

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

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No. 2017-0548

Conduent State & Local Solutions, Inc.

v.

The State of New Hampshire Department of Transportation
and Cubic Transportation Systems, Inc.

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
MERRIMACK COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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COUNTERSTATEMENT OF THE ISSUE PRESENTED

1. Did the trial court correctly conclude that the legislature granted the New Hampshire Department of Transportation comprehensive and broad authority in connection with the procurement, contracting, and implementation of the Back Office System and thereby did not violate the separation of powers provision of the New Hampshire Constitution?

COUNTERSTATEMENT OF THE CASE

On October 16, 2015, Appellant filed the predicate action in Merrimack County Superior Court. AA 262.¹ That Complaint challenged the New Hampshire Department of Transportation's ("NHDOT") award of a Back Office System ("BOS") contract to Cubic Transportation Systems, Inc. ("Cubic") for failing to comply with statutory bidding procedures in connection with the New Hampshire E-ZPass highway tolling system. The Complaint contained no Count IX—the subject of this appeal—nor did it contain any reference to allegations that NHDOT violated the separation of powers provision of the New Hampshire Constitution. On June 7, 2016, Appellant moved to amend its Complaint to include a Count II, asserting that NHDOT violated RSA 228:4 by awarding the contract on the basis of best value rather than lowest responsible bidder. AA 1-9. On July 1, 2016, Appellant further moved to amend its Complaint adding Count IX, which alleged that NHDOT had no authority to procure the BOS contract. AA 10-13. Appellant filed its First Amended Complaint on August 4, 2016. AA 322. NHDOT and Cubic filed a Joint Motion to Dismiss on August 18, 2016, arguing, among other contentions, that the Appellant's claims were barred by sovereign immunity. AA 393, 400.

On September 19, 2016, Appellant filed a Motion for Partial Summary Judgment regarding Count IX of the First Amended Complaint. Appellant stated that NHDOT did not have "best value" procurement authority, solely "lowest bidder" procurement authority under RSA 228:4. AA 67. On November 2, 2016, NHDOT objected to the Motion for Partial Summary Judgment stating that NHDOT had broad procurement authority under RSA 21-I:22-a and 22-b. AA 282.

¹ Appellant's Brief is referred to as "AB" and Appendix as "AA". The Appellees' Joint Appendix is referred to as "JA".

The Merrimack County Superior Court (*Nicolosi, J.*) granted the Appellees' August 18, 2016 Joint Motion to Dismiss on January 22, 2017, but noted that Appellant had 30 days to amend its Complaint pertaining to declaratory judgment claims. AB 33, 46. Appellant filed its Second Amended Complaint on January 26, 2017. AA 15. In Count IX of the Second Amended Complaint, Appellant claimed that NHDOT's best value procurement violated the separation of powers doctrine of the New Hampshire Constitution. AA 38 ¶ 148. Appellant requested that the Court declare the contract void and enjoin Cubic from performing under the contract. AA 38 ¶ 151. The same day, Appellant renewed its Motion for Partial Summary Judgment. AA 203.

On February 6, 2017, NHDOT filed a Reply to Appellant's Renewed Motion for Summary Judgment; its own Motion for Summary Judgment on Counts IV, V, and VI of Appellant's Second Amended Complaint; and a Second Motion to Dismiss on Counts I-III and VII-IX of Appellant's Second Amended Complaint. AA 430, 219, 40. Cubic filed its Motion to Dismiss Appellant's Second Amended Complaint on February 24, 2017. AA 54. On May 17, 2017, the trial court ruled on NHDOT's Motion for Summary Judgment, granting summary judgment on Count V and denying summary judgment on Counts IV and VI. AB 47. On June 13, 2017, the court dismissed Count IX of the Second Amended Complaint by partially granting NHDOT's and Cubic's Motions to Dismiss and denying Appellant's Partial Motion for Summary Judgment. AB 59. Appellant filed a Motion for Reconsideration of the June 13, 2017 order which was denied on September 7, 2017. AB 80. Appellant filed a Notice of Voluntary Nonsuit which the court treated as a motion and granted on November 15, 2017. AA 215. This appeal of the court's dismissal of Count IX followed.

COUNTERSTATEMENT OF FACTS

NHDOT administers the NH E-ZPass, an electronic toll collection system that allows vehicles with a transponder to pay the toll electronically without having to stop and manually pay the toll. *See* AA 16 ¶¶ 7-8. NHDOT maintains accounts for E-ZPass users, and when a vehicle with a transponder passes through a tollbooth, the toll is charged to the account corresponding with the transponder. AA 16 ¶ 9.

Operating the E-ZPass system requires various “back office” activities. This matter relates to a Request for Proposals (“RFP”) entitled “Back Office Systems to Support Electronic Tolling, Video Tolling & Violation Processing” issued by NHDOT on December 9, 2014. *See* JA 1. The scope of work related to this RFP required the successful vendor to “provide...all necessary resources, software, systems, facilities, communications and other resources needed to fully support electronic tolling, video tolling and violation processing.” JA 45. As noted by the Appellant in its Complaint, the Back Office System (“BOS”) is comprised of software, financial systems, and customer service components. AA 17 ¶ 16.

The RFP expressly stated that proposals would be scored based on the solutions and services proposed, qualifications of contractors and subcontractors, experience and qualifications of the proposed candidates, and cost. JA 28 § 5.1. The notice of intent to award was issued based on those factors and was weighted by specific scoring criteria. The RFP required bidders to submit a technical proposal and a price proposal. JA 24-26 § 4.19. Proposers were advised by the RFP that the technical proposal made up 70% of the total score, while cost accounted for the remaining 30%. JA 28 § 5.1. The RFP further explained how the price would be translated into a point score so that it could be combined with the technical evaluation scoring to create an overall score for the proposal. JA 33-34 § 5.4.6. The process as described by the RFP, which the

evaluation team followed, was to conduct the technical scoring first, while the price proposals remained sealed. JA 29 § 5.3.2. If a vender did not receive a minimum score of 49 on its technical proposal, the vender would not receive further consideration. JA 29 § 5.3.1. At no point in the RFP did the State advise the proposers that a contract award would be based on a low bid, in fact it did exactly the opposite. JA 28-30 § 5.3.

After reviewing the bids, NHDOT scored Appellant a higher scorer than Cubic for its price proposal, but Cubic received a higher score for its technical proposal. AA 22 ¶¶ 46-47. In total, NHDOT gave Cubic a combined score of 80.8 and Appellant a combined score of 80.1. JA 311 ¶ 4. In fact, Appellant came in last of the three bidders, while a third competitor, Egis, came in second at 80.7. JA 311 ¶ 4.

NHDOT recommended that the BOS contract should be awarded to Cubic as the highest scoring proposer. JA 311, ¶ 4. That award was approved through the Governor & Executive Council on October 7, 2015. AA 22 ¶ 43. NHDOT disclosed to the Governor & Executive Council that Cubic was not the lowest price bidder. AA 22 ¶ 44.

When awarding a contract directly related to tolling, such as the BOS, the Bureau of Turnpikes (“Bureau”) uses the best value method of procurement, where a proposal is scored using weighted categories. JA 288 ¶ 3. Since 2004, the Bureau has awarded six contracts using the best value method of procurement, including contracts previously awarded to Appellant. JA 288 ¶ 4. As an example: the E-ZPass Customer Service Center contract (RFP No. 2004-017), awarded to Appellant (then known as Xerox State & Local Solutions, Inc.) in 2004, was procured using the best value method. JA 289 ¶ 5. Likewise, the Toll Collection System contract (RFP No. 2012-060), awarded to Appellant in 2012, was also procured using the best value method. JA 289-90 ¶ 6.

STANDARD OF REVIEW

The interpretation of a statute is a question of law that the Court reviews *de novo*. *Cloutier v. City of Berlin*, 154 N.H. 13, 17 (2006) (citation omitted). The Court is “the final arbiter[] of the legislature’s intent as expressed in the words of the statute considered as a whole.” *Id.* Initially, the Court examines “the language of the statute, and, where possible, ascribe[s] the plain and ordinary meanings to the words used.” *Id.* “When a statute’s language is plain and unambiguous, [the Court] need not look beyond it for further indication of legislative intent, and [it] will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Id.* However, if a statute is ambiguous, the Court may consider legislative history in order to apply statutes “in light of the legislature’s intent in enacting them, and in the light of the policy sought to be advanced by the entire statutory scheme.” *Id.*

SUMMARY OF THE ARGUMENT

NHDOT properly utilized a best value method to evaluate and score the BOS contracts bids. NHDOT is granted broad authority under RSA chapters 236 & 237 to acquire, implement, and maintain a tolling scheme for the Turnpike System. Using this authority, and the authority granted by RSA 21-I:22-a & :22-b, NHDOT developed a RFP that evaluated both technical specifications of the potential contractors’ bids as well as the price proposals. Although Appellant contends that the New Hampshire Department of Administrative Services has sole procurement authority for State contracts, with limited exceptions, there is no support for this assertion in the statute. Because NHDOT possessed statutory authority to procure the BOS contract using the best value method, there is no separation of powers violation and this Court should affirm the judgment below.

ARGUMENT

I. THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION POSSESSED STATUTORY AUTHORITY TO PROCURE THE BACK OFFICE SYSTEM CONTRACT USING A BEST VALUE METHOD.

Part I, Article 37 of the New Hampshire Constitution states as follows:

In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

The Separation of Powers clause prohibits each branch of government from encroaching on powers and functions of another branch, and is violated when one branch usurps an essential power of another. *In re Judicial Conduct Comm.*, 145 N.H. 108, 109 (2000). This doctrine does not, however, require “erection of impenetrable barriers between the branches of our government,” and “thus contemplates some overlapping and duality in the division as a matter of practical and essential expediency.” *Hynes v. Hale*, 146 N.H. 533, 537 (2001) (citations and quotations omitted). “Unlike most state constitutions the language of the New Hampshire Constitution recognizes that separation of powers in a workable government cannot be absolute.” *N.H. Health Care Ass’n v. Governor*, 161 N.H. 378, 386 (2011) (citation and quotation omitted). It is well recognized that the power to contract is an executive function, not a legislative one. *Opinion of the Justices*, 129 N.H. 714, 717-18 (1987).

A. There Is No Separation Of Powers Violation Where NHDOT Acted Within Its Authority Conferred By The Legislature.

Appellant states that if the BOS contract does not fall within the ambit of RSA 228:4, which requires the contract to be awarded to the “lowest responsible bidder,” then NHDOT has no authority to procure the contract. First and foremost, the procurement of the BOS contract is not controlled by RSA 228:4 because that statute applies to contracts that are characteristic of,

and more conducive to, price per unit type of bidding that is common in construction contracts. RSA 228:4 states, “Each state transportation project shall be built under contracts awarded to the lowest responsible bidder through competitive bidding.” The word “Project” is defined as “any construction, reconstruction, alteration or maintenance of any highway, bridge, building, plant, fixture, facility, or other item directly related to transportation.” RSA 228:1, VII. Pursuant to this definition, RSA 228:4 does not apply to the procurement at issue because the statute is for construction and infrastructure and the BOS is a services and software contract.

However, RSA 228:4 is not the sole procurement authority granted to NHDOT. The legislature explicitly granted NHDOT authority to “[a]cquire and install new toll collection equipment.” RSA 237:2, VIII. Additionally, the legislature granted the Commissioner of NHDOT broad authority to operate and maintain the New Hampshire Turnpike System, including the authority to “[e]nter into contractual relations on behalf of the state” and “[d]o and perform all such acts as are necessary for the public good.” RSA 237:5, II(i) and (j). Further, RSA 236:31, IV provides NHDOT authority to implement “a system to detect, record, verify, and administratively enforce violations of this section.” Finally, *Appellant’s own pleading admits that the legislature granted NHDOT procurement authority under RSA 237*. In its Motion for Partial Summary Judgment and Supporting Memorandum of Law, Appellant states, “A survey of all of NHDOT’s enabling statutes reveals that the legislature has granted competitive procurement authority in several contexts. *See ... RSA 237:2 (authorizing acquisitions and improvements to the turnpikes system).*” AA 74.

RSA chapters 236 & 237 are expansive statutes that grant wide-ranging authority to NHDOT and its commissioner to promote and maintain the Turnpike, including electronic tolling such as the E-ZPass system. Where the legislature is silent on exactly how these

authorized actions shall be implemented, it must be left to the province of the executive branch to execute the authority granted to it by the legislature. Otherwise, the executive branch would be paralyzed with a panoply of legislatively created authorities and mandates and no means by which to execute them. This is an absurd result that must be rejected by the court. *See Weare Land Use Assoc. v. Town of Weare*, 153 N.H. 510, 511-12 (2006) (“The legislature will not be presumed to pass an act leading to an absurd result and nullifying, to an appreciable extent, the purpose of the statute.”).

Ironically, Appellant’s insistence that NHDOT has no authority to procure the BOS contract would do more to usurp the powers of the legislature by frustrating the broad authority they have to NHDOT to collect the tolls that financially support the major infrastructure of the State. It is evident that the general court provided authority to implement an electronic toll collection system and enter into a regional agreement for collection of the tolls. Appellant acknowledges that this electronic toll collection system requires a back office system of software and support services. AA 17 ¶ 16. Accordingly, if Appellant’s allegation is correct, NHDOT would have no legal means to procure these services and the legislature’s will would be blunted by the inability to carry out these valid legislative mandates. Interpreting the statutes to prohibit NHDOT from contracting for the essential services that are required to collect the many millions of dollars relied on to maintain the Turnpike System would frustrate the legislature’s intent.

Still more, RSA 21-I:22-a expressly permits State agencies to advertise requests for purchases, request for quotes, or other procurements that provide objective criteria upon which each selection will be reviewed, the weight given to each criteria, and the standards on which an award will be based. RSA 21-I:22-a, titled “Request for Purchases and Request for Quotes,” states that:

Notwithstanding the provisions of RSA 21-I:18, every request for purchases (RFP), request for quotes (RFQ) or other procurement which is greater than \$35,000 that is undertaken by the state or by a state agency as defined in RSA 21-I:11, II(b), including those agencies referenced in RSA 21-I:18, shall contain within the body of the document the objective criteria by which each submission will be reviewed, if there are particular requirements that will receive more weight in the review of the submission, and the standards upon which any award will be based.

RSA 21-I:22-b, titled “ Awards,” further states that:

Notwithstanding the provisions of RSA 21-I:18, awards which are made by the state or by a state agency as defined in RSA 21-I:11, II(b), including those agencies referenced in RSA 21-I:18, under this subdivision shall not be made on criteria that are unknown to the parties submitting bids or proposals. Nothing in this subdivision shall prevent the state or a state agency as defined in RSA 21-I:11, II(b), including those agencies referenced in RSA 21-I:18, from making judgments on the capabilities of vendors to complete the work requested if this option is clearly stated in the body of the document and if used as the reason for the award, is so stated.

The legislature granted the above authority to “any board, department, commission, hospital, sanitarium, home, library, school, college, prison, or other institution conducted or operated by or for the state of New Hampshire.” RSA 21-I:11, II(b). There is no dispute that NHDOT is a department of the State of New Hampshire. *See* AA 15 ¶ 2. The superior court has previously noted, in a similar bid protest case, that the above language permits a State agency to use both objective criteria and subjective judgment when making a contract award decision. *XTL-NH, Inc. v. N.H. State Liquor Comm'n*, No. 217-2013-CV-119, 2016 N.H. Super. LEXIS 10 *45 (Merrimack Superior Court 2016). This is precisely what NHDOT has done in this procurement.

Appellant’s separation of powers argument is defective on all fronts. RSA chapters 236 & 237 grant broad authority to NHDOT to acquire the tools necessary to implement an electronic tolling system. RSA 21-I:22-a and :22-b permit NHDOT to conduct a qualification based “best value” procurement. Even assuming, *arguendo*, that the legislature was silent on the manner in which NHDOT can procure software and services, this is a traditionally executive function

which was performed in furtherance of the broad statutory authority granted to NHDOT to operate the Turnpike System and conduct electronic tolling. As such, this procurement does not usurp power from the legislature but is rather a valid execution of legislative authority. Therefore, NHDOT did not violate the separation of powers doctrine and the trial court's dismissal of Count IX should be upheld.

B. The New Hampshire Department Of Administrative Services Does Not Possess Sole Authority To Conduct Procurements Of State Contracts.

Appellant argues that NHDOT does not have statutory authority because the New Hampshire Department of Administrative Services (“DAS”) exercises the exclusive power to procure contracts for the State, with limited exceptions not applicable here. Appellant’s argument imposes procurement authority on DAS that simply does not exist. Appellant states that RSA chapter 21-I, the enabling statute for DAS, “recognizes just four categories of procurement authority across the executive branch.” AB 13. However, this expansive assertion of DAS’s authority is incorrect and stems from a narrow reading of RSA chapter 21-I.

RSA 21-I:1 sets out the general functions of DAS. To be sure, DAS is responsible for “administrative and financial functions” that help maintain “the effective and efficient management of all state programs and operations.” RSA 21-I:1, II. Included in the list of general functions is procurement, along with accounting, graphic services, general support services, and other general *administrative* needs of the departments of the State. *Id.* The statute then goes on to establish certain units within DAS to help it perform its statutory functions. Appellant maintains that two of these units—the division of procurement and support services (RSA 21-I:11) and the division of public works design and construction (RSA 21-I:78, :80, & :81)—combine with NHDOT’s purported construction authority under RSA 21-I:78 and agencies exempt from the

provisions of RSA chapter 21-I (RSA 21-I:18) to become the sum of the total procurement authority over all contracts in the State. AB 16.

First and foremost, this assertion is unfounded. There is nothing in RSA chapter 21-I that even hints that the legislature intended to give DAS exclusive procurement powers over state contracts. “When a statute’s language is plain and unambiguous, [the Court] ... will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Cloutier v. City of Berlin*, 154 N.H. at 17. In fact, reviewing the statute as a whole, it is clear that the legislature intended to grant authority to DAS to procure contracts for services such as janitorial, furniture, and other functions that pertain to all departments of the State. This facilitates a better functioning administration of the services offered to the executive branch. RSA chapter 21-I is a grant of authority to DAS, much like other enabling statutes, and does not preclude other Departments from procuring contracts related to their department.

Appellant’s support for the “comprehensive” DAS procurement scheme that prohibits all other state procurements is unconvincing and depends on the interpretation of four distinct legislative grants of power. First, DAS’s division of procurement and support services is responsible for “purchasing all materials, equipment, supplies, and services for all departments and agencies of the state ... *except as otherwise provided by law.*” RSA 21-I:11, I(a)(1) (emphasis added). As stated above, RSA chapter 237 grants authority to NHDOT to procure the BOS contract. Still more, the procurement referenced in the DAS statute does not contemplate a contract like the BOS. In fact, the definitions related to the division of procurement and support services state:

- (a) “Supplies” shall mean all materials, equipment, printing, furniture, furnishings, and books, of every name and nature, including computer hardware, software, related licenses, media, and documentation, and support

and maintenance services, *excluding any systems that collect or store data off-site.*

[...]

- (f) “Services” shall mean services provided for general agency use including, but not restricted to, the following: credit card agreements, elevator maintenance, hazardous waste testing and removal, janitorial services, laboratory services, rubbish removal, recycled materials pickup, security services, snow removal, soil testing, transportation, office machine maintenance, vehicle repair, vehicle rental and leasing, and warehousing. “*Services*” *shall not mean services provided solely to one agency.*

RSA 21-I:11, II(a) & (f) (emphasis added). Because the BOS is a system that collects and stores data off-site (*see* JA14), and the services in the RFP were solely provided to NHDOT, the BOS contract would not fall under the procurement authority of the division of procurement and support services.

The BOS contract also would not fall under any of the other three “mutually exclusive categories” for DAS procurement. The division of public works contracts for the construction and maintenance of buildings, fixtures, and facilities, and as such, would not procure a services and software contract. RSA 21-I:78-81. Appellant alleges that NHDOT’s authority to procure under RSA chapter 21-I lies within RSA 21-I:78, IX. However, this is a definition that delineates the construction work that is controlled by the division of public works versus that performed by NHDOT, and would not include the BOS contract. Finally, the section that lists certain agencies exempt from the provisions of RSA chapter 21-I contain no agency that would procure the BOS contract. RSA 21-I:18. Thus, in Appellant’s “DAS as the sole procurer” scheme, the BOS contract would not be procurable by any state department, let alone DAS. Certainly a legislature that provides for a turnpike tolling method intends to authorize some department to procure the contract for the services and software to implement that system.

Yet, the list of exempt agencies is logical when viewed with the lens that DAS's intended procurement power is for administrative supplies and services. It is sensible that the university system of New Hampshire is exempted from buying all their paper and books through DAS and allowed to use their own vendor. However, in Appellant's scheme, the university system can procure anything it wants because it is exempt from RSA 21-I. Simply put, Appellant's view of the DAS procurement power is too expansive, and the trial court's reading of the statutes was correct.

C. Legislative History Is Consistent With A Best Value Procurement For The BOS Contract.

As Appellant states itself: "New Hampshire law does not prescribe a single method of procurement across state government. Rather, the legislature has chosen to give agencies different types of procurement authority on a case-by-case basis." AA 72-73. Appellant states in its brief that the legislature has considered and rejected best value procurement authority on multiple occasions. However, Appellant also admits that legislation exists that gives agencies authority to use a best value approach to procurement, citing RSA 21-I:22, V (authorizing contract negotiations with the "highest qualified firm" when seeking architectural, engineering, or surveying services) and RSA 126-A:5, XIX(a) (authorizing the commissioner of health and human services to procure a managed care model for administering the state Medicaid program that offers the "best value, quality assurance, and efficiency"). AA 72-73.

Appellant argues that because a 2010 procurement bill that advocated for a best value procurement across all government entities "failed as inexpedient to legislate," NHDOT's use of best value procurement in a services contract is against legislative intent. AB 4-5. Still more, Appellant mentions a past legislative committee that failed and a current legislative committee that examined state contract procurement methods and potential uniformity across the state. AB

5-6. This continuous review of procurement methods supports the notion that there is not one scheme for procurement, and the legislature is still examining the issue. There exists no legislative intent to disavow the best value procurement method.

II. THE DECLARATORY JUDGMENT ACTION ASSERTED BY APPELLANT MUST BE DISMISSED WHERE OTHER REMEDIES ARE AVAILABLE.

An action for declaratory judgment in New Hampshire may only be brought in cases where no other adequate remedy exists to address the violation complained of by the plaintiff. *Morin v. Berkshire Mut. Ins. Co.*, 126 N.H. 485, 486 (1985). In this case, Appellant's declaratory judgment allegations are merely a rebranding of its equitable and promissory estoppel claims against the State. This is not a case where the plaintiff seeks to invalidate a statute or regulation and can only reach those remedies through a declaratory ruling. Rather, this is a dispute over a commercial transaction between the State and a corporate entity. Disputes such as this are more than adequately addressed through the remedy of monetary damages, if appropriate. "[D]amages ordinarily should be limited to the expenses incurred by the low bidder in its fruitless participation in the competitive bidding process, i.e., its bid preparation costs." *Marbucco Corp. v. City of Manchester*, 137 N.H. 629, 634 (1993). This is the sole remedy that New Hampshire courts have provided to disappointed bidders. As an adequate remedy exists, Appellant's declaratory judgment claims were properly dismissed.

Even assuming that Appellant has a right to a declaration as to the State's conduct in this matter, it may not seek equitable relief on these claims. Appellant seeks to void the State's contract with Cubic. AA 38 ¶ 151. New Hampshire courts have never allowed such an extraordinary remedy to a disappointed bidder and have identified monetary damages as the sole remedy available in these cases. *See Marbucco Corp.*, 137 N.H. at 634. In general, claims seeking equitable relief against the State are barred by the doctrine of sovereign immunity. *See*

Lorenz v. N.H. Admin. Office of the Courts, 152 N.H. 632, 634-35 (2005) (sovereign immunity barred action for declaratory judgment seeking equitable relief). Sovereign protection against equitable claims exists to safeguard the orderly administration of government and to ensure that government operations do not come to a grinding halt. State agencies like NHDOT are “cloaked with the State’s sovereign immunity.” *Chase Home for Children v. N.H. Div. for Children Youth & Families*, 162 N.H. 720, 730 (2011). The request to void a contract after more than two years of design and development activities implicates all of the concerns ameliorated by the doctrine of sovereign immunity. The trial court properly declined to allow Appellant to move forward on its equitable claims based on these concerns and the availability of monetary damages. The same consideration should be given to claims for equitable relief couched in declaratory judgment.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

REQUEST FOR ORAL ARGUMENT

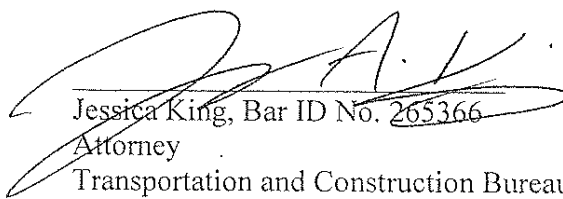
The State requests a 15-minute oral argument and expects that Jessica A. King will present the argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

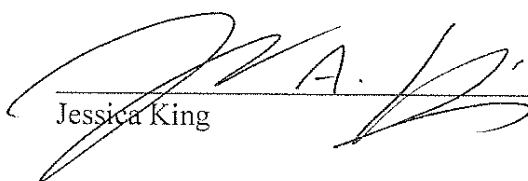
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February 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing were mailed this day, postage prepaid, to all counsel of record.


Jessica King