IN THE MATTER OF NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 0000035	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1030-25 CIVIL ACTION ON APPEAL FROM: NEW JERSEY TRANSIT CORPORATION

APPELLANT AETNA LIFE INSURANCE COMPANY'S BRIEF IN SUPPORT OF MOTION TO STAY CONTRACT IMPLEMENTATION AND FOR ACCELERATION OF APPEAL

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INTRODUCTION

Appellant Aetna Life Insurance Company ("Aetna") seeks to stay implementation of a public contract issued by New Jersey Transit Corporation ("NJT") under Request for Proposal No. 0000035 for Administration of NJT's Self-Funded Medical Plans (the "RFP") to Horizon Blue Cross Blue Shield of New Jersey ("Horizon"). Aetna also seeks to accelerate the appeal. For the reasons set forth herein, a stay of contract implementation and acceleration of the appeal is appropriate—particularly when considering that Aetna seeks only to preserve the status quo. Absent a stay and acceleration, Aetna will suffer irreparable harm.

STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

On December 1, 2023, NJT publicly advertised the RFP for administration of its self-funded medical plans. Ma95-139.[2] On January 30, 2024, NJT received two (2) proposals in response to the RFP—one from Aetna and the other from Horizon. Ma4. Based on a review of each proposal, and consideration of the evaluative criteria set forth in the RFP, NJT determined that Aetna's responsive and responsible proposal was the most advantageous, price and other factors considered. Ma144. The

[1] The Statement of Facts and Procedural History are inextricably intertwined and for the convenience of the Court and the parties, are presented together here.

[2] Ma = Appellant's Motion Appendix

NJT Technical Evaluation Committee ("TEC") ranked Aetna's proposal first with a score of 2002.8, followed by Horizon's proposal with a score of 1853.2. *Id*.

On March 25, 2024, NJT provided Aetna with written notice of its intent to award the contract to Aetna and requested a meeting with Aetna's team. Ma146-47. However, no such meeting occurred. Instead, on December 11, 2024, the NJT Board of Directors adopted Resolution 2412-71, acknowledging that Aetna is the "highest ranked firm," but nevertheless awarding a contract to the "second-ranked" incumbent Horizon, stating in relevant part:

> WHEREAS, after evaluation of the proposals, it was determined that the highest ranked firm was Aetna, followed by Horizon; and
>
> WHEREAS, before commencing negotiations with Aetna, NJ TRANSIT determined that its labor agreements have inconsistent language concerning the provision of medical benefits; and
>
> WHEREAS, NJ TRANSIT's medical benefits have been administered by Horizon since 2019, pursuant to Contract No. 17-030R-A (the Contract); and
>
> WHEREAS, union leadership and its representatives objected to a proposed switch to Aetna, including, but not limited to appearing before the NJ TRANSIT Board of Directors on multiple occasions expressing publicly their belief that a switch to Aetna would adversely affect their members' ability to receive medical care and their desire for NJ TRANSIT to continue to contract with Horizon for the administration of medical benefits; and
>
> WHEREAS, the NJ TRANSIT Board of Directors can reject proposals and award a contract to a second-ranked firm when such rejection "is in the public interest to do so" and where the award "will be the most advantageous to the corporation [NJ TRANSIT], price and other factors considered"; and

> WHEREAS, NJ TRANSIT's award of a contract to Horizon will ensure continuity of the provision of medical benefits to NJ TRANSIT agreement and non-agreement employees and their dependents and promote labor harmony. . . . [Ma141-42].

Thereafter, on December 24, 2024, NJT provided Aetna and Horizon with written notice of NJT's intent to award the contract to Horizon. Ma333-34. In response, Aetna filed a bid protest challenging the award as arbitrary, capricious, and unreasonable, and requesting a stay of implementation of the contract. Ma39; 201. Aetna argued, *inter alia*, that NJT's decision to bypass Aetna's lower priced and higher-ranked proposal in favor of Horizon was arbitrary, capricious, and unreasonable because the decision: (a) lacked support and was directly refuted by substantial, credible evidence in the record; (b) allowed unions to dictate the outcome of a public procurement in an unlawful abdication of NJT's authority rendering the award to Horizon *ultra vires*, *void ab initio*, and invalid as a matter of law; and (c) unlawfully made award to Horizon whose proposal was materially non-compliant with the specifications and should have been rejected. *Id*.

NJT agreed to stay implementation of the Contract while it considered the merits of Aetna's protest. Ma232. On November 13, 2025, NJT issued a final agency decision denying Aetna's protest and lifting the stay. Ma1. This appeal and emergent application followed.

LEGAL ARGUMENT

A stay of Contract pending appeal is warranted under the factors for injunctive relief set forth by the New Jersey Supreme Court in *Crowe v. DeGioia*, 90 N.J. 126, 132-34 (1982). Under *Crowe*, a party seeking a stay must demonstrate: (1) irreparable harm; (2) a reasonable probability of success on the merits; (3) that a balancing of the relative hardships reveals greater harm would occur in the absence of a stay; and (4) consideration of the public interest militates in favor of the court's intervention. *Id*. at 132-34. Aetna is easily able to satisfy each of the *Crowe* factors.

A stay is especially appropriate where, as here, the underlying matter implicates the public interest in the context of a major public contract award, and the moving party seeks only to preserve the status quo. In those circumstances, the Court may take "a less rigid view of the *Crowe* factors and the general rule that all factors favor injunctive relief." *Waste Mgmt. of N.J., Inc. v. Morris Cnty. Mun. Utils. Auth.*, 433 N.J. Super. 445, 453 (App. Div. 2013) (quoting *Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth.*, 399 N.J. Super. 508, 520 (App. Div. 2008)).

Under this "less rigid approach," the Court may award "injunctive relief preserving the status quo even if the claim appears doubtful when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed." *Id*. at 454.

In fact, "courts, in the exercise of their equitable powers, 'may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'" *Id*. (quoting *Waste Mgmt.*, 399 N.J. Super. at 520-21).

Here, Aetna seeks only to preserve the status quo. Horizon's current contract with NJT has been extended through December 31, 2025. Ma5. NJT also extended both Aetna's and Horizon's proposals through March 31, 2026. Ma4. Finally, NJT already agreed to stay implementation of the new Horizon contract for nearly a year until it resolved Aetna's protest, which occurred only several days ago. Ma232. The requested relief here would serve only to continue that very same status quo.

I. AETNA IS LIKELY TO SUCCEED ON THE MERITS.

Aetna is likely to succeed on the merits of its appeal. First, the record demonstrates unequivocally that Aetna's proposal is the most advantageous to NJT, price and other factors considered. Consequently, NJT's decision to bypass Aetna's "highest-ranked" proposal in favor of Horizon's "second-ranked" proposal is the epitome of arbitrary, capricious, and unreasonable. The justifications proffered by NJT to support its decision either lack support in the record or are directly refuted by substantial, credible evidence in the record, or rely upon conduct that is *ultra vires*, *void ab initio*, and otherwise invalid as a matter of law. Second, there is no

legal basis to award a contract to Horizon, whose proposal is materially non-compliant and should have been rejected.

A. Aetna's Proposal Is The Most Advantageous To NJ Transit, Price And Other Factors Considered.

Following a thorough review, NJT declared Aetna the highest-ranked proposer. NJT determined that Aetna's pricing and technical proposal fully complied with—and in most instances, exceeded—each and every requirement in the RFP. In naming Aetna the highest ranked proposer, NJT not only determined that Aetna's proposal was the most advantageous to NJT, price and other factors considered, but also that Aetna possessed all qualifications necessary to proceed with award of the contract. There is nothing in the record to contradict or undermine that assessment.

NJT's procurement process here is governed by N.J.S.A. 27:25-11(c), which provides that award should be made "to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to [NJT], price and other factors considered." The process is also governed by N.J.A.C. 16:72-3.12, which states, "[u]nless all proposals are rejected, award shall be made to that responsible proposer whose proposal, conforming to the request for proposals, is the most advantageous to the State, price and other factors considered, and/or provides the best value pursuant to the governing law applicable to the RFP."

Sound judgment required NJT to award the contract to Aetna. *See*, *e.g.*, *Matter of Honeywell Info. Sys., Inc. Protest of Contract Award Requisition X-32*, 145 N.J.

Super. 187, 201 (App. Div. 1976) ("[A] responsible bidder whose proposal is most advantageous to the State [should not] be shunted aside for a favored bidder by arbitrary action, bad faith, fraud or corruption.").

Fatal to NJT's decision is the absence of a proper record to support it. NJT offers no legitimate basis for its decision to bypass Aetna's proposal. NJT has never suggested that Aetna is unqualified or incapable of performing the required services. Incredibly, NJT suggests that Aetna's protest "misses the point" by focusing on performance issues like minimal disruption, increased access to providers, and lower costs. Ma21. This is, without question, arbitrary, capricious, and unreasonable.

It is well-settled that "a determination predicated on unsupported findings is the essence of arbitrary and capricious action." *In re Holy Name Hosp.*, 301 N.J. Super. 282, 296 (App. Div. 1997). As a result, "[a]dministrative agencies must 'articulate the standards and principles that govern their discretionary decisions in as much detail as possible.'" *Noble Oil Co. v. Dep't of Envtl. Prot.*, 123 N.J. 474, 476 (1991). NJT is no different. Pursuant to N.J.A.C. 16:72-1.6, "[i]n all procurement actions, each purchase order or contract file shall be supported by documentation of actions taken with respect to the procurement, including final disposition, sufficient to constitute a full history of the transactions."

"It is incumbent on the agency to explain its decision in sufficient detail to assure [the reviewing court] that the agency actually considered the evidence and

addressed all of the issues before it. Failure to address critical issues, or to analyze the evidence in light of those issues, renders the agency's decision arbitrary and capricious and is grounds for reversal." *Green v. State Health Benefits Comm'n*, 373 N.J. Super. 408, 414 (App. Div. 2004).

There is no record contradicting NJT's original determination that Aetna's proposal fully meets the requirements of the RFP, and is the most advantageous, price and other factors considered. Indeed, the record demonstrates that Aetna's nationwide provider network is a 95.45% match to the providers Horizon currently offers NJT employees. Critically, there are more providers currently being used by NJT employees in Aetna's network (93%) than in Horizon's (90.9%). Ma278-79. In other words, a transition to Aetna results in *positive provider disruption*, as Aetna has more in-network providers than Horizon. According to NJT's own consultant, Korn Ferry, 4.9% more claims for services will be in-network based on current usage with a move to Aetna. *Id*.

NJT members currently exposed to higher costs when they go out of network would immediately benefit from an award of the contract to Aetna. Likewise, NJT will realize reduced costs with increased in-network utilization. Although there will still be a few employees whose current providers are not in-network with Aetna, this is mitigated by Aetna processes that foster continuity of care and access under

appropriate circumstances. In fact, NJT members will have access to more in-network options under Aetna.

NJT's acceptance of union complaints that Aetna is unable to meet the terms of the union contracts is contrary to the record. Aetna showed it had transitioned thousands of participants in the State Health Benefits Plan ("SHBP") without labor concerns. This transition occurred after the State brought Aetna back to the SHBP following a four-year stint from 2019 to 2023 with Horizon as the lone vendor. [3] Aetna is the sole administrator of the State dental insurance plan and is the sole vendor in administering the State's Medicare Advantage Plan for some 200,000+ retirees, numerous New Jersey municipalities and corporations. Aetna covers over 1.7 million members in New Jersey.

[3] In a desperate attempt to analogize this case with *Matter of NJ Transit*, 473 N.J. Super. 261 (App. Div. 2022), the Final Agency Decision references a recent filing of a qui tam matter in Massachusetts naming Aetna, ostensibly to demonstrate that the NJT Board could have bypassed Aetna even without union opposition. This extraneous reference is noteworthy given more relevant events closer to home. Indeed, less than twenty-four hours after NJT issued its final agency decision, the New Jersey Office of the Attorney General announced *a $100 million settlement* with Horizon "to settle allegations that it fraudulently induced the State to enter into a 2020 contract to administer the State's employee benefit programs, and then systematically overcharged the State for healthcare claims throughout the life of that contract." *AG Platkin: Horizon Agrees to Settle False Claims Act Case for $100 Million*, N.J. OFFICE OF THE ATTORNEY GENERAL (November 14, 2025), available at https://www.njoag.gov/ag-platkin-horizon-agrees-to-settle-false-claims-act-case-for-100-million/. The irony of NJT's reference to Aetna when juxtaposed with the revelation of Horizon's $100 million settlement cannot be overstated.

The absence of a proper administrative record to support the contract award, combined with the clear failure to select the most advantageous proposal, compels the court to find NJT's action arbitrary, capricious, and unreasonable.

B. NJ Transit's Decision To Bypass Aetna In Favor Of Award To Horizon Was Arbitrary, Capricious, And Unreasonable.

NJT's bases for its decision to bypass Aetna's proposal are as follows: (a) public opposition by labor union leadership and their representatives; (b) speculation and belief that an award to Aetna would increase provider disruption, and adversely affect medical plan benefits for employees; (c) presumptions that Aetna cannot—or will not—provide equal or better coverage than Horizon because "lower costs would result in poor healthcare services" for NJT employees; (d) claims that certain labor union agreements to which NJT is a party have language inconsistent with an award to Aetna; (e) fear that award to Aetna would lead to labor strife; and (f) a desire for Horizon to continue to administer NJT's self-funded medical plans.

In defense of these justifications, NJT misinterprets the Board's discretion under N.J.S.A. 27:25-11(c), maintaining that the award to Horizon was proper because the Board "reasonably and properly determined: (g) an award to Aetna could 'undermine employee morale and be very harmful to labor relations;" (h) the possibility of labor unrest outweighed 'any proposed savings that may be gained from switching' to Aetna; (i) 'it is not in the best interest of the agency, the ridership, or the State to switch insurance carriers' to Aetna; and (j) it was in the best interest

of NJ TRANSIT 'to keep the current insurance' with Horizon." Ma21; 33. These arguments fail.

i. NJ Transit impermissibly relied upon criteria not included in the RFP.

The justifications referenced in (a), (e), (f), (g), (h), (i), and (j) *supra*, were not part of the RFP's evaluative criteria, and constitute an invalid basis for NJT to reject Aetna's proposal. It is well-settled that "a public contract cannot be awarded upon terms which are different from those contained in the invitation to bid." *Palamar Const., Inc. v. Pennsauken Twp.*, 196 N.J. Super. 241, 250 (App. Div. 1983); *see also Hillside Twp., Union Cnty. v. Sternin*, 25 N.J. 317, 327 (1957) ("To require the bids upon one basis, and award the contract upon another, would, in practical effect, be an abandonment of all bids.").

Moreover, none of these purported justifications lend themselves to an objective method for evaluation. To be clear, Aetna is not suggesting that NJT is precluded from considering public sentiment or broader factors in the public interest as part of its overall evaluation. The issue is that NJT deliberately declined to address the accuracy or veracity of that public sentiment. At best, these justifications are an expression of rash judgment based upon public outcry and unfounded speculation, neither of which constitutes a valid basis for NJT to reject Aetna's proposal.

ii. NJ Transit accorded weight to false speculation and unfounded beliefs over substantial, credible evidence in the record.

With regard to the justifications referenced in (b) and (c), *supra*, there is no substantial, credible evidence to be found in the administrative record that would support either conclusion. Any argument that an award to Aetna would increase provider disruption is rebutted by NJT's own data.

NJT's own analysis demonstrates that Aetna's comprehensive and nationwide provider network is a 95.45% match to Horizon's current offering of providers to NJT employees. Additionally, and critically, of those providers currently being used by NJT employees, there are more in Aetna's network (93%) than Horizon's (90.9%) based on historical claims data. Ma278-79. While there will be loss of some in-network providers (2.5%) in moving to Aetna, a higher portion of service (4.9%), including medical professionals, is anticipated to move in-network with Aetna, a resulting positive disruption benefitting NJT and its employees. *Id*.

As the RFP makes clear, no public procurement can avoid disruption completely—it is an inherent byproduct of a system designed to secure for the public the benefits of competition. With each new vendor, there will be some level of disruption. In the health benefits industry provider disruption is commonplace and can occur even when the incumbent vendor is awarded a new contract. Consequently, the RFP called for "[a]n extensive and effective provider network, which balances cost and quality, with ***minimal*** provider disruption."

The administrative record is also devoid of any evidence to suggest that an award to Aetna would adversely affect or discontinue medical plan benefits employees. In fact, it is the opposite—Aetna has demonstrated that it would not only provide equal or better coverage than Horizon, but that in doing so, it would provide NJT, its employees, and New Jersey taxpayers with cost savings. Simply stated, there will be no gaps in coverage for NJT employees moving from Horizon to Aetna. Aetna offers a comprehensive and nationwide provider networks representing most recognized specialties. Any suggestion by labor union leadership that all members amid a course of treatment will suffer or be required to change physicians as a result of the change to Aetna is false.

Equally unfounded is the suggestion that a lower cost proposal equates to inferior healthcare services. Aetna provided a better cost proposal than Horizon and is capable of administering the same benefits with equal or better coverage than Horizon, at a lower administrative cost to NJT. This efficiency should not be penalized; rather, it was a primary reason for NJT's selection, aligning with public policy that favors competitive value. Crucially, the switch is expected to lower the cost of care for both NJT and its members due to Aetna’s broader national network and better provider discounts in New Jersey, which will increase in-network claim adjudication, reduce member out-of-pocket costs, and yield substantial savings for the self-funded medical plan, affirming the benefit of the competitive process.

Despite having both the ability and opportunity to do so, NJT inexplicably declined to rebut these unfounded assertions and presumptions, which in turn would have quelled any concerns expressed by NJT employees. Instead, NJT opted to jettison all pretense of a competitive bidding process under the RFP and make award to a vendor who is more expensive, and less advantageous—if not detrimental—to NJT, its employees and the taxpayers of New Jersey.

iii. Existing labor union agreements cannot preclude award of a contract to Aetna or mandate award to Horizon.

Principal among the stated bases for NJT's decision to bypass Aetna's proposal in favor of Horizon is that certain NJT labor union agreements have "inconsistent language." NJT has repeatedly declined to elaborate further on this point but suggests that a contract award to Aetna would somehow violate one or more of its existing labor union agreements. The argument fails for several reasons.

First, the labor union agreements cited by NJT do not ***mandate*** the award of a contract to Horizon. Rather, the agreements require only that coverage be equal or better than equal, substantively comparable, or provided at the same level as such benefits are currently provided. The material terms in these agreements are focused on the ***health benefits provided***, not the ***provider of those benefits***. Aetna has not only demonstrated that it will provide equal or better coverage than Horizon, but that in doing so, it will also provide NJT, its employees, and New Jersey taxpayers with cost savings.

Second, any labor union agreement that purports to supersede or otherwise modify any statute or regulation governing NJT's contracting power and authority such that award of a contract under the RFP is contingent upon a particular labor union's "express consent" is clearly invalid as a matter of law. It is well-settled that contracts are voidable, in whole or in part, if they contain any provisions that violate or contradict statutory or other legal requirements. A contract may likewise be found unenforceable if it is "unconscionable or violate[s] public policy," "it is inimical to the public interest or detrimental to the common good." *Saxon Const. & Mgmt. Corp. v. Masterclean of N. Carolina, Inc.*, 273 N.J. Super. 231, 236 (App. Div. 1994) (citing *Vasquez v. Glassboro Serv. Ass'n, Inc.*, 83 N.J. 86, 99 (1980); *Driscoll v. Burlington-Bristol Bridge Co.*, 10 N.J. Super. 545, 575 (Ch. Div. 1950)).

New Jersey Courts have consistently held that the competitive bidding process is designed "to promote the honesty and integrity of those bidding and of the system itself." *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175*, 279 N.J. Super. 566, 595 (App. Div. 1995) "Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." *Id*. at 589 (quoting *Keyes Martin & Co. v. Dir., Div. of Purchase & Prop., Dep't of Treasury*, 99 N.J. 244, 256 (1985)).

The statutes and regulations governing NJT—the New Jersey Public Transportation Act of 1979, N.J.S.A. 27:25-1, et seq. ("NJPTA") and the New Jersey Transit Procurement Policies and Procedures, N.J.A.C. 16:72-1.1, et seq. ("NJTPPP")—echo these principles. Indeed, a contract with NJT "is not a private contract, but one involving a governmental instrumentality," and thus, "must be let only after the broadest opportunity for public bidding is given in order to secure competition, and guard against favoritism, improvidence, extravagance and corruption." *D'Annunzio Bros. v. New Jersey Transit Corp.*, 245 N.J. Super. 527, 532 (App. Div. 1991) (citing *Hillside*, 25 N.J. at 322); *see also Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J. Super. 530, 534 (App. Div. 1997) (citing N.J.S.A. 27:25-11(a)); N.J.A.C. 16:72-1.3 (competition "to the maximum practicable extent."); N.J.A.C. 16:72-1.8 ("full and free competition"); N.J.A.C. 16:72-3.1 (procurement that "maximizes the opportunity for competition.").

Allowing a private entity—the labor union—to preordain the results of statutorily mandated public procurement undermines the public policy that is the bedrock of New Jersey's public-bidding framework. Anything that limits NJT's ability to secure for the public the benefits of unfettered competition by permitting the perpetual incumbency of a vendor, is at odds with the statutory objectives of the NJPTA and NJTPPP, and opens the door to the very concerns that those procedures are designed to eliminate, leading to higher pricing and diminished public benefit.

Likewise, any attempt by NJT to delegate its contracting power and authority to third-party labor union vis-à-vis collective bargaining is *ultra vires* and *void ab initio*. NJT is indisputably a creature of statute, *In re New Jersey Transit Bus Operations, Inc.*, 125 N.J. 41, 43 (1991), and thus, "a power or duty delegated by statute to [it] cannot be subdelegated in the absence of any indication that the Legislature so intends," *Mutschler v. New Jersey Dep't of Envtl. Prot.*, 337 N.J. Super. 1, 12 (App. Div. 2001), *aff'd sub nom. Mercer Council No. 4, New Jersey Civil Serv. Ass'n, Inc. v. Alloway*, 61 N.J. 516 (1972)); *see also* R. *H. Macy & Co. v. Dir., Div. of Taxation*, 77 N.J. Super. 155, 174 (App. Div. 1962), aff'd, 41 N.J. 3 (1963). "This is especially true when the agency attempts to subdelegate to a private person or entity, since such person or entity is not subject to public accountability." *In re Applications of N. Jersey Dist. Water Supply Comm'n*, 175 N.J. Super. 167, 206 (App. Div. 1980).

Third, even assuming *arguendo*, that labor union consent is a lawful prerequisite to award of a contract under the RFP, and we do not concede that it is, the appropriate action upon discovering an alleged inconsistency would have been to afford Aetna an opportunity to meet with NJT and the labor unions, in a good faith effort to eliminate any perceived inconsistency—not to summarily reject the proposal most favorable to NJT. NJT responds that "because [it] had no obligation to contract with Aetna, it had no obligation to negotiate with Aetna," and in any

event, "Aetna is not a party to the labor agreements and therefore cannot negotiate with NJ Transit's . . . employees." This ignores evidence in the record that even the labor unions that vocally opposed the award of a contract to Aetna were nevertheless willing to meet "in the interests of cordial labor relations." Ma181. NJT's decision not to afford Aetna that opportunity was arbitrary, capricious, and unreasonable.

iv. Horizon's proposal is materially non-conforming and should have been rejected.

Even assuming, *arguendo*, that NJT had a legitimate basis to bypass Aetna's far superior proposal—which we do not concede that it did—there was no legal basis to award a contract to Horizon, whose proposal is materially non-compliant with the specifications and should have been rejected, without review, at the outset.

In *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307 (1994), the New Jersey Supreme Court adopted a two-part test for determining whether a particular bid deviation is material, and thus, incapable of waiver: (1) "whether the effect of a waiver would be to deprive the [governmental entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements"; and (2) "whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition." *Id*. at 315. Horizon's proposal contained two material, non-waivable deviations.

First, among the ten (10) minimum requirements set forth in the RFP that "[p]roposers ***must meet*** . . . in order for their proposals to be considered," is the requirement that the vendor "provide **150-days** advance notice of renewal rates (after initial three-year term) for any additional one-year contract terms." Ma138. The RFP plainly required strict compliance with ***all*** mandatory minimum requirements for a proposal to be considered, advising that "Those proposals not meeting the [minimum] requirements will not be considered." *Id*. Despite these clear instructions, Horizon expressly rejected and took exception to this mandatory minimum requirement in its proposal stating, "**Disagree.** Horizon BCBSNJ generally agrees to provide renewal notifications **60 days in advance**." Ma322.

This is a material, non-waivable defect under *Meadowbrook*, which mandated rejection of Horizon's proposal without review. NJT wrongly asserts that the deviation is not material because the notice period relates to option years "which may not come to fruition" due to NJT's discretion to exercise the optional renewals. Ma36. Of course, NJT conveniently ignores the scenario where it did exercise the option, in which case Horizon's proposal was completely noncompliant.

The purpose of the 150-day advance notice requirement is to ensure that NJT is afforded sufficient time before the end of the contract term to determine whether the existing contract should be renewed or permitted to lapse. During this period, NJT solicits information from other vendors to assess the competitiveness of the

proposed renewal rates. Horizon's 60% reduction in the required lead time makes it impossible for any other vendor to provide a viable alternative to renewal, thereby frustrating NJT's ability to conduct a review of its renewal options, as contemplated under the RFP and placing Horizon in a position of advantage over other bidders who committed to the 150-day advance notice.

Second, the opening paragraph of Horizon's proposal contains impermissible qualifying language that it is "informational in nature and not intended to be a binding offer." Ma303. This renders its proposal facially invalid, but constitutes the hallmark of a material and non-waivable deviation.

Like any public contract solicitation, Aetna and Horizon submitted proposals to NJT under specific rules and conditions. One of those rules—arguably the most fundamental—is that any organization which submits a proposal is bound by the promises and commitments contained therein. *See*, *e.g.*, *State v. Ernst & Young, L.L.P.*, 386 N.J. Super. 600, 612 (App. Div. 2006); *Conduit & Found. Corp. v. Atl. City*, 2 N.J. Super. 433, 438-39 (Ch. Div. 1949); *Cataldo Construction Co. v. County of Essex*, 110 N.J. Super. 414, 416 (Ch. Div. 1970). Bedrock bidding concepts, including bid conformity, non-waiver of material bid deviations and the common standard of competition, are turned upside down if a bid can be construed as something other than a binding option to the public entity to contract.

By adding the above qualifying language to its proposal, Horizon made clear—in no uncertain language—that it did not intend to be bound by the terms of its proposal or the RFP. In fact, it seems Horizon's proposal expressly rejects the conditions and requirements of the RFP, which ultimately "will become the basis of the contract between the parties," and to which "[a]ll submitted proposals are assumed to adhere." Ma134. Any attempt to minimize the effect of this qualifying language is rebutted by the plain language of Section IV of Attachment C that "[f]ailure to meet any of [the general proposal] conditions may result in a rejection and disqualification of proposals or termination of any subsequently awarded contract." *Id*.

This language transforms Horizon's proposal from an offer that confers upon NJT a binding option to contract, to a conditional offer that Horizon was free to revoke, or modify for any reason, and at any time, after submission. NJT, as a result, was deprived of any assurance that the contract would be entered into, performed and guaranteed in accordance with the specified requirements. Horizon was free to walk away from its proposal for any reason, or to insist on conditions or terms different from its proposal or the specifications. This ability to walk away is the hallmark of materiality. *See*, *e.g.*, *Muirfield Const. Co. v. Essex Cnty. Improvement Auth.*, 336 N.J. Super. 126, 137, (App. Div. 2000) It also afforded Horizon with an advantage over other bidders, who are bound by their proposals.

II. AETNA HAS NO ADEQUATE REMEDY AT LAW AND WILL SUFFER IMMEDIATE AND IRREPARABLE HARM ABSENT A STAY.

A stay of contract implementation is necessary to prevent irreparable harm to Aetna, NJT's employees, the taxpayers of New Jersey, and New Jersey's public-bidding framework itself. It is well settled that a stay is appropriate in a bidding case where there is a danger of the contract being awarded and the subject matter of the appeal potentially dissipating pending appeal. *See Waste Mgmt.*, 433 N.J. Super. at 453 (quoting *Gen. Elec. Co. v. Gem Vacuum Stores, Inc.*, 36 N.J. Super. 234, 236 (App. Div. 1955). Irreparable harm is likewise assumed in a bidding case where the contract could be wrongfully awarded and, in this case, implemented during the pendency of the appeal to the detriment of the appealing party. *Statewide Hi-Way Safety, Inc. v. N.J. Dept. of Transp.*, 283 N.J. Super. 223, 233 (App. Div. 1995).

Notably, a bidder aggrieved by a public agency's failure to award it a contract to which it is legally entitled may not assert a claim for damages under New Jersey law. *Commercial Cleaning Corp. v. Sullivan*, 47 N.J. 539, 546 (1966). Accordingly, the absence of a monetary remedy in a bidding matter such as this renders the harm to be suffered as a result of the wrongful award of a contract irreparable. *M.A. Stephen Construction Co, v. Borough of Rumson*, 125 N.J. Super. 67, 75-76 (App. Div. 1973). Even if Aetna ultimately prevails on the merits of its protest, absent a stay, it cannot recover damages for the lost term of the improperly awarded contract.

Further, a procurement process in which a third-party contract pre-ordains an award to the incumbent undermines all public confidence in a fair, competitive, and open process and the goals of competitive bidding are entirely lost. To prevent irreparable harm to the New Jersey public bidding framework, injunctive relief must issue. "Both the public interest and the public's perception that the bidding process is fair, competitive and trustworthy are critical components and objectives of our public bidding statutes." *Muirfield*, 336 N.J. Super. at 137-38.

III. A BALANCING OF THE RELATIVE HARDSHIPS WEIGHS IN FAVOR OF A STAY.

A balancing of the relative hardships of the parties reveals that greater harm would occur if a stay of the implementation of the contract is not granted than if it were. Horizon is the incumbent on this contract. Its current contract has been extended through December 31, 2025, and implementation of the new contract that is the subject of this appeal was stayed through the final agency decision on November 13, 2025. Given the January 1, 2026 effective date for employee benefits, Horizon has likely completed or is in the process of open enrollment under the existing contract. Those benefits ***should*** run through December 31, 2026 and thus a stay of the new contract has little impact and presents no hardship for the parties involved; it merely maintains the existing status quo.

By contrast, if Aetna is not granted its requested stay and ultimately prevails on appeal, it will suffer irreparable harm as NJT will move forward with the new

contract, depriving Aetna its rights as the most advantageous bidder and causing non-recoverable economic harm in the loss of the contract term during appeal.

While delay of a public contract is never convenient, New Jersey Courts have made clear that a stay is not only appropriate, but necessary to preserve the sanctity of the public procurement process, and to prevent the deprivation of contractual rights of the protesting vendor. *Statewide*, 283 N.J. Super. at 233 (citing *Crowe*, 90 N.J. at 132). Further, a stay of implementation of the Contract protects the public interest by ensuring that services are procured pursuant to an open and fair process. Any delay occasioned by a stay pending appeal presents no hardship for the parties, especially as Horizon is the incumbent. If anything, the requested relief here is merely an extension of NJT's stay of the past year while it decided the protest.

Considering all of the foregoing factors, a balancing of the hardships heavily favors Aetna in this case, and a stay is warranted to protect these important interests. Aetna therefore, respectfully requests that the Court preserve the status quo and enter the requested stay pending appeal.

Any alleged impact that a stay of the implementation of the Contract may have can be mitigated by acceleration of the appeal pursuant to R. 2:9-2. As New Jersey courts have recognized, acceleration under R. 2:9-2 should "be freely exercised where the public interest is involved and prompt final disposition is important." *DeSimone v. Greater Englewood Hous. Corp. No. 1*, 56 N.J. 428, 435 (1970); *see*

also Enourato v. New Jersey Bldg. Auth., 182 N.J. Super. 58, 67 (App. Div. 1981), *aff'd*, 90 N.J. 396 (1982). Litigation, such as this, involving public procurement matters falls within "the highest public interest" necessitating disposition "as expeditiously as possible." *Ippolito v. Mayor of City of Hoboken*, 60 N.J. Super. 477, 490 (App. Div. 1960).

CONCLUSION

For all the foregoing reasons, it respectfully requested that the Court enter a stay of the implementation of the Contract pending Aetna's appeal of the NJT's final agency decision and accelerate the appeal.

Dated: November 25, 2025

Respectfully submitted,

STEVENS & LEE, P.C.

By: */s/ Maeve E. Cannon, Esq.*
Maeve E. Cannon, Esq.

Attorneys for Petitioner-Appellant
Aetna Life Insurance Company

IN THE MATTER OF NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 0000035	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1030-25 CIVIL ACTION ON APPEAL FROM: NEW JERSEY TRANSIT CORPORATION Final Agency Decision

RESPONDENT'S BRIEF IN OPPOSITION TO APPELLANT'S MOTION TO STAY

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PRELIMINARY STATEMENT

Aetna Life Insurance Company ("Aetna") asks this Court to stay a contract award for the provision of health benefits for New Jersey Transit Corporation's ("NJT") employees simply because it did not receive it. But Aetna improperly discounts the NJT Board of Directors' statutory role as final decision-maker. The Request for Proposal (the "RFP"), governing statutes, and case law all mandate that NJT select the proposal "most advantageous…price and other factors considered" that is in "the best interest of the corporation, its mission, and the public." Aetna's argument would make board approval automatic and ministerial. It is neither. The Board's decision was discretionary and exercised exactly as the law demands.

NJT provides medical benefits for over 10,000 agreement and non-agreement employees, retirees and their dependents. The record reflects months of sustained union objection and warnings that a switch of providers could ignite labor instability across a vital public transportation system that only recently weathered strikes. NJT Board of Directors credited those concerns, evaluated risk and concluded that maintaining Horizon Blue Cross Blue Shield ("Horizon") best protected operations, workforce stability and the public interest. These concerns represent the "other factors" the statute requires NJT to consider and courts do not and cannot substitute their judgment for the agencies in such matters.

NJT submits this opposition to Aetna's motion for emergent relief which seeks a stay of contract implementation and an accelerated disposition of its appeal of the November 13, 2025 Final Administrative Decision (the "FAD"), seeking a decision within 60-90 days. NJT does not object to an accelerated schedule but objects to a stay of contract implementation

NJT may: (i) select for award "the responsible bidder whose proposal will be the most advantageous to the corporation, price and other factors considered;" and (ii) award to a second-ranked firm when it "determine[s] that it is in the public interest to do so." That is precisely what occurred here when NJT's Board of Directors authorized NJT to enter a contract with Horizon. Aetna seeks a stay of an award to Horizon during pendency of this appeal.

A stay is not warranted because Aetna has not demonstrated, inter alia, a reasonable probability succeeding on the merits and/or imminent irreparable harm.

STATEMENT OF FACTS[1]

A. The RFP - Scoring - Final Decision

In December 2023, NJT advertised the RFP to provide health benefits to its agreement and non-agreement employees, retirees and their dependents. (Ma132).[2]

[1] The Statement of Facts and Procedural History are inextricably intertwined and for the convenience of the Court and the parties, are presented together here.

[2] References to Movant's Appendix are cited as "Ma" herein. References to Respondent's Appendix are cited as "Ra."

The RFP provides that its documents and the proposal "will become the basis of the contract … as … conformed in the … executed …Contract." (Ma134). The RFP also provides that terms added by proposers can be "accepted, rejected, or negotiated" and NJT "considers …the Proposal[s] subject to negotiations." (Ma118; Ma122).

The Contract has a three-year term with two optional one-year renewals that NJT may exercise at its discretion. (Ma132). The RFP provides: (i) NJT can negotiate renewal rates; and (ii) failure to meet conditions "may result in a rejection." (Ma134; Ma138). The RFP explains that certain of "the numerous plans are the result of collective bargaining" with "varying eligibility rules." (Ma132). The Technical Evaluation Committee ("TEC") scored proposals which set the "initial competitive range." (Ma121).

The RFP provides:

- Recommendation of award is based on what "is most advantageous to … [NJT], price and other factors considered." (Ma122).
- The award of the Contract ***is subject to the NJT Board of Directors' review and approval,*** and only after that approval will NJT enter a formal Contract. (Id.) (emphasis added).

B. Aetna Scores Higher - Administration of Medical Benefits

In January 2024, NJT received two proposals from Aetna and Horizon. (Ma141-Ma142). In March 2024, the proposals were scored, with Horizon receiving a score of 1853.2 and Aetna receiving a score of 2002.8. (Ma144). In March 2024, NJT notified Aetna it was the highest-ranked firm but made clear that "award of a

Contract to Aetna is contingent upon NJT and Aetna reaching an agreement on the terms … of the Contract ***and approval by [the] NJT Board of Directors***." (Ma146) (emphasis added).

In July 2024, NJT requested that Aetna and Horizon confirm their proposals would be valid for an additional 6-month period. (Ma160; Ra75). After several extensions, Aetna and Horizon extended their proposals through March 2026. (Ra77; Ra79).

C. Brotherhood of Locomotive Engineers and Trainmen

Agreement employees are from bus, rail and police. One group is the Brotherhood of Locomotive Engineers and Trainmen ("BLET"). NJT and the BLET are parties to a collective bargaining agreement which covers 485 engineers. (Ra01-Ra10). Beginning in 2019, NJT and the BLET were engaged in a dispute over that agreement. In May 2025, the BLET lodged a three-day strike, causing extraordinary disruption of the commuter system.

D. Labor Agreements

Horizon has administered NJT's medical benefits for several years, which covers all NJT employees, including approximately: (i) 2,000 non-agreement employees; (ii) 10,000 agreement employees - covered by numerous independent and collectively bargained agreements; (iii) retirees; and (iv) dependents. (Ma141-Ma142; Ra18; Ra19).

NJT found that the labor agreements have inconsistent language concerning provision of medical benefits, including some that require it to contract with Horizon or provide medical benefits equal to or better than Horizon. (Ma141-Ma142).

- BLET: requires that NJT provide "the Horizon] Traditional Plan, [and Horizon] Blue Select (PPO)." (Ra08-Ra10).
- Police: requires "Blue Select (Horizon PPO) Plan for hospital, surgical and medical coverage" and a "self-insured HMO Plan similar to Horizon HMO Blue if available." (Ra15-Ra17).

E. Union Objection

Starting in July 2024, union representatives objected to a switch. (Id.) Union leaders appeared at Board of Directors meetings and wrote letters, voicing opposition, including: (i) that members were "terrified;" and (ii) a switch from Horizon - which provides "excellent" coverage - is wrong. Union leadership voiced concerns at the following meetings and sent letters on the following days.

On July 24, 2024, Orlando Riley of Amalgamated Transit Union and Jerome Johnson of SMART-TD voiced concerns. (Ra22). Riley explained:

> Do not turn your back on us by switching from healthcare coverage which has covered our members excellent over the last decades.

(Ra26, Lines 1-3) (emphasis added). Johnson explained:

> We ask this board to not allow our members to be assaulted again by changing the administ[rator] of this new New Jersey Transit healthcare plan …..

(Ra30, Lines 5-9) (emphasis added).

In July and September, 2024, Johnson advised that members are "vehemently against" a switch. (Ma171). Thomas Haas of the BLET stated that they ***demanded NJT stop pursuing a switch, or it would deem that a violation of the status quo and Railway Labor Act***; and threatened legal action. (Ma180-Ma181).

On September 18, 2024, Riley explained:

> We tell … there's two reasons to work here …. And that's your pension and the health benefits, period ….

(Ra39, Lins 16-19) (emphasis added).

On October 10, 2024, Gregory Roberts, Jr. of SMART-TD expressed concern:

> We have attended … board meetings … to deliver a clear message: do not replace our health insurance, Blue Cross Blue Shield, because Aetna was the lowest bidder.

(Ra55 Line 20-Ra56 Line 4) (emphasis added).

F. The NJT Board of Directors' Decision

On December 11, 2024, the board authorized a contract with Horizon. (Ra71 Line 19-Ra74 Line 12). Board Member Maroko explained:

> ***And it seems to me that switching health care providers creates two significant problems to the agency***. ***The first is a significant risk of litigation, which, without commenting on the specific merits of any threatened litigation …. Putting aside any potential litigation, it would certainly, without question, undermine employee morale and be very harmful to labor relations.*** And I think those considerations outweigh any proposed savings that may be gained from switching. And, for that reason, in my discretion, ***it is my conclusion that it is not in the***

> ***best interest of the agency, the ridership, or the State to switch insurance carriers***. And, for that reason, I will be voting to keep the current insurance … until something different is negotiated with the applicable unions.

(Ra69 Line 19-Ra70 Line 17). (emphasis added). Board Member Abrantes agreed:

> In my opinion … ***cheaper insurance doesn't always necessarily translate into better service ….***. And I think, … it's in the best interest … we maintain the policies ….

(Ra70 Line 20-Ra71 Line 6) (emphasis added). Board Member Narra noted that "Board Member Maroko summed up my comments. I just want to go on the record saying that I completely agree with his statement." (Ra71 Lines 12-16).

G. The Resolution

On December 11, 2024, NJT's Board adopted Item 2412-71 awarding the Contract to Horizon (the "Resolution"). (Ma141-Ma142.) The Resolution provides:

> **WHEREAS**, NJT … seeks to award a contract … most advantageous to NJT, price and other factors considered; (emphasis added)
> **WHEREAS**, before commencing negotiations with Aetna, NJT determined … its labor agreements have inconsistent language concerning … medical benefits; (emphasis added)
>
> **WHEREAS**, union leadership … objected to a … switch to Aetna, including … appearing before the NJT Board of Directors … expressing publicly their belief that a switch to Aetna would adversely affect their members' ability to receive medical care and their desire for [NJT] to continue to contract with Horizon for the administration of medical benefits;

> **WHEREAS**, the NJT Board of Directors ***can reject proposals*** and ***award a contract to a second-ranked firm*** when such rejection ***"is in the public interest to do so" and where the award "will be the most advantageous to the corporation [NJT], price and other factors considered***;"
>
> **WHEREAS,** NJT's award of a contract to Horizon will ensure continuity of the provision of medical benefits … ***and promote labor harmony***.

(Ma141-Ma142) (emphasis added).

On December 24, 2024, NJT provided a Notice of Intent to Award. (Ma334). On March 4, 2025, Aetna argued the information provided by NJT's consultant, Korn Ferry, should be disclosed. (Ma260-Ma272).[3]

NJT has been informally negotiating with Horizon to be able to provide health benefits to its employees. As Aetna implicitly concedes one of the critical factors here is "benefits should run through December 31, 2026." (Br. at 23). Negotiating a new complex contract, such as this one, takes great time and care not only because of the scope of work and pricing but also because the services affect so many people, from NJT's employees to the public they serve. It is in the best interest of NJT and the public for NJT to provide medical benefits to its employees in a prompt and expeditious manner. NJT has - and will continue - to informally negotiate with Horizon so it is prepared to enter a fully executed agreement when appropriate.

[3] On April 7, 2025, Aetna filed a complaint by way of an Order to Show Cause, seeking information provided by Korn Ferry. On November 5, 2025, the court and dismissed Aetna's complaint. (Ra85-Ra88). Aetna has also appealed that Decision.

ARGUMENT

I. APPLICABLE LEGAL STANDARD

It is well settled that "the power to issue injunctions is the strongest weapon at the command of the court of equity, and its use, therefore, requires the exercise of great caution, deliberation and sound discretion." Light v. National Dyeing & Printing Co., 140 N.J. Eq. 506, 510 (Ch. 1947). Due to a stay being an extraordinary remedy, the party seeking a stay "must satisfy a particularly heavy burden." Gauman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011).

Crowe v. De Gioia, 90 N.J. 126 (1982) provides a movant must show: (i) claim rests on settled law and a reasonable probability succeeding on the merits; (ii) imminent irreparable harm; and (iii) balancing of hardships reveals greater harm would occur if a stay is not granted. The moving party must satisfy the Crowe factors by clear and convincing evidence to demonstrate the right to a stay. Waste Management of New Jersey, Inc. v. Morris County Municipal Utilities Authority, 433 N.J. Super. 445 (App. Div. 2013). When a case involve an issue of "significant public importance," courts must consider public interest. McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484 (2003).

When reviewing public contract awards, courts apply a limited standard of review. George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8 (1994). There is a "strong presumption of reasonableness" to an agency's "exercise of its statutorily

delegated responsibilities." Matter of Restrepo Dept. of Corrections, 449 N.J. Super. 409, 417 (App. Div. 2017). New Jersey courts review agencies' decisions under a gross abuse of discretion. Barrick v. State, 218 N.J. 247 (2014). Appellate courts will not overturn an agency decision unless it is "arbitrary, capricious, or unreasonable." Matter of NJ Transit, 473 N.J. Super. 261, 273 (App. Div. 2022).

II. REASONABLE PROBABILTY OF SUCCESS

Aetna does not have a reasonable probability of success on the merits.

A. New Jersey Law Grants The Board Broad Discretion

In New Jersey that "[b]idding statutes are for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good. Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Keyes Martin & Co. v. Director, Div. of Purchase and Property, Dept. of Treasury, 99 N.J. 244, 256 (1985). But, as important as competition in public bidding may be, competition is not an end in itself and there is no absolute mandate that "an agency must, in every action it takes, promote competition at the expense of all other concerns." Tormee Constr. v. Mercer County Improvement Auth., 143 N.J. 143, 155-156. Labor harmony is considered in public procurement. Keyes Electrical Service v. Board of Chosen Freeholders, 15 N.J. Super. 178 (Law Div. 1951).

The powers of NJT are vested in the voting members of the board to "apply

independent judgment in the best interest of the corporation, its mission, and the public." N.J.S.A. §27:25-4(e); N.J.S.A. §27:25-4.1(b)(1). The duties of the board include the approval or rejection of bids, and "[t]he corporation may reject any or all bids or proposals … when the corporation shall determine that it is in the public interest to do so." N.J.S.A. §27:25-11(c). The board has ultimate discretion and is not "required to adopt the proposal recommended by the [TEC], or to afford the Committee's evaluation any deference." Matter of NJ Transit, 473 N.J. Super. at 275. Since Aetna's score conferred no entitlement to negotiation, contract award, or board deference, it cannot form the basis of a likelihood of success on appeal.

B. NJT's Decision Was Proper and Supported

The NJT Board of Directors, after reviewing information from various sources, including from NJT's management and union representatives, voted unanimously to authorize an award of the Contract to Horizon.

Aetna contends the award to Horizon was improper because Aetna's proposal was the most advantageous to NJT when considering price and other factors. (Br. at 5). In support of this contention, Aetna argues there is an "absence of a proper record" supporting the decision to award to Horizon. (Id. at 7). To the contrary, the information relied on by the NJT Board of Directors, including but not limited to: (i) the RFP; (ii) the proposals; (iii) the scoring sheets; (iv) the Notice of Intent; (v) Labor Agreements; (vi) public statements made at Board Meetings; (vii)

correspondence from union leadership; and (viii) other information, has been provided to Aetna. (Ma247).

C. Aetna Continues to Fail to Address Applicable Legal Authority

The issues here are similar to those in Matter of NJ Transit, supra.[4] NJT issued request for proposals for bus service. 473 N.J. Super. at 263. NJT indicated its intent to execute a contract that was "the most advantageous … price and other factors considered." Id. at 264. Proposals were scored. Id. at 264-65. Although the recommendation were based on the highest score, NJT: (i) reserved its right "to reject" proposals; and (ii) indicated an award was subject to "approval of" the Board of Directors. Id.

In that case, NJT received proposals from ONE Bus and Academy. 473 N.J. Super. at 265. In February 2022, NJT notified Academy it was the highest-ranked. Id. The Notice advised that the award was subject to a fully executed agreement and approval by the NJT Board of Directors. Id. ONE Bus argued the TEC failed to account for fraud claims against Academy. Id. at 267.

In March 2022, the NJT Board of Directors was presented with a resolution to award to Academy. 473 N.J. Super. at 270. During the public comment, individuals objected to an award to Academy. Id. The NJT Board of Directors,

[4] Despite NJT's detailed analysis of this case, in the FAD, including why it is controlling, Aetna does not even attempt to explain why NJT's analysis is misguided but rather merely references to the decision in a footnote. (Br. at 9).

acknowledging its duty to act in the best interest of NJT, voted to reject the award to Academy and to award the contract to ONE Bus. Id. at 271.

Academy protested, arguing the decision to award to ONE Bus was improper. 473 N.J. Super at 271. In April 2020, NJT denied the protest, finding: (i) the award to Academy "was subject to approval by NJ Transit's Board of Directors;" and (ii) the NJT Board of Directors "utilized its independent judgment" and its decision "was in the best interest of NJT." Id. at 271-72.

Academy appealed and requested a stay. 473 N.J. Super at 272. The Appellate Division denied the request, explaining: (i) Academy must demonstrate a likelihood of success; (ii) court's review of the decision is "severely limited;" and (iii) appellate courts will not overturn an agency's decision unless it "is arbitrary, capricious, or unreasonable." Id. at 272-73. The Appellate Division found the decision was proper and ruled: (i) NJT's powers are "***vested in the voting members of the board***;" and (ii) board members must perform the duties in "***good faith***" and "***may take into consideration the views … of any … person***" and must apply "***independent judgment in the best interest of***" NJT. 473 N.J. Super at 274 (emphasis added). The Appellate Division noted:

- NJT ***is not "required to adopt the proposal recommended by the Technical Evaluation Committee***, or to afford the Committee's evaluation any deference." Id. at 275 (emphasis added).
- Contract award "is plainly ***subject to approval by the NJT Board***, whose members, in performing their duties, can ***take into consideration the views***

and policies of any … person" and ***must apply "independent judgment in the best interest of" NJT***. Id. (emphasis added).

- The Board has ***broad discretionary authority to reject proposals when it "determines 'it is in the public interest to do so"***" and can consider any factor it "***deems to be in the public interest***." Id. at 276 (emphasis added).

The NJT Board of Directors' decision to award to Horizon was also proper because it reasonably determined: (i) award to Aetna could "undermine employee morale and be very harmful to labor relations;" (ii) labor unrest outweighed "any proposed savings that may be gained from switching;" (iii) "it is not in the best interest of the agency, the ridership, or the State to switch insurance carriers" to Aetna; and (iv) it was in the best interest of NJT "to keep the current insurance." (Ra69-Ra74).

D. Absence of Negotiation with Aetna Does Not Support Reversal

Aetna's argument that NJT's decision was wrong because it was obligated to negotiate with it fails. (Br. at 17-18). NJT had no obligation.

First, as in Matter of NJ Transit, NJT is not "required to adopt the proposal recommended by the Technical Evaluation Committee, or to afford the Committee's evaluation any deference." 473 N.J. Super. at 275. Second, Aetna minimizes NJT's concern about labor disharmony. (Ma74). Third, the RFP provides that NJT "considers all elements of the Proposal[s] subject to negotiations," provided that negotiated terms "do not diminish NJT's rights under the Contract resulting from the RFP." (Ma118; Ma122). Fourth, NJT has the right to reject proposals. (Ma103).

Finally, although the RFP provides that "NJT will enter into negotiations with the highest ranked Proposer," the NJT Board of Directors makes final decisions regarding an award of contracts. (Ma122).

E. Consideration of Factors was Proper

Aetna argues that the NJT Board of Directors' decision was improper because NJT considered: (i) "public opposition by labor union leadership and their representatives;" (ii) speculation that a switch to Aetna "would increase provider disruption, and adversely affect or discontinue medical plan benefits" of NJT employees; (iii) "presumptions that Aetna cannot … provide equal or better coverage than Horizon because 'lower costs would result in poor healthcare services' for NJT employees;" (iv) "claims that certain labor union agreements … have language inconsistent with an award to Aetna;" (v) "fear that award to Aetna would lead to labor strife;" and (vi) "a 'desire' for Horizon to continue to administer NJT's self-funded medical plans." (Br. at 10). Aetna contends that NJT's consideration of these factors was inappropriate because: (i) they were not set forth in the RFP; and (ii) there is no record evidence supporting them. (Id. at 11). Either way, Aetna's contention is incorrect.

NJT, as noted above, does not dispute that the TEC ranked Aetna higher than Horizon. (Ma144). Thus, Aetna's argument that NJT's decision was improper because Aetna's proposal would cause minimal disruption and/or provide increase

access to providers and/or be provided at a lower cost misses the point. (Br. at 12-14). That said, while Board Member Maroko's comments make clear that the NJT Board of Directors did consider the projected cost savings related to a switch to Aetna, the scope of information that the NJT Board of Directors, including labor disharmony, may consider - as a matter of law - is broader than what Aetna contends.

Aetna's argument that NJT's consideration of a number of factors, including labor disharmony, was overbroad is belied by the Appellate Division's decision in Matter of NJ Transit which ruled that boards: (i) have broad discretionary authority to reject proposals when it "determines 'it is in the public interest to do so;'" and (ii) can "consider any factor it 'deems to be in the public interest,'" including but not limited to public comments made at board meetings. 473 N.J. Super. at 275-76 (the board can "'take into consideration the views and policies of any elected official … or other person and … apply independent judgment in the best interest of'" NJT).

The New Jersey Supreme Court's decision in Keyes Martin & Co. v. Director, Div. of Purchase & Property, Dep't of Treasury, 99 N.J. 244 (1985) is instructive. There, the Lottery Commission issued a request for proposals for advertising services for the state lottery. Id. at 247. The Lottery Commission ranked Keyes Martin ("KM") as the highest-ranked firm. Id. When the commission discovered a business dealing between the President of KM and the Chairman of the Lottery Commission, it rejected KM's proposal and awarded the contract to a lower-ranked

contractor. Id. The Appellate Division reinstated the Lottery Commission's award to KM but the New Jersey Supreme Court reversed. Id. at 248.

In so doing, the Court ruled: (i) the Director of the Division of Purchase and Property may reject bids when it is determined "that it is in the public interest to do so;" (ii) when making that determination, the Director can consider all "material factors;" and (iii) state officials charged with purchasing goods must select "the most advantageous bid" and ***should consider "all relevant factors that would inform [that] choice.***" 99 N.J. at 252-53. The Court explained it was "proper to consider the fact that a business relationship existed" and "any other facts that" the Director concluded would support rejection. Id. at 261-62. The NJT Board of Directors' consideration of factors, including labor disharmony, was proper.

The NJT Board of Directors makes final decisions regarding award of contracts. (Ma122). The board members: (i) must perform their duties "in good faith;" (ii) shall exercise a "degree of diligence … which an ordinarily prudent person in like position would use under similar circumstances;" (iii) may consider "views … of any elected official … or other person;" and (iv) should "apply independent judgment in the best interest of the corporation, its mission, and the public." Matter of NJ Transit, 473 N.J. Super. at 274-75. Furthermore, the board "may reject … proposal[s] … when it determines it is in the public interest to do so" and is not "required to adopt the proposal recommended by the [TEC] … or to afford

the [TEC's] … evaluation any deference." Id.

Aetna's argument that the Board of Directors must accept the TEC's recommendation and/or could not consider information outside of the RFP would render the board meaningless. But the Appellate Division's decision in Matter of NJ Transit demonstrates that Aetna's argument fails. Indeed, here, like in Matter of NJ Transit and Keyes Martin, the NJT Board of Directors properly considered the entirety of the circumstances, including objections by union leadership on behalf of approximately 10,000 agreement employees, and decided to reject Aetna's proposal and award a contract to Horizon. (Board Item No. 2412-71). That decision, like those in Matter of NJ Transit and in Keyes Martin - where circumstances beyond the evaluation in the RFP but relevant to the contract award were brought into the evaluation process - was proper.

F. Labor Harmony - Threatened Litigation

NJT is a party to independent and collectively bargained labor agreements. (Ma141). NJT found that these agreements have inconsistent language concerning the provision of medical benefits. (Id.) The NJT Board of Directors properly considered these agreements and union objections to a switch to Aetna, including threatened litigation, when deciding to award to Horizon. (Id.) Aetna argues that NJT's consideration of these labor agreements was improper because, inter alia, the

inclusion of a provision in NJT's labor agreements requiring that it work with a provider is void, as a matter of law. (Br. at 14-18). Aetna's argument fails.

First, the case of Township of Union v. FMB Local No. 46, P.E.R.C. No. 2002-55 (March 28, 2002), supports rejection of the argument. That case addresses whether a switch of health care providers constitutes an improper change. Id. at p. 2. The union filed unfair practice charges against the Township. Id. The Public Employment Relations Commission ("PERC") ruled the change would constitute a change in employee benefits. Id. PERC indicated that the identity of a carrier is properly included in a labor agreement and changing of a carrier must be negotiated. Id. at 8. The ruling supports a finding that a labor agreement with a provision relating to a specific provider, is not invalid, as a matter of law. If so, there would be no need to consider whether such a provision constitutes an improper change.

Second, New Jersey courts have held that a public board's consideration of ***labor disharmony in public procurement*** decisions is proper. Keyes Electrical Service v. Board of Chosen Freeholders, 15 N.J. Super. 178 (Law Div. 1951). The Board advertised bids for electrical work. Id. at 180. After discussion about labor disharmony if plaintiff was awarded the contract, the board re-advertised with a requirement labor employed will work "so that there will be no dissention between trades." Id. at 181. The Board awarded the contract and plaintiff argued the decision was improper based on its consideration of discussion about possible labor

disharmony. Id. at 186. The court found that because it would not "***analyze the … fears***" of that Board concerning the possibility of labor disharmony affecting "'***the affairs of … government***,'" consideration of the issue was proper. Id. at 187.

Third, Aetna's claim that the decision to reject Aetna was improper contravenes law which provides that agencies may consider the entirety of the circumstances. The New Jersey Supreme Court has explained: (i) bidding statutes are "for the benefit of" taxpayers," construed as nearly as "possible with sole reference to the public good; and (ii) state officials must select "***the most advantageous bid***" and ***should consider "all relevant factors that would inform [that] choice***." Keyes Martin & Co., 99 N.J. at 252-55.

Finally, Aetna's contention that NJT "should have afforded Aetna an opportunity to negotiate with" the unions is not plausible as it is not a party to the agreements and cannot negotiate with 10,000 (approx.) employees.

G. Materiality

Although N.J.A.C. 16:72-3.10 provides a proposal that fails to meet a "mandatory material requirement" shall be non-responsive, NJT may accept proposals with "minor informalities" considered to be non-material. Turner Construction Co. v. New Jersey Transit Corp., 296 N.J. Super 530 (App Div. 1997).

H. Aetna's "Impermissible Qualifying Language" Argument Fails

Aetna cites the following from Horizon's proposal:

> This response … is informational … ***and not intended to be a binding offer*** or Agreement and will not give rise to any rights or obligations of Horizon, New Jersey Transit Corporation or any other party.

(Br. at 20). Aetna contends this is non-waivable and relies on State v. Ernst & Young, L.L.P., 386 N.J. Super 600 (App. Div. 2006). New Jersey issued request for proposals relating to medical records with a "contract effective date" of April 1, 2003. Id. at 604-05. During a pre-bid conference, the State indicated the April 1st date was a target date. Id. at 606. In May 2003, the State notified E&Y it accepted its proposal. Id. at 608. In July 2003, E&Y notified the State that it could not accept the award because the May acceptance date changed the circumstances surrounding the project. Id. In September 2003, the State cancelled the E&Y contract and sued E&Y for breach of contract. Id. Under those facts, the court explained: (i) a bid "in response to an RFP is an offer that confers an option to contract upon the State;" and (ii) if "the option remains unaccepted, it is a … writing lacking the mutual elements of a contract …." Id. at 612. The court also explained for a contract to form "there must be a 'meeting of the minds' … to every term of the contract." Id. at 613.

First, the case does not involve whether a proposal materially complies with a request for proposal. Second, Aetna's application to determine materiality when a proposal is submitted is improper as the RFP makes clear that the proposal would be subject to approval by the board. Lastly, Aetna fails to consider because the RFP instructed that even after notice of an intent to award, were subject to negotiation.

I. Aetna's Time Period Argument Fails

Aetna argues Horizon's proposal of a different time period for notice of renewal rates for a possible one-year contract extension mandates rejection.

Horizon's proposal states it "generally agrees to provide renewal notifications 60 days in advance." (Ma84). The timing for notice of renewal rates is identified as a minimum requirement in the RFP. The TEC scored the criterion for renewal notice as part of the Administrative and Service Capabilities, a category was evaluated at 70% overall. (Ma129-Ma130).

An entity's discretion to accept a proposal is guided by the policies relating to public bidding, which include "thwarting favoritism, improvidence, extravagance and corruption." Barrick, 218 N.J. at 258-59. The test for materiality follows a two-prong analysis, which includes whether the deviation: (i) would deprive the public entity of its assurance the contract will be performed according to its requirements; and (ii) adversely affect competitive bidding. Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994).

J. Acceptance of Horizon's Proposal Was Proper

Acceptance of the proposal was proper since it was based on the entirety of the circumstances to determine overall importance. In Barrick, the State requested proposals for a lease for property ***which was required to be*** located within .25 miles of public transportation. 218 N.J. at 252. The State awarded to RMD. Barrick argued

RMD's proposed site was .58 miles from public transportation - .33 miles away from the distance required by the RFP. The State found that RMD's proposal conformed. Id. at 254. The Appellate Division ruled the requirement ***was not waivable***. Id. The New Jersey Supreme Court found the distance requirement was waivable. 218 N.J. at 254. The Court found "the Director's materiality determination and resultant award decision were unassailably reasonable and consonant with the statutory process …." Id. at 262. After considering the entirety of the circumstances and the overall importance of the distance requirement, the Court found the State's acceptance was proper because the requirement was "***not a legal requirement" and was "not found in either a statute or regulation***." Id. at 262 (emphasis added).

First, like the distance requirement in Barrick, the time period in the RFP concerning notice of renewal rates is neither a "a legal requirement" nor is it " found in either a statute or regulation." Second, Horizon's proposal will not deprive NJT of assurance that the Contract will be performed according to its terms as it does not concern Horizon's performance of the Contract but rather relates to option years - which may not come to fruition as NJT has the sole discretion to exercise this right. Third, like the .33 miles difference in Barrick, the ninety (90) day difference here is negligible and, as a matter of law, does not warrant rejection of Horizon's proposal. Finally, NJT's acceptance of Horizon's proposal was proper - as a matter of law - as it was based on the entirety of the circumstances.

II. THERE IS NO IMMEDIATE IRREPARABLE HARM

"Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages." Garden State Equal. v. Dow, 216 N.J. 314, 328 (2013). Even though monetary damages are not available for the failure to award a public contract, bidders are not automatically entitled to a stay. Comm'l Cleaning Corp. v. Sullivan, 47 N.J. 539, 546 (1966), Blondell Vending v. State, 169 N.J. Super. 1, 9 (App. Div. 1979). This is so because one of the pillars underlying the public bidding laws is that no bidder is ***entitled*** to award of a public contract. Comm'l Cleaning, 47 N.J. at 546. A stay will not issue "unless from the pressure of an urgent necessity." B&S Ltd., Inc. v. Elephant & Castle Int'l, Inc., 388 N.J. Super. 160, 168-69 (Ch. Div. 2006). As Aetna explains, due to the upcoming end of the current contract term, coverage will be provided through December 2026. (Br. at 23). If this Court were to expedite the appeal as requested by Aetna, a decision will be issued in the next few months. NJT agrees an expedited appeal is in the public's best interest, so the contract can move forward after finality from the Court.

III. BALANCE OF HARDSHIPS

There is no harm to Aetna if a stay is not granted. Aetna cannot demonstrate any contractual right to the bid. If this Court were to grant an expedited appeal, the final decision would come in 2026. On the other hand, a stay could adversely affect the provision of health care to NJT employees. Moving from a very complex

contract such as this one takes great time and care - not only because of the scope of work and pricing - but also because the services affect so many people, from NJT's employees to the public they serve in good health. It is in the best interest of NJT and the public for NJT to provide medical benefits to its employees in a prompt and expeditious manner, on terms it deems are most advantageous to it.

CONCLUSION

For the foregoing reasons, Aetna's request for stay should be denied.

Respectfully submitted,

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By: */s/ Jennifer Borek*
Jennifer Borek

Dated: November 26, 2025

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November 26, 2025

VIA EMAIL AND ECOURTS

Honorable Lisa Rose, J.A.D.
Honorable Patrick DeAlmeida, J.A.D.
Richard J. Hughes Justice Complex
PO Box 006
Trenton, New Jersey 08611

Re: In the Matter of New Jersey Transit Corporation Request for Proposal No. 0000035; A-001030-25; M-001988-25
DATE SUBMITTED: November 26, 2025

Dear Judges Rose and DeAlmeida:

This law firm represents third-party Defendant-Respondent Horizon Blue Cross Blue Shield of New Jersey ("Horizon") in the above-captioned matter. Pursuant to Rule 2:6-4(a) and Rule 2:6-2(b), please accept this letter brief in lieu of a more formal brief in opposition to the November 25, 2025 Emergent Motion to Stay filed by Plaintiff-Appellant Aetna Life Insurance Company ("Aetna"). Horizon hereby joins in and adopts the arguments set forth in the brief submitted by Defendant-Respondent NJ Transit Corporation ("NJ Transit") to the extent applicable and, below, respectfully sets forth additional bases upon which the Court should deny Aetna's emergent motion for a stay of the subject contract's

implementation. Horizon does not, however, object to the requested acceleration of this action.

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STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

Horizon is the current administrator of health benefits for NJ Transit. In December 2023, NJ Transit issued a Request for Proposal for the Administration of NJ Transit's Self-Funded Medical Plans (the "RFP"). (See Ma96–97.[2]) The RFP provided that the successful proposal would become the basis of the contract between the parties, and that such contract would have a three-year term

[1] Because the Statement of Facts and Procedural History of this matter are inextricably intertwined, they are presented together.

[2] "Ma" denotes Aetna's Motion Appendix.

with two optional one-year renewals. (Ma132.) The award of a contract was "contingent upon[,]" among other things, approval by NJ Transit's Board of Directors. (Ma4; Ma146.)

In January 2024, Aetna and Horizon each submitted a proposal in response to the RFP to be evaluated by NJ Transit's Technical Evaluation Committee ("TEC"). (Ma4.) The TEC gave Aetna's proposal a score of 2002.8 and Horizon's proposal a score of 1853.2. (Ibid.) Notwithstanding Aetna's proposal scoring higher than Horizon's, prior to commencing contract negotiations with Aetna pursuant to the RFP, NJ Transit reviewed its "numerous independent and collectively bargained labor agreements." (Ma6.) This review revealed "inconsistent language concerning the provision of medical benefits, including that some [agreements] require NJ T[ransit] to contract with Horizon or provide medical benefits equal to or better than Horizon." (Ma6.)

Beginning in July 2024, NJ Transit union leadership expressed objections to changing from Horizon to Aetna. (Ma7–11.) This "intense opposition" was voiced at NJ Transit Board of Directors meetings and expressed in written letters. (Ma7.) Accordingly, on December 11, 2024, the NJ Transit Board of Directors approved Item No. 2412-17 authorizing NJ Transit to enter into a contract with Horizon. (Ma12). That resolution acknowledged Aetna's higher-

scored proposal, but also stated that (i) NJ Transit's labor agreements contained inconsistent language concerning medical benefits; (ii) union leadership objected to the proposed change to Aetna; (iii) the NJ Transit Board of Directors can reject proposals and award a contract to a second-ranked firm when it "is in the public interest to do so," and where the award "will be the most advantageous to [NJ Transit], price and other factors considered"; and (iv) an award to Horizon would promote labor harmony. (Ma13–14; Ma141–42.)

On December 24, 2024, NJ Transit provided Aetna with a Notice of Intent to Award the contract to Horizon. (Ma14; Ma334.) Thereafter, Aetna protested the award to Horizon, (Ma39, Ma201), and the contract award was stayed pending NJ Transit's review of Aetna's protest, (Ma232). Concurrently, Aetna requested that NJ Transit produce certain documents relating to the award and later filed an Order to Show Cause in the Superior Court of New Jersey.[3] The Court held a hearing, reviewed the parties' written submissions, and conducted an *in camera* review of certain requested documents. On November 5, 2025, the Court denied Aetna's request for relief and dismissed the complaint.[4]

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[3] Aetna v. NJ Transit, et al., ESX-L-2686-25.

[4] On November 24, 2025, Aetna filed a Notice of Appeal with respect to the Court's November 5, 2025 order dismissing its complaint.

On November 13, 2025, NJ Transit issued a comprehensive, 38-page written Final Administrative Agency Decision denying Aetna's bid protest and awarding the contract to Horizon. (Ma1–38.) The instant motion seeks to stay implementation of that contract.

ARGUMENT

I. THE COURT SHOULD DENY AETNA'S REQUEST FOR A STAY.

The Court should deny Aetna's emergent motion for a stay because Aetna has not demonstrated that it is entitled to that extraordinary relief. "The requirements for issuance of a stay are well established." See Matter of NJ Transit, 473 N.J. Super. 261, 273 (App. Div. 2022). The party seeking a stay must, by clear and convincing evidence, establish the following three factors first outlined in Crowe v. De Gioia, 90 N.J. 126, 132–35 (1982):

> (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.
>
> [N.J. Transit, 473 N.J. Super. at 273 (internal quotation marks and citation omitted).]

Further, when a case presents an issue of significant public importance, the courts will consider how granting or denying a stay would impact the public

interest. Ibid. (noting "an appellate court in essence considers the soundness of the . . . ruling and the effect of a stay on the parties and the public") (internal quotation marks and citation omitted). Aetna has failed to establish these factors and its emergent motion should be denied.

A. Aetna Has Not Demonstrated a Likelihood of Success on the Merits.

The bulk of Aetna's brief is dedicated to arguing its likelihood of success on the merits. (See Mov. Br. at 5–21.) Horizon defers to NJ Transit regarding the details of its decision-making process, but in the same vein, notes the absence in Aetna's papers of any discussion of the factor that makes it most *unlikely* to succeed on the merits: agency deference.

Appellate courts accord substantial deference to final agency decisions. Indeed, "[a]ppellate review of administrative action is severely limited," and an appellate court will only overturn a final agency decision if it is "arbitrary, capricious, or unreasonable." NJ Transit, 473 N.J. Super. at 273 (internal quotation marks and citations omitted). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443–44 (App. Div. 2006). Such appellate deference "is consistent with the strong

presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility." In re Att'y Gen. Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 489 (2021) (internal quotations and citation omitted). In reviewing a final agency decision, an appellate court may not simply "substitute its own judgment for the agency's." Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

Here, the Appellate Division's task is to determine whether NJ Transit's final decision to award the contract to Horizon, a qualified bidder, was arbitrary, capricious, or unreasonable. See NJ Transit, 473 N.J. Super. at 274 ("Our task is simply to apply the gross abuse of discretion criterion to NJ Transit's choice between what it has determined to be two qualified bidders under the standard established in N.J.S.A. 27:25-11(c)(2)."). This is a substantial burden, and Aetna cannot meet it, rendering its likelihood of success on the merits minimal.

NJ Transit's board has the statutory authority to "take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the corporation, its mission, and the public" when awarding contracts. N.J.S.A. 27:25-4.1(b)(1);

N.J.S.A. 27:25-4(e). Further, in considering this RFP, NJ Transit had the statutory authority to reject any bids or proposals if it determined, among other things, that "it [was] in the public interest to do so." N.J.S.A. 27:25-11(c); see also NJ Transit, 473 N.J. Super. at 274.

N.J. Transit's November 13, 2025 final agency decision painstakingly details the process and authority under which the agency's decision was made. (Ma1–38.) Indeed, the decision notes that the NJ Transit Board of Directors considered and relied on the following information in voting unanimously to authorize the awarding of the contract to Horizon: (i) the RFP; (ii) the proposals; (iii) the scoring sheets; (iv) the Notice of Intent to Aetna; (v) the Labor Agreements; (vi) public statements made at Board Meetings; (vii) correspondence from union leadership; and (viii) other information as provided to Aetna. (Ma17.) Additionally, the final decision explains that the Board of Directors "reasonably and properly determined" that

> (i) an award to Aetna could undermine employee morale and be very harmful to labor relations; (ii) the possibility of labor unrest outweighed any proposed savings that may gained from switching to Aetna; (iii) it is not in the best interest of the agency, the ridership, or the State to switch insurance carriers to Aetna; and (iv) it was in the best interest of NJ T[ransit] to keep the current insurance with Horizon.

[(Ma21 (internal quotations omitted).)]

The RFP was advertised almost two years ago, and the NJ Transit Board provided notice of its intent to award the contract to Horizon nearly one year ago. (See Mov. Br. at 1–2.) NJ Transit then issued its final agency decision nearly a year after the initial notice, (see id. at 3), following Aetna's year-long bid protest and related lawsuit (which was ultimately dismissed by the trial court and is the subject of a separate appeal). NJ Transit's final decision is thus the *opposite* of arbitrary and capricious; it is thorough, well-reasoned, and entitled to substantial deference. Aetna had the opportunity to make its case in multiple forums, on multiple theories, and so far, it has failed; nothing about this history suggests (and certainly does not establish by clear and convincing evidence) that it is now likely to succeed on the merits of its claims. Accordingly, the Court should deny this motion.

B. Aetna Does Not Face Irreparable Harm and a Balancing of the Hardships Weighs Against Granting a Stay.

Aetna fails to establish any irreparable harm in the absence of a stay. (See Mov. Br. at 22–23.) First, New Jersey courts have been clear that "[t]here is no irreparable harm to a disappointed bidder in not staying the award of a contract *the bidder cannot show a reasonable likelihood of having been entitled to win*."

NJ Transit, 473 N.J. Super. at 277 (emphasis added). As detailed above, Aetna cannot make that required showing. Second, Aetna has not demonstrated any true "emergency"; this is not a circumstance in which construction has begun or a contract is substantially complete and a party will be irreparably damaged. On the contrary, the contract awarded to Horizon is not set to take effect until July 1, 2026. There is no emergency to prevent; therefore, the Court need not grant the extraordinary relief sought and can instead consider this matter in the normal course.

Moreover, the required balancing of the relative hardships to the parties, see Crowe, 90 N.J. at 134, reveals that greater harm would occur if a stay is granted than if it is not. The harm here is rooted in the public interest, which "must not be unduly impacted by a stay." N.J. State Policemen's Benevolent Ass'n. v. Murphy, 470 N.J. Super. 568, 595 (App. Div. 2022); see also Barrick v. State, 218 N.J. 247, 258 (2014) ("The public interest underlies the public-bidding process in this State."). The agency has already determined that awarding the subject contract to Horizon is in the public interest; indeed, its Board has broad latitude to "consider *any* factor it 'deems to be in the public interest'" in awarding contracts, see NJ Transit, 473 N.J. Super. at 276 (emphasis added) (citing N.J.A.C. 16:85-2.3(a)(7)), and the agency's final

decision details those interests and how they factored into its decision. Further, as a practical matter, and as detailed supra, the subject RFP was issued in 2023. For two years, the parties have drafted, submitted, and reviewed proposals, engaged in litigation, and deliberated the awarding of the contract. Further, NJ Transit extensively reviewed and considered the proposals, met and conferred with union leadership, heard public statements, considered Aetna's protests, and ultimately, issued a well-reasoned and comprehensive final decision awarding the contract to Horizon. This protracted process has necessitated the extension of contracts awarded under previous RFPs. Further delay of the long-awaited contract implementation will harm NJ Transit, Horizon, and the public.

Aetna has not met its burden to establish by clear and convincing evidence that a stay is required. Accordingly, Horizon respectfully requests that the Court deny Aetna's motion for a stay of the subject contract's implementation.

Respectfully Submitted,

s/ Rachel M. Dikovics
Rachel M. Dikovics, Esq.

cc: All Counsel of Record (via eCourts)