is located nearly 20 miles away from the largely underground Symphony Project, and was not described in either the Symphony RFQ, RFP, or Contract No. 02-A26CN06. Further, the Foxboro Project was anticipated by the MBTA, and as such could not be procured via change order.¹ *See Sheet Metal Workers, Local 17*,

¹ In an email to the OAG dated September 5, 2025, the MBTA stated “[T]he accessibility improvements being made to Symphony Station, Foxboro Station, and other subway and commuter rail locations arise out of and are part of the MBTA’s program to improve accessibility throughout the system. The work at Symphony Station was prioritized ... [h]owever, the planned accessibility improvements are not limited to this one location...The timing of the decision concerning when to complete accessibility work at Foxboro Station via a [change order] to A26CN06 was influenced by Massachusetts’ award of seven matches of the 2026 FIFA World Cup to be played at “Boston Stadium.” Thus, it appears the Foxboro Project was part of the MBTA’s “program” to improve accessibility at its stations but was deliberately omitted from the Symphony Project scope of work when the Symphony Project went out to bid in late 2024.

supra, (finding that a project considered before the procurement and deliberately left out of the original scope of work cannot be procured via change order). However, we do not base our determination that the MBTA's use of the Change Order here is improper solely upon the dissimilarity between the two projects or the prior anticipation of the Foxboro Project.² We also consider the value of the Change Order relative to the base contract, which is sufficient to declare MBTA's use of a change order to award additional, unrelated work violates the public construction bidding laws.

The Change Order does not bear a reasonably subsidiary relation in nature, magnitude and expense to the work originally covered by the Symphony Station CMR contract. On this point, the *Morse* Court found:

The aggregate amount of change in this respect runs into large sums of money according to the allegations. Manifestly this is not incidental to the main contract; **it is in itself a major factor**. The nature of the contract as thus altered, from a business standpoint, is quite different from the contract as first executed. The increase in quantities called for by the other amendments or alterations in the contract accentuate this aspect of the matter. It seems clear to us that **a new and different contract has been substituted for the original contract. This is a violation of the statute.**

Id. at 254 (emphasis added).

The *Morse* Court based its finding on the fact the contract amendments in that case increased the quantities called for by the contract from 171,000 cubic yards to 385,000—a 125% increase over the advertised quantities which significantly increased the contract price.

Here, as denoted on the Change Order at Section III, the contract price increased from \$200,805 to \$559,084—a 178% increase—for the additional Foxboro Station preconstruction work. As *Morse* instructs, the large change in contract price is not incidental to the main contract, but rather a major factor indicating that the nature of the contract has changed substantially. Just as the *Morse* Court held, I find the Change Order impermissibly modifies the Symphony Station CMR contract to such an extent that the significant additional work at the Foxboro Station should have been procured separately.

The MBTA claims in its Memo it did not intend to flout the Massachusetts bidding statutes, yet its description of its own actions shows the MBTA intended to do just that. With only skeletal plans and no funding secured, the MBTA assumed it would not receive viable, responsive bids that would meet its deadline and thus decided to award the Foxboro Project to Suffolk via the Change Order, with no competition at all. The public construction bid laws do not permit an awarding authority to make the unilateral decision that compliance with the bidding laws does not fit its project timeline and thus opt out. As the MBTA—an experienced and

² To the extent the MBTA argues that one accessibility project covers all accessibility improvements at MBTA stations, we note that RFQs for CMR accessibility improvement projects at Newtonville commuter rail station and Downtown Crossing/Central Square T Stations were issued after the Symphony Station RFQ was issued and did not utilize Contract No. A26CN06.

sophisticated awarding authority—knows very well, public projects must bend to the requirements of the bidding laws, not the reverse. In its Memo, the MBTA confirms it knew using the Change Order was not in the “usual course” contemplated by the bidding laws and instead was a deviation from laws, the sole purpose being to meet the “external deadline” for a “major international sporting event.”

Meeting an “external deadline” set by a non-essential, “major international sporting event” is not one of the aforementioned purposes of the bid laws, and indeed, the Change Order here thwarts both settled purposes of the public construction bidding scheme. First, using the Change Order to append the Foxboro Project to the Symphony Project was not open and competitive, as other CMR firms were not provided an opportunity to compete for the Foxboro Project. Second, it remains unclear whether the MBTA obtained CMR services for the Foxboro Project at the lowest rate competition among responsible contractors could provide because the MBTA only received pricing from one CMR firm, Suffolk. This is especially concerning given the Change Order was used to “attach” the unadvertised Foxboro Project to the Symphony Project and award more than \$14,000,000 in construction services as “extra work” to Suffolk, none of which was identified in the Symphony RFQ, RFP, or Contract No. 02-A26CN06. Such action is anti-competitive and in direct contravention of the spirit of the public construction bidding laws.

The Massachusetts bid laws do not provide for a “public interest” waiver of the bidding laws. The Supreme Judicial Courts held a violation of the public construction bidding laws “cannot be excused because it saves public funds or results in a benefit to the public.” *See Chick’s Construction Co., Inc. v. Wachusett Regional High School District School Committee*, 343 Mass. 38, 42 (1961) (internal citations omitted). Neither this Office nor any court has ruled that an awarding authority’s interest in meeting an external deadline for a non-essential, major sporting event outweighs an eligible contractor’s legal right to bid on public work, or taxpayers’ rights to have their money spent expeditiously. Finally, the MBTA’s failure to properly advertise for CMR services for the Foxboro Station Project is not cured by the MBTA’s competitive procurement of trade contractors on the Foxboro Project. The issue here is the Foxboro CMR Project was given to Suffolk, without advertisement or receipt of SOQs or proposals, denying other CMR firms the opportunity to compete for the work. This Office acknowledges “the [CMR] delivery method authorized by Chapter 149A allows agencies to timely address critical infrastructure needs during the project development phase and still provide for advertising and competitive bidding for the work being performed in the field,” as MBTA’s counsel stated in an email dated September 5, 2025. However, such statutory authorization does not extend to nearly tripling the value of an existing contract to include extra services far afield from the initial project without advertising or competition, then using the improperly altered contract to award millions of additional dollars in construction work to the contractor without advertisement or competition. *See Morse* at 252 (“Statutes enacted at different times are to be construed so far as possible to constitute a harmonious and consistent body of legislation.”). To hold otherwise, would be to ignore the stated purposes of the bidding laws and permit an alternative delivery method such as the CMR statute to swallow the entire legislative bidding scheme.

It is the opinion of the OAG that the MBTA’s failure to advertise an RFQ for CMR services at Foxboro Station, and the subsequent execution of an IGMP in the amount of more than \$14 million for the Foxboro Project substantively violated the bidding laws. *See Baltazar*

Contractors, Inc. v. Town of Lunenburg, 65 Mass. App. Ct. 718 (2006) (holding awarding authority's failure to advertise a public construction project in compliance with advertising laws rendered the resulting contract void with the contractor unable to recoup in law or equity for work performed). The OAG recognizes the MBTA's argument that the public interest would be best served by allowing the Change Order to stand and the work on the project to continue.³ The Attorney General's Office does not reach the merits of this argument as this matter is not currently being litigated and there is no application for a preliminary injunction.

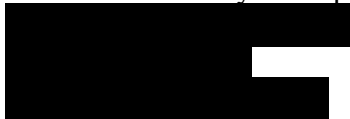
This is the final decision of the Attorney General's Office on this issue. Any appeal would be to the Superior Court.

Very Truly Yours,

A handwritten signature in cursive script that reads "Justin Polk". The signature is written in dark ink on a white background.

Justin Polk, Esq.
Assistant Attorney General
Hearing Officer – Bid Unit

cc: Brian O'Rourke, Esq.
Counsel, Capital Project Procurement
Massachusetts Bay Transportation Authority



³ The MBTA asserts "13,000 additional spectators will be forced to use what will be already crowded highways to reach the Stadium for each of the 7 matches," "gridlock would damage the Commonwealth's ability to host large and prestigious events in the future," "disabled and mobility limited spectators will be largely denied the ability to attend via public transportation," "voiding the contract will likely result in litigation between the construction manager and the MBTA," and "completing the work at a later date will also lose the current contract pricing for the work, introduce escalation of labor and material, and result in a project that will be delivered late and at a significantly higher cost."