

**IN THE MATTER OF HUDSON
COUNTY MEDICAL/FISCAL
ADMINISTRATION AT THE
HUDSON COUNTY
CORRECTIONAL CENTER**

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO: A-004144-23**

Civil Action

Submitted: December 31, 2024

Sat Below:

**State of New Jersey Office of the State
Comptroller
Acting State Comptroller Kevin D.
Walsh**

BRIEF ON BEHALF OF APPELLANT COUNTY OF HUDSON

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³ See footnote 1.

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PRELIMINARY STATEMENT

For the past six years, appellant County of Hudson and respondent Office of the State Comptroller (“OSC”) have wrangled over the procurement process for the medical services contract at the Hudson County Correctional and Rehabilitation Center (“HCCRC”). Starting in 2018, and after multiple lawsuits, the County determined to award the contract on an annual basis as a professional services contract, as permitted under N.J.S.A. 40A:11-5, rather than through a lowest responsible bidder or competitive contracting methodology. While the OSC initially objected to this procurement process in 2018, it failed to issue an appealable Final Agency Decision and did not disapprove or take any action with respect to successive one year professional services contracts issued by the County from 2019 through 2023.

With respect to the 2024 procurement process, the OSC resurrected its long forgotten, albeit ill-conceived objections. The County has complied with all requests for information from the OSC, has participated in recorded interviews, and has been transparent and cooperative. But cooperation and compelled capitulation, lacking a reviewable administrative record, are not synonymous. Nor are the Comptroller’s erroneous legal conclusions entitled to any deference from this Court.

To resolve their fundamental disagreement as to whether this contract may be awarded as a one year professional services contract, utilizing a non-fair and open

process, the County has repeatedly requested that the parties jointly seek a judicial determination – which the OSC has refused to undertake and has thwarted each of the County’s past efforts for judicial review. It is apparent that the OSC prefers to act by bureaucratic fiat.

The County has awarded this contract from 2018 through 2024 as a one year professional services contract, by invitation to bidders, each time on notice to the OSC. The OSC has never issued a Final Agency Action during this period and did not move to enjoin any of these contracts.

On August 5, 2024, the OSC issued a Final Agency Decision rejecting the HCCRC medical services contract months after the contract was awarded, on notice to the OSC on the day of its award, March 28, 2024. No action to enjoin the contract, either before or after its award, was filed by the OSC, and the OSC has provided no explanation for its failure to render a Final Agency Decision until August 2024. Within 93 minutes of serving its Final Agency Decision on August 5, 2024, the Comptroller filed an enforcement proceeding in the Superior Court, Chancery Division, Hudson County.

The Final Agency Decision is noteworthy for its conclusions, albeit unsupported factually or legally, but, importantly, for the first time, the August 5 decision has provided the County with a right of appeal and an opportunity to obtain a judicial determination regarding its procurement process. The County filed the

within timely appeal of the Final Agency Decision on August 30, 2024. After receiving the Final Agency Decision and prior to filing its Notice of Appeal, the County advised that, while the OSC has rendered legal conclusions regarding the medical services contract with which the County disagrees, this is a mixed question of law and fact which requires an evidentiary hearing. The Comptroller failed to respond and has opposed the County's efforts for a remand for an evidentiary hearing in the trial court and the Appellate Division.

The OSC clearly fears the development of a factual record, recognizing that it will expose its lack of a medical expert, its failure to interview any medical personnel providing services under the current contract or to obtain sworn testimony from any County personnel regarding the procurement process or the nature of the services knowing that it will undermine the OSC's erroneous legal conclusions.

Based on the above, the County respectfully requests that this Court set aside the Final Agency Decision as arbitrary, capricious and unreasonable, unsupported by the factual record, and premised on improper legal and factual conclusions. In the alternative, the County asks this Court to remand this matter for an evidentiary hearing for the development of a reviewable administrative record.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

The County is constitutionally required to provide health care services to the inmates at the HCCRC. (Pa1361, ¶ 4) Since 2008, the process by which the County has awarded the contract for the provision of those services – whether by lowest responsible bidder or competitive contracting -- has been fraught with litigation. (Id., ¶ 5)

2008 Contract and Ensuing Appeal

In 2003, the County awarded a five year contract to Correctional Health Services, LLC (“CHS”) to provide medical and related services for both adult inmates and juveniles detainees. CFG Health Systems, LLC v. County of Hudson, 413 N.J. Super. 306, 310 (App. Div. 2010). (Id., ¶ 6)

In anticipation of the expiration of that contract, in 2008, the County issued a publicly advertised request for proposals (“RFP”) on a new five year contract and ultimately awarded the contract to CHS. Id. at 310-312. The unsuccessful bidder, CFG Health Systems, LLC (“CFG”), challenged the award in both the trial court and the Appellate Division based on a post-award reduction in staffing. Id. at 312. In a reported decision, the Appellate Division held that post-bid revisions to the contract constituted a material change in the RFP but did not require the County to re-bid the

¹ The Statement of Facts and Procedural History of this matter are intertwined and, therefore, are set forth in a combined statement.

contract. Id. at 317 and 322.

2010 Contract and Ensuing Appeal

The County ultimately determined to terminate the contract with CHS and to seek new bids. CFG Health Systems, L.L.C. v. County of Hudson, 2012 WL 2923306 (App. Div. 2012). (Pa1) Accordingly, the County issued a publicly-advertised RFP, using a competitive contracting methodology, for award of the contract. (Pa2) The Board of Freeholders (now known as the Board of Commissioners) determined to reject all bids, based on an expressed bias in favor of CHS by one of the evaluators on the competitive contracting evaluation committee, and awarded an eight month contract to CHS. (Pa2)

CFG again challenged the contract award to CHS in the trial court which invalidated the contract award to CHS and directed the County to award the contract to CFG. (Pa2-3) CHS appealed. The Appellate Division determined to affirm the trial court's ruling, directing the County to award the contract to CFG, as the lone responsive bidder (Pa7), while observing the following in its decision:

We note initially that we do not share the trial court's view that the County's decision to reject all bids would give rise to an inference of favoritism towards CHS.

Indeed, it appears that by rejecting all bids, the County was endeavoring to avoid creating such an inference, in view of Dr. Molinari's disclosure of his perceived bias in favor of CHS. Moreover, if the County wanted to contract with the 'favorite son,' it would have awarded the contract to CHS, rather than ordering a third round of bidding.

(Pa4)

The Appellate Division ruled in favor of CFG, and CFG became the medical services provider at the HCCRC and continued serving as the medical vendor through on or about June 28, 2018, when the County entered into a Transition Agreement, terminating CFG's services. (Pa1363, ¶ 12)

Multiple Inmate Deaths Occurred during CFG's Tenure Resulting in Multiple Lawsuits against the County.

In 2018, after the tragic death of five inmates at the HCCRC, the County determined to terminate its contract with CFG and to undertake a revised selection process to ensure necessary, high quality services to the HCCRC population. (Pa1363-64, ¶¶ 13-14)

The County prepared detailed specifications, shared with nationally recognized, competent correctional healthcare providers, and distributed the specifications to 10 potential vendors, inviting the submission of proposals by way of a non-fair and open process, in accordance with New Jersey Pay to Play laws, N.J.S.A. 19:44A-20 et seq. (Pa1364, ¶ 15) The specifications provided that the contract would be awarded as a professional services contract, pursuant to N.J.S.A. 40A:11-5, for a term not to exceed three years, in accordance with N.J.S.A. 40A:11-15(29). (Id.) When the OSC objected to the award of a three year professional services contract, the County deferred to OSC's advice and determined to award a

one year professional services contract. (Pa1366, ¶¶ 21-22)

But the dispute about the procurement process undertaken by the County and the award of this contract as a professional services contract continued. Lacking a Final Agency Decision by OSC with respect to the 2018 professional services contract, the County filed a declaratory judgment action in the Superior Court, Chancery Division, Hudson County, for a judicial determination – which was opposed by OSC. (Pa1368, ¶ 27) The matter was transferred to the Appellate Division for adjudication. (Id., ¶ 28)

OSC also opposed this lawsuit in the Appellate Division and specifically urged that the County’s suit “should be dismissed without the court reaching the merits.” (Id., ¶ 29; Pa15) In a 2020 decision, the Appellate Division declined to reach a conclusion on the applicability of the professional services exception but did not disallow the professional services contract awarded to Correct Care Solutions (now known as Wellpath) or disallow such a contract in the future. (Pa17) The Appellate Division rested its decision on the notice provision of N.J.S.A. 52:15C-10(b) and concluded that “[t]he statute contemplates a cooperative effort between the local government entity and the State Comptroller to ensure compliance with the LCPL [Local Public Contracts Law]. In the event that those efforts do not result in the State Comptroller’s approval of the county’s intended procurement process for a new contract, the county may at that time seek judicial relief.” (Pa29) The County

now seeks that judicial relief.

The County Has Awarded One Year Professional Services Contracts Every Year from 2018 to 2023, on Notice to and Without Exception by the OSC.

Significantly, since 2018 and continuing until 2023, the County awarded successive 12 month professional services contracts based upon negotiations as to terms and pricing. Each contract consisted of an annual professional services contract, approved by the Board of Commissioners by Resolution. For each of these professional services contracts, the County provided post-award notice of the contract to the OSC, in accordance with N.J.S.A. 52:15C-10a. At no time did the OSC indicate any dispute with any of these awards. (Pa1369, ¶ 31)

The OSC did not advise the County that it was impermissible to award a professional services contract, even though the contracts each included a small percentage of related ancillary services, and did not require the County to engage in either competitive contracting or to select a vendor for medical services based on a lowest responsible bidder scheme from 2019 through 2023. (Id., ¶ 32) Consequently, the County reasonably believed that once it had agreed to reduce the term of the contract from three years to one at OSC's direction, OSC had no further opposition to the award of the medical services contract by invitation to bid. (Id., ¶ 33)

In the Spring 2023, the County determined to again utilize the process initiated in 2018 for selection of a medical provider at the HCCRC for the award of a one year professional services contract for 2024. (Pa1370, ¶ 34) In July 2023, the County

retained Amanda Parsons, MD, MBA of Triple Aim Consulting, LLC to review the specifications previously used in 2018, and as modified in subsequent contracts, to incorporate modifications and additions to the specifications to better satisfy the needs of the correctional facility. (Id., ¶ 35) Dr. Parsons has significant experience in the field of correctional health and provided advice and guidance to the County with respect to the 2018 HCCRC medical contract. (Id.)

The face amount of the 2023 contract was \$11,053,077. (Pa1375, ¶ 53) While some changes to existing services were included in the 2023 specifications for the 2024 contract, e.g., enhanced mental health services, the County did not anticipate that a one year contract in 2024 would exceed or approach the \$12.5 million threshold requiring notice to be provided to the OSC when the specifications were prepared.² (Pa1370, ¶ 35, Pa1375-1376, ¶¶ 53-55)

In July 2023, the County issued specifications to eight vendors in the field of correctional health. (Pa1371, ¶ 37) In August 2023, the specifications were sent to a ninth vendor. (Id.) A tenth vendor secured a copy of the specifications from another vendor, but ultimately declined to participate. (Id.) Site visits were scheduled with

² It was not until in or about November 2023 that the County learned that certain nursing services had not been factored into the 2023 contract or paid to Wellpath. When the cost for the nurses is considered, the expired contract amount should have been increased by approximately \$1,737,934, thus bringing the contract over the statutory threshold for pre-solicitation submission to the OSC. (Pa1375, ¶ 54; Pa543; Pa673-675)

each vendor to gain familiarity with the medical and custodial operations at the jail in August 2023. (Id., ¶ 38) The vendors were then offered the opportunity to submit questions to the County regarding the specifications and the proposed contract, with the questions and responses shared with each vendor. (Id., ¶ 39)

Six vendors submitted proposals on September 22, 2023. (Pa1372, ¶ 40) The vendor pricing for a one-year contract varied from a low of \$12,689,173 to a high of \$16,839,107. (Id.) The County Qualified Purchasing Agent shared the proposals with the ad hoc review Committee formed by the County, which included members of the Hudson County Board of Commissioners, the Deputy County Administrator, high ranking representatives from the HCCRC, and HCCRC medical consultant/County employee Dr. Samuel Kahnowitz. The County Purchasing Agent and County Counsel provided technical support and guidance to the review Committee but were not voting members. (Pa1372, ¶ 41) The vendor proposals were shared with Dr. Parsons and her colleague Tina DeVico for review and analysis. Dr. Parsons prepared a synopsis of each proposal to assist the Committee in the evaluation of the proposals. (Id., ¶ 42; Pa283-309)

Each vendor participated in a meeting with the Committee to make a presentation and to answer questions from the Committee members in October 2023. (Pa1373, ¶¶ 43, 45) After the conclusion of the interviews, the Committee met with Dr. Parsons and Ms. DeVico along with the County Purchasing Agent and County

Counsel to discuss the proposals and the information gathered during the interviews. (Id., ¶ 45) Prior to the discussion, each participant was asked to weigh in with respect to the vendor proposals and presentations to establish a starting point to ascertain which vendors were serious candidates for the contract prior to any deliberation. (Id., ¶ 46) The Committee (excluding Dr. Parsons, Ms. DeVico, the Purchasing Agent and the County Counsel) agreed to eliminate certain vendors from consideration. (Id.) While the Purchasing Agent and the County Counsel provided input, they did not participate in the final assessment as to which vendors would be brought back for a subsequent interview. (Id.)

The remaining two vendors, NaphCare and Wellpath, were invited to attend another round of interviews with the Committee in November 2023. (Pa1374, ¶ 47) Prior to the second round interviews, and with assistance and input from Dr. Parsons, the County Purchasing Agent directed questions to each vendor for additional information and/or clarification, with written responses provided by NaphCare and Wellpath. (Id.; Pa496; Pa499; Pa502; Pa513) Each vendor was given two hours to supplement their previous presentation and to address further questions from the Committee, which questions were developed with the assistance of Dr. Parsons. (Pa1374, ¶ 48)

After the Committee's second interview with representatives from NaphCare and Wellpath, the Committee reached a consensus that Wellpath was the superior

choice, after consideration of the quality of service currently provided by Wellpath, to be continued and enhanced based on Wellpath's proposal, at a competitive price, and without the disruption caused by a transition to a new vendor with limited knowledge of the facility or the population served. (Id., ¶ 49) The Committee directed the County Counsel, along with Deputy Administrator Oscar Aviles and HCCRC Director Scott, to meet with Wellpath to discuss the contract terms. (Id.)

The meeting occurred on November 16, 2023 and, as the result of those discussions, the vendor agreed to contract terms beneficial to the County with respect to pricing and performance. (Pa1375, ¶ 50) The following day, November 17, 2023, the County notified OSC of its intention to award a one year contract for medical and related services at the HCCRC to Wellpath for \$13,488,000 and provided the specifications and other required documents associated with this proposed award. (Id., ¶ 52; Pa791; Pa799; Pa1278)

OSC responded to the County on December 12, 2023, resurrecting its prior arguments regarding professional services – which it had expressly requested that the Appellate Division not adjudicate in the County's prior appeal and which was inconsistent with the position that it had tacitly endorsed for the past five years with respect to the annual professional services contract awarded from 2019 through 2023. (Pa1376, ¶ 56; Pa15; Pa1279)

In a series of letters, OSC requested additional information from the County.

The County provided responses on December 18, 2023, January 10 and 23, February 23 and March 6 and 18, 2024, and supplied requested documents. (Pa1376, ¶ 57; Pa30-Pa753) Additionally, at OSC's request, OSC conducted recorded, but unsworn, interviews of Qualified Purchasing Agent Christine Moro, Esq. and Hudson County Counsel Donato J. Battista on February 9, 2024. (Pa1377, ¶ 58) Throughout this process, the County has been fully cooperative and transparent in its interaction with the Comptroller's Office. (Id., ¶ 59)

On March 1, 2024, the County Counsel received a letter from Wellpath indicating its unwillingness to continue to provide health care services at the HCCRC utilizing 2023 contracted rates and of its intention to "exit Hudson County and no longer provide medical and mental health services effective 11:59 pm, March 31, 2024." (Id., ¶ 60; Pa742) A copy of Wellpath's letter was provided to OSC on March 6, 2024. (Pa1377, ¶ 60; Pa740)

The County had now reached a crisis point. Based on its constitutional obligation to provide medical and related services at the HCCRC, the County was required to take immediate action so that these vital services could continue. (Pa1377, ¶ 61) In recognition of the good faith difference of opinion regarding whether the proposed contract with Wellpath constitutes a contract for professional services, the County again proposed that the parties jointly seek a determination from the Appellate Division on this issue – which the OSC has repeatedly rejected.

(Pa1377-78, ¶ 62) And although the OSC had advised the County in its December 12, 2023 letter of its renewed opposition to the award as a professional services contract, no Final Agency Decision, appealable by right by the County, was issued by OSC. (Id.)

The County informed OSC that it would seek approval from the County Board of Commissioners on March 28, 2024 to award the proposed contract to Wellpath. (Pa1378, ¶ 63) Although on notice, OSC took no action to enjoin the contract award prior to March 28, 2024 and did not issue a Final Agency Decision then or at any prior time which would have been appealable by right by the County. (Id., ¶ 64)

Immediately following the Commissioners' meeting on March 28, 2024, County Administrator Abraham Antun sent an email and attachments thereto at 3:43 pm advising OSC, among others, that a one year professional services contract had been awarded to Wellpath for the period April 1, 2024 through March 31, 2025. (Id., ¶ 65; Pa754; Pa743; Pa755; Pa766; Pa777) At 3:48 pm on March 28, 2024, County Administrator Antun received an acknowledgment of receipt of his March 28, 2024 email from OSC. (Pa1378, ¶ 66; Pa780)

OSC took no action to enjoin the contract after its award and did not issue a Final Agency Decision after receiving notice that the contract had been awarded which would have been appealable by right by the County in March 2024. (Pa1378, ¶ 67) It should further be noted that there has been no challenge to the process or to

the contract award by any of the unsuccessful vendors, any potential vendor, or member of the public or taxpayer. (Pa1379, ¶ 68)

The Acting State Comptroller Issues a Final Agency Decision for the First Time on August 5, 2024.

By letter, dated June 28, 2024, OSC was timely advised of the County's intention to award either a one year professional services contract to Wellpath or to employ an informal procedure similar to that undertaken by the County previously, to occur prior to the expiration of the current contract with Wellpath on March 31, 2025. (*Id.*, ¶ 69; Pa1322) With that letter, and in accordance with N.J.S.A. 52:15C-10b(1), the County provided OSC with advance notification of the County's intentions with respect to the HCCRC medical services contract process, with an anticipated effective contract date of April 1, 2025. (Pa1379, ¶ 69)

While continuing to maintain that its process and award comported with all requirements of the Local Public Contracts Law, the County recognized its disagreement with OSC as to whether the medical services contract may be legally awarded in the manner utilized. (*Id.*, ¶ 70) As the County had offered repeatedly in the past, the way to resolve the differences in their respective interpretations was to jointly seek a judicial determination of whether the contract services in question qualify as professional services and whether the informal process is permitted under the Local Public Contracts Law. (*Id.*) Yet, the County received no response to the June 28, 2024 letter. (Pa1380, ¶ 71)

Rather, some six weeks later and belying any urgency on the part of OSC, on August 5, 2024, the County received the Final Agency Decision by email at 3:58 pm. (Pa1380, ¶ 72; Pa781) Approximately 90 minutes later, the Verified Complaint for an enforcement proceeding was served on August 5, 2024 at 5:31 pm. (Pa1380, ¶ 73, Pa787)

While the County disputes both the legal and factual underpinning of the Final Agency Decision, there were two additional significant aspects of the decision. The August 5 Decision refers to Wellpath as “the County Counsel’s preferred vendor.” (Pa785) The County Counsel claims no personal, financial or other relationship with Wellpath and the Acting State Comptroller has provided no facts to support his accusation. (Pa1380, ¶ 75)

The Acting Comptroller further asserts that the County refuses to work cooperatively with his office. (Pa1381, ¶ 77; Pa784) The County has invited OSC to join with the County to seek judicial review of their legal dispute on numerous occasions but have been continuously rebuffed in that request. The County has replied to all requests for information and interviews and has been fully transparent and truthful in its interaction with the OSC. Seeking an adjudication jointly of a contested legal issue is the sine qua non of cooperation, which the OSC has eschewed. (Pa1381, ¶ 77)

On August 30, 2024, the County filed an appeal of the Final Agency Decision

in addition to the December 12, 2023 and March 21, 2024 letters issued by the OSC, if they, in fact, constitute interlocutory orders. (Id., ¶ 79; Pa1326)

The County Seeks a Hearing with Respect to Disputed Facts.

Prior to filing the appeal, the County requested a hearing with respect to certain factual issues which directly bear on the seminal issue in dispute, i.e., whether the HCCRC health care contract constitutes a professional services contract. (Pa1381, ¶ 80; Pa1330) While the OSC has rendered legal conclusions with respect to this issue with which the County disagrees, the County contends that this is a mixed question of law and fact which requires an evidentiary hearing. In fact, the OSC has never presented any facts or expert to support its erroneous conclusion that this is not a professional services contract or to counter Dr. Parsons's opinions. (Pa1381-82, ¶ 80)

As the underpinning of its hearing request, the County noted the following. OSC Director of Procurement Geary conducted interviews of the Qualified Purchasing Agent and the County Counsel but failed to swear in either of them. (Pa1382, ¶ 81) Director Geary failed to utilize a court reporter, and no certified or accurate transcript has ever been produced of these interviews. The OSC also neglected to obtain sworn testimony by or even interview the medical provider performing the actual services at the HCCRC or from the County's outside correctional health care expert, Dr. Parsons, who has concluded that up to 94.5% of

the contract services may be characterized as medical. (Id., ¶ 82; Pa1383, ¶ 85; Pa668)

Notably, the Final Agency Decision, as well as the other letters issued by OSC, did not refer to and do not rely on any medical opinion regarding the nature, quality, or character of the services to be rendered under the subject contract. (Pa1382, ¶ 83) The Final Agency Decision further makes a factual finding, albeit wholly incorrect, that the selection process was skewed in favor of the County Counsel's alleged "preferred vendor." (Pa785) This erroneous determination requires the development of a factual record or it should be summarily set aside. (Pa1383, ¶ 84)

The County advised that it was prepared to present witnesses at a hearing to support its contention that the health care contract, effective April 1, 2024, (as well as the HCCRC health care contracts issued annually, on notice to and never disapproved by the OSC over the prior five year period, and those to be issued in the future, if permitted) constitute professional services contracts and can be properly awarded. (Id., ¶ 85) These witnesses include:

- Dr. Parsons: A physician and recognized expert in correctional health who participated in the development of the specifications for the 2018 and 2023 HCCRC medical contracts, provided advice and input to the review Committee and rendered an analysis of the specifications regarding the quantity and type of medical services

to be provided. Dr. Parsons has concluded that up to 94.5% of the contract is for direct medical services (Pa1383; Pa668);

- Dr. Kahnowitz: A physician who serves as the County's liaison for medical services at the HCCRC, participated as a member of the Committee which vetted the six vendors who submitted proposals for the HCCRC medical contract and can testify regarding the services actually provided and required ancillary services (Pa1383);
- Herbert Smyczek, M.D.: A physician and Wellpath Medical Director who can describe the services actually provided and required ancillary services (Pa1384);
- Deputy County Administrator Aviles: Former Director of the HCCRC who researched nationally recognized medical providers in the field of correctional health for submission of proposals for the HCCRC contract and participated in the review Committee and in the negotiation of the Wellpath contract (Id.);
- HCCRC Director Becky Scott: Participated in the review Committee and in the negotiation of the Wellpath contract (Id.);
- Geoffrey Perselay, Esq.: Serves as a consultant for the County, responsible for review of Wellpath's billing and comparison with the matrix of services identified in the Specifications (Id.);
- Christine Moro, Esq.: Hudson County Qualified Purchasing Agent who participated in the development of the Specifications along with Dr. Parsons and

served as staff to the review Committee (Id.); and

- County Counsel Battista: Has been involved in each of the procurements for medical services at the HCCRC as County Counsel since 2003 and served as staff to the review Committee in 2023. He can also rebut the Acting Comptroller's allegation that Wellpath is his "preferred vendor." (Id.)

The County did not receive the courtesy of a reply to the hearing request from the OSC or its counsel. (Pa1385, ¶ 89)

After receipt of the Final Agency Decision and enforcement action, the County filed an application for an evidentiary hearing which was granted by the Hon. Jeffrey R. Jablonski, then serving as the Hudson County Assignment Judge.³ (Pa 1385, ¶ 90) In an Order entered on October 16, 2024, Judge Jablonski granted the County's request for an evidentiary hearing to "provide a record that might be helpful to the Appellate Division" based on "substantial issues of fact and law that can only be established by an evidentiary hearing." (Id., ¶ 91; Pa1332-1333)

In the accompanying statement of reasons placed on the record on October 16, 2024, the trial court recognized that the dispute between the parties concerned the procurement process for the correctional health contract and whether it was properly awarded as a one year professional services contract. (Pa1337 [T4-8 to 14]) Judge Jablonski observed that the OSC had not issued a Final Agency Decision until

³ On November 7, 2024, Judge Jablonski was elevated to the Appellate Division.

months after the contract award and the County's multiple prior attempts to obtain a judicial determination regarding the propriety of its procurement process had been impeded by the OSC. (Pa1337-1338 [T4-16 to 5-18]; Pa1341 [11-5 to 12])

The trial court agreed with the County's assertion that the dispute as to whether this contract constitutes professional services involves mixed questions of law and fact regarding the nature of the services provided for which the County has obtained expert analysis of the specifications and services, unrebutted by OSC. (Pa1339 [T7-19 to 8-7]) The trial court found "that there are both factual and legal issues that need to be decided as to whether the determination that is made by the O.S.C. is correct." (Pa1340 [T10-14 to 20])

On October 17, 2024, Judge Jablonski issued an additional Order, deferring a decision on the Acting Comptroller's enforcement action, pending the evidentiary hearing scheduled for December 16 and 17, 2024. (Pa1386, ¶ 94; Pa1343)

The Acting Comptroller filed an emergent appeal of the October 16 and 17, 2024 Orders. On November 6, 2024, the Appellate Division reversed both Orders finding that the trial court did not have jurisdiction to order a hearing (unless remanded by this Court for this purpose), and remanded the matter to proceed with the enforcement action. (Pa1347) The November 6, 2024 Order on Emergent Motion makes no determination regarding the merits of the County's appeal with respect to whether the HCCRC medical contract constitutes a professional services contract,

exempt under the Local Public Contracts Law, or whether an evidentiary hearing is required to establish a fulsome record for judicial review. (Id.)

On November 18, 2024, the County sought a stay of the enforcement action pending a determination by this Court regarding the propriety of its procurement process and whether the medical contract constitutes a professional services contract exempt from the Local Public Contracts Law and requested a remand for an evidentiary hearing prior to filing its merits brief on appeal. (Pa1357) The Appellate Division denied the County's Motion by Order filed on December 17, 2024, finding that it has not demonstrated entitlement to relief under Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013), and Crowe v. DeGioia, 90 N.J. 126, 132-33 (1982). (Pa1390)

On December 18, 2024, the Hon. Joseph A. Turula entered an Order Enforcing the Final Agency Decision – albeit with no Court ever endorsing or ruling on the Comptroller's strained view of the propriety of the HCCRC medical contract award. (Pa1392)

In the Legal Argument which follows, the County will demonstrate that the award of the medical services contract as a professional services contract, utilizing a non-fair and open process, is permissible under the Local Public Contracts Law, requiring reversal of the August 5, 2024 Final Agency Decision. If the Court finds that the Acting State Comptroller has failed to adduce a sufficient administrative

record, based on disputed adjudicatory facts, the County respectfully requests that the matter be remanded to the trial court or the Office of Administrative Law for an evidentiary hearing.

STANDARD OF REVIEW

The New Jersey State Constitution provides for judicial review of administrative agency action. N.J. Const. art VI, § 5, ¶ 4. Agency action “will be sustained unless there is a clear showing that it is arbitrary, capricious or unreasonable, or that it lacks fair support in the record.” In Re Proposed Constr. Of Compressor Station (CS327), 258 N.J. 312, 324 (2024), citing Mount v. Bd. of Tr., PFRS, 233 N.J. 402, 418 (2018).

Citing In re Carter, 191 N.J. 474, 482 (2007), the Court in In re Ambroise, 258 N.J. 180, 197-198 (2024), provided the following legal standard for an agency decision:

To assess whether an agency decision is arbitrary, capricious, or unreasonable, a court must examine:

- (1) whether the agency’s action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action;
- and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

However, when an agency interprets a statute or case law, a court will review that construction under a de novo standard of review. In Re Proposed Constr. of Compressor Station (CS327), 258 N.J. at 324; Russo v. Bd. of Tr., PFRS, 206 N.J. 14, 27 (2011); Bulur v. The New Jersey Office of the Attorney General, ___ N.J. Super. ___ (App. Div. 2024) (slip op. at 9). A court is "in no way bound by an agency's

interpretation of a statute." Russo v. Board of Trs., PFRS, 206 N.J. 14, 27 (2011), quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93, 312 (1973).

Applying either of these standards of review, the County urges that the Comptroller's Final Agency Decision must be reversed.

LEGAL ARGUMENT

POINT I

THE CONTRACT FOR MEDICAL AND RELATED SERVICES AT THE HCCRC MAY BE AWARDED AS A PROFESSIONAL SERVICES CONTRACT. **(Pa782; Pa760; Pa1279)**

While the Local Public Contracts Law, N.J.S.A. 40A:11-4, generally provides for an award of goods or services to be awarded to the lowest responsible bidder, the Legislature has adopted numerous exceptions to public bidding under N.J.S.A. 40A:11-5. (Pa762)

N.J.S.A. 40A:11-5(1)(a)(i) expressly exempts professional services contracts from public bidding. The statute provides in relevant part, “Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if ... [t]he subject matter thereof consists of ... [p]rofessional services.” N.J.S.A. 40A:11-5(1)(a)(i).

Professional services has been defined by the Legislature as:

services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or

services that are original and creative in character in a recognized field of artistic endeavor.

N.J.S.A. 40A:11-2(6); see also N.E.R.I. Corp. v. N.J. Highway Auth., 147 N.J. 223, 237 (1996).

New Jersey case law provides that professional services, such as medical services, are not required to be secured by public bidding because of the inherent ability to “nullify or detract from the professional quality of the services being sought.” Capasso v. Pucillo, 132 N.J. Super. 542, 550 (Ch. & Law Div.), aff’d, 132 N.J. Super. 473 (App. Div. 1974). The court in Capasso, 132 N.J. Super. at 550, emphasized that, “The exceptions are generally grounded in situations where public bidding would be meaningless or impractical. It was always the law that public bidding was dispensed with where the municipality or other governmental unit was contracting for professional services, whether **medical**, legal or otherwise.” (Emphasis added.)

The essence of a professional service is that it involves specialized knowledge, labor or skills and the labor or skill is **predominately** mental or intellectual, rather than physical or manual. Atlantic Mut. Ins. Co. v. Continental Nat’l Amer. Ins. Co., 123 N.J. Super. 241, 246 (Law Div. 1973), Autotote, Ltd. v. N.J. Sports & Exposition Auth., 85 N.J. 363, 372 (1981); Nachtigall v. N.J. Tpk. Auth., 302 N.J. Super. 123, 137 (App. Div. 1997), certif. denied, 151 N.J. 77 (1997); Borough of Princeton v. Bd. of Chosen Freeholders of Cty. of Mercer, 333 N.J.

Super. 310, 329-30 (App. Div. 2000). As set forth by the court in Baylinson v. Board of Commissioners of the Housing Authority of the City of Atlantic City, 282 N.J.

Super. 132, 135-136 (Law Div. 1995):

Whether such services be medical, legal or otherwise, professional services are not to be secured by public bidding because there is something inherent in the process which would nullify or detract from the professional quality of the services being sought. Capasso v. Pucillo, 132 N.J. Super. 542 ... (Ch. & Law Divs.), aff'd, 132 N.J. Super. 473 ... (App. Div. 1974). Contracts for legal services are included as professional service contracts, and public bidding is not necessary. Id. at 550 ...

While the court in Baylinson considered a contract for legal, rather than medical, services, the same rationale applies: professional services do not require public bidding.

In addition to the Legislature's express exemption of professional services from public bidding under the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(i), our courts have made clear that the inclusion of ancillary services to a professional services contract does not change the characteristic of the contract as professional services. Autotote, 85 N.J. at 372; Nachtigall, 302 N.J. Super. at 137.

The decision in Autotote, 85 N.J. at 372, involved the award of a contract by the New Jersey Sports and Exposition Authority ("NJSEA") to a private company without public bidding, for the installation and servicing of a totalisator system at the Meadowlands racetrack. In finding that ancillary services did not detract from

the classification of the contract as one for professional services, exempt from public bidding, the Court there noted, “The contract under review calls for both equipment and services. These services are not limited to standby personnel who are called upon to act only in case of malfunction. The system needs specially trained technicians to supervise day-to-day operations. Without them, the system could not function.” Id. at 371. Although these specially trained technicians are not persons authorized by law to practice a specific profession, under the Local Public Contracts Law definition of professional services, used as reference point, the Court considered the contract as a whole as one for professional services. Id.

Similarly, in Nachtigall, 302 N.J. Super. at 134, the Appellate Division reviewed whether the inclusion of ancillary services changed the characterization of a professional services contract and held that it did not. The court “concluded that the contract here involved is one for professional services exempt from the competitive bidding laws requiring award to the lowest responsible bidder[.]” Id. In so finding, the appellate court stated:

We recognize that the proposal has some individual aspects that are not themselves professional services, such as digging the trench for the fiber optic cable and laying it, and providing the patented hardware. But we also think it plain that these elements of the proposal are inseparable from the predominant nature of the entire proposal, which is, essentially, an agreement by MFS to provide a combination of coordinated professional services, namely traffic-consulting services; the highly specialized financial and marketing services involved in designing, operating,

and servicing the CSC; the development of the highly sophisticated software essential to the running of the coordinated system; and the provision of brokerage services involving the marketing and leasing of highly technical communication access facilities.

Id. at 134-35. (Emphasis added.)

The OSC urges that the professional services exemption does not apply, claiming that the definition of professional services under the Local Public Contract Law “is limited to services performed by *a person* with specific credentials” and concludes that Wellpath (or any of the other entities that submitted proposals) do not meet the definition of professional services as a “full-service management company that performs a bundle of health care, mental health care, fiscal management, and administrative services” at the HCCRC. (Pa762) The OSC’s position does not square with existing case law which sustained awards to entities, as opposed to individual professionals, and which included ancillary services and software required to fulfill the contract. Autotote, 85 N.J. at 372; Nachtigall, 302 N.J. Super. at 134-135.

Further, the OSC’s interpretation does not comport with the manner in which modern medicine is practiced – whether in a correctional setting, an urgent care center, or a doctor’s office. A doctor cannot function, for example, without a medical technician, a medical assistant, a phlebotomist, or an electronic records coordinator – none of which are licensed in New Jersey, yet are included as necessary ancillary services in the medical contract at the HCCRC. Nor is the

Comptroller's statutory interpretation entitled to any deference which must be addressed by this Court de novo.

The OSC's examination of the scope of work in the specifications for the 2024 contract provides a glaring example of the fallacy of its position. In an effort to support its finding that the subject contract cannot be awarded as a professional services contract, the OSC has described the services to be provided:

The scope of work in the 2023 Specifications includes an array of tasks to provide inmate patient care services beginning with inmate intake, including screening, sick call, infirmary, and ambulatory care to be provided by a management company that employs both licensed professionals and unlicensed administrative staff. The County's stated program objectives are to provide comprehensive health care management, mental health care management, Medication Assisted Treatment (MAT)⁴

(Pa767)

By OSC's own description of the Specifications for the 2024 contract, any objective observer would understand these to be medical and technical related services.

The OSC also objects to the inclusion of assisting inmates to enroll in Medicaid or health insurance plans and to the submission of claims to outside payors as part of a professional services contract. (Pa767-68) Again, these are services which would be undertaken by any medical provider. And if there is any bona fide

⁴ The Medication Assisted Treatment (MAT) program treats inmates with opioid use disorder. (Pa767)

dispute regarding whether any of these ancillary services are customarily undertaken in a medical practice, this should have been the subject of an evidentiary hearing, not a determination rendered by the OSC without factual basis. An evidentiary hearing is required when the administrative action is based on disputed adjudicatory facts. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995); In re Farmers' Mut. Fire Assurance Ass'n of NJ, 256 N.J. Super. 607, 618 (App. Div. 1992)

While a fraction of the contemplated medical services contract does not explicitly fall within the “medical” professional services exception, as determined by Dr. Parsons (with approximately 90 to 95% of the services constituting direct patient services), this small portion is inseparable from the predominant nature of the entire contract, which is an agreement to provide highly necessary, constitutionally mandated medical services at the HCCRC. The OSC attempts to undermine Dr. Parsons’s conclusion that an overwhelming proportion of the Specifications are professional services, suggesting that only an individual with a “law degree” is capable of rendering that assessment. (Pa768) Ironically, lawyers at the OSC have deemed themselves uniquely qualified to determine what is “medical” and have further decided that a medical services contract can be performed without “medical assistants, unit coordinators, administrative coordinators, medical records administrators, medical records clerks, and x-ray

technicians,” lacking any identified medical expert or common sense to support their conclusion. (Pa771) An evidentiary hearing is required based on disputed evidentiary facts, Contini, 286 N.J. Super. at 120, if the Court determines to rely on the OSC’s unsourced opinion.

The OSC further claims that the procurement approach employed by the County limited competition, but this is patently untrue. (Pa773; Pa785) In fact, the selection process utilized by the County resulted in more competition than in previous years. It cannot be disputed that using the County’s procurement model, more vendors were solicited, more vendors participated and more proposals were received by the County than in the prior 20 years of medical contract procurement at the HCCRC. (Pa1388, ¶ 100; Pa785)

The OSC’s preferred method for the award of the medical services contract is through competitive contracting, as permitted by N.J.S.A. 40A:11-4.1. (Pa774) But review of the competitive contracting statute reveals that this method “may” be utilized to procure medical services at a county correctional facility, N.J.S.A. 40A:11-4.1(h). The statute does not require the use of competitive contracting for County correctional medical services.

The Acting State Comptroller claims that the procurement process utilized by the County lacked sufficient transparency because the County invited nationally recognized entities to submit proposals, rather than advertising for medical providers

on the County website for this specialized contract. (Pa774; Pa785) But the OSC fails to recognize that this process yielded a larger pool of applicants and included additional bidders not invited by the County. All of the proposals were vetted through a multi-step process. Ultimately, the Board of Commissioners made the determination to award the contract, at an open session, by public Resolution. There has been no objection to the process or to the award, and no lawsuit has been filed by any bidder not invited to participate, by any of the unsuccessful bidders or by any member of the public or taxpayer – none of which has been acknowledged by the OSC.

In addition to selecting qualified companies to submit proposals, the procurement method devised by the County permitted negotiation of the contract price. The Acting State Comptroller objects to this negotiation – even though it indisputably resulted in a reduction in cost of hundreds of thousands of dollars in favor of the County. (Pa785) Moreover, the professional services exemption expressly permits negotiation and award without public advertising. N.J.S.A. 40A:11-5(1)(a)i.

The Final Agency Decision further attempts to undermine the integrity of the process undertaken by referring to Wellpath as the “County Counsel’s preferred vendor.” (Pa785) The County Counsel has denied any personal, financial or other relationship with that vendor. (Pa1324; Pa1380, ¶ 75) The logical inference of the

Acting State Comptroller's inflammatory words is that the County Counsel engaged in a level of conduct that was a willful violation of the Local Public Contracts Law by selecting this vendor or worse, that the conduct was unethical and potentially criminal – all of which have been denied. (Pa1324; Pa1380, ¶ 76) As significantly, the OSC has not provided a scintilla of proof that the County Counsel “preferred” Wellpath or in any manner infected or affected the procurement process in favor of Wellpath. An evidentiary hearing is required based on disputed evidentiary facts, Contini, 286 N.J. Super. at 120, if the Court determines to rely on the Acting State Comptroller's finding.

After years of litigation, the County developed a process for the selection of the medical provider at the HCCRC, which relies on an exception to the Local Public Contracts Law for professional services, while requiring the bidder to comply with Pay to Play restrictions. The OSC does not favor this approach, but its concerns, albeit forcefully raised, do not serve to discredit the propriety of this procurement process, either factually or legally. After many attempts to obtain a judicial determination, all of which have been thwarted by the OSC, this lawsuit will provide the first opportunity for a court to issue a definitive ruling, providing guidance to both the County and the Acting State Comptroller.

The August 5, 2024 Final Agency Decision should be set aside as arbitrary, capricious and unreasonable, with its findings unsupported by substantial evidence

in the record. The County further submits that OSC's conclusions of what constitutes professional services is not entitled to deference, requiring this Court to undertake an interpretation of professional services, as defined in the Local Public Contracts Law, to determine whether the County properly relied on this statutory exemption in awarding the medical services contract at the HCCRC.

In rendering its determination in this matter, this Court should note that the OSC has never provided the County with an opportunity to present affirmative witnesses or evidence. (Pa1384, ¶ 86) Lacking a sufficient evidentiary record, this Court should find that the OSC's determination was arbitrary, capricious and unreasonable, or, at the very least, remand the matter for an evidentiary hearing which will then be subject to further judicial review. (Pa1384, ¶ 87) The County consented to this hearing to occur before the trial court or before the Office of Administrative Law. (Id., ¶ 88) Alternatively, this Court may reject OSC's overly narrow interpretation of the Local Public Contracts Law as it relates to the procurement of this professional services contract for medical and related services at the HCCRC and set aside the August 5, 2024 Final Agency Decision.

The County submits that its selection process was appropriately transparent and resulted in greater competition. Using the County's procurement model, more vendors were solicited, more vendors participated and more proposals were received by the County than in the prior 20 years of medical contract procurement at the

HCCRC. (Pa1388, ¶ 100; Pa785)

The decision to award the medical services contract by way of professional services exception was not a unilateral determination by the County Counsel but a considered determination by the County administration, including the Purchasing Department and corrections leadership, and in consultation with a recognized leader in correctional health, Dr. Parsons. (Pa1388, ¶ 101; Pa785) Any assertion by the OSC that the process was unfair, anti-competitive or smacked of favoritism, improvidence, extravagance or corruption is just wrong and must be overturned. (Pa1388, ¶ 102; Pa785)

CONCLUSION

Based on the above, the County of Hudson respectfully submits that the award of the correctional health contract as a professional services contract, utilizing a non-fair and open process, is permissible under the Local Public Contracts Law. As such, the August 5, 2024 Final Agency Decision and any enforcement Order flowing therefrom must be reversed. If the Court finds that the Acting State Comptroller has failed to adduce a sufficient administrative record, based on disputed adjudicatory facts, the County respectfully requests that the matter be remanded to the trial court or the Office of Administrative Law for an evidentiary hearing.

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By: *Cindy Nan Vogelmann*

CINDY NAN VOGELMAN

Dated: 12.31.2024

IN THE MATTER OF HUDSON
COUNTY MEDICAL/FISCAL
ADMINISTRATION AT THE
HUDSON COUNTY
CORRECTIONAL CENTER

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-004144-23

Civil Action

Submitted: February 18, 2025

On Appeal from a Final Decision of
The New Jersey Office of the State
Comptroller

**BRIEF ON BEHALF OF RESPONDENT NEW JERSEY
OFFICE OF THE STATE COMPTROLLER**

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PRELIMINARY STATEMENT

The County of Hudson (“County”) challenges the Final Agency Decision and Remediation Plan (“FAD”) issued by the Office of the State Comptroller (“Comptroller”) determining, among other things, that the County violated applicable public contracting law when it awarded a \$13,488,000 contract under an inapplicable exception to the public procurement requirements. The County’s refusal to comply with the Comptroller’s directives to not proceed under that exception to award the contract amounts to a flagrant and unprecedented disregard for applicable law. Indeed, the County’s justifications for violating the procurement requirements have no support in statute or controlling case law. Because the Comptroller’s determination is well-supported by the factual record and represents a reasonable application of the law, the FAD should be affirmed.

To safeguard public funds, the Legislature tasked the Comptroller with reviewing certain high-value public procurements for compliance with applicable public contracts law. To facilitate that review, covered public entities must provide the Comptroller timely, advance notice of procurements that exceed a threshold value. Upon review, if the Comptroller finds the procurement violates applicable law, the Comptroller is authorized to direct the contracting unit to defer further action until it cures the violation; the Comptroller may also issue guidance on the proper method of procurement.

On a prior occasion, this Court admonished the County for failing to timely notice the Comptroller of a procurement for medical and management services at the Hudson County Correctional Center (“HCCC”). Despite that warning, the County again failed to properly notify the Comptroller that it had solicited a \$13.4 million contract for those same HCCC services. Even worse, it intended to imminently award that contract. The County’s failure to notify the Comptroller until it had already solicited the contract, evaluated responses, and negotiated costs violated the statutory notice requirement.

Even more troubling is that the County also failed to publicly advertise the procurement, as required by the Local Public Contracts Law, N.J.S.A. 40A:11-1 to -60 (“LPCL”). To justify that failure, the County pointed to the “professional services” exception to the LPCL. After a comprehensive review that included hundreds of pages of documents submitted by the County along with interviews of pertinent County staff, the Comptroller determined that the “professional services” exception did not apply and directed the County to re-procure the contract using one of two acceptable methodologies, both of which require public advertisement. The Comptroller also directed the County to submit a Corrective Action Plan. The County never did.

Instead, the County defiantly awarded the contract in disregard of the Comptroller’s directive and governing law. Making matters worse, the County

then advised the Comptroller that, prior to the expiration of that contract, it intended to re-procure the contract by exception again. The Comptroller then issued its FAD, finding violations of both the notice provisions of the Comptroller's enabling act and the public procurement provisions of the LPCL.

The Comptroller's determination, which is entitled to substantial deference, is well-supported by a plainly reasonable interpretation and application of the statute. Particularly in light of the statutory provision expressly governing contracts for patient care services at county correctional facilities, the LPCL prohibits the County from using the professional services exception to procure the HCCC contract. Moreover, the County's attacks on the Comptroller's review process are unfounded. And despite the County's untimely notice, the Comptroller conducted a review that was thorough, fair, and in accordance with law. In sum, the Comptroller's FAD should be affirmed.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY²

A. The Office of the Comptroller’s Statutory Oversight of Public Contracting Law Compliance

The Legislature established the Office of the State Comptroller to, among other things, subject government actions to “uniform, meaningful, and systematic public scrutiny” through “audit and oversight functions that strengthen public accountability with the goal of increasing public trust and confidence that every tax dollar collected by government is spent wisely and well.” N.J.S.A. 52:15C-1. The Comptroller performs an “independent oversight role in safeguarding efficient and independent public financial control and accountability statewide.” Larkins v. Solter, 450 N.J. Super. 519, 523 (App. Div. 2017). Among its “broad powers,” *id.* at 525, the Comptroller is responsible for “monitor[ing] the process of soliciting proposals for, and the process of awarding, contracts made by . . . [counties] . . . that involve a significant consideration or expenditure of funds,” N.J.S.A. 52:15C-7(b).

To ensure that the Comptroller can fulfill that oversight obligation, a county must provide written notice to the Comptroller of any procurements equal to or exceeding \$12,500,000³ in value “at the earliest time practicable as

² The facts and procedural history are intertwined and therefore are set forth in a combined statement for the Court’s convenience.

³ See N.J.S.A. 52:15C-10(d); 52 N.J.R. 1443(b) (July 20, 2020) (increasing the notice threshold to \$12,500,000).

the [county] commences the procurement process, but no later than the time the [county] commences preparation of[] any bid specification or request for proposal.” N.J.S.A. 52:15C-10(b)(1). That written notice must be in a form determined by the Comptroller and include such documents and information as required by the Comptroller. N.J.S.A. 52:15C-10(b)(3).

The Comptroller has at least thirty days to review a county’s submission and “provide a written determination to the [county] regarding whether the procurement process complies with applicable public contracting laws, rules, and regulations.” N.J.S.A. 52:15C-10(b)(2), (4). During this review period, the county may not “issue any public advertising, notice of availability of a request for proposals or any other public or private solicitation of a contract for a procurement.” N.J.S.A. 52:15C-10(b)(2).

If the Comptroller determines that a county’s proposed procurement does not comply with the LPCL, the Comptroller “shall direct the [county] not to proceed with the procurement” and provide a written statement of reasons, which may include guidance on an appropriate procurement process. N.J.S.A. 52:15C-10(b)(4). Upon receiving the Comptroller’s written direction not to proceed, the county may not advertise or issue the planned procurement. Ibid. The Comptroller may also “propose and enforce remediation plans” against local governments “that are found by the State Comptroller to have deficient practices

or procedures.” N.J.S.A. 52:15C-8(a).

B. The County’s Procurement of the HCCC Contract

The County contracts with a vendor to provide medical and management services to incarcerated persons at the HCCC.⁴ (Pa803.) In 2018, the County violated the LPCL when it failed to timely notice the Comptroller of a contract for these services. (Pa17-29.)⁵ When the County challenged the Comptroller’s finding, this Court dismissed the appeal for lack of a justiciable controversy. (Pa18.) The Court noted, however, that the County “fail[ed] to fulfill its statutory obligation to provide timely notice of its intended procurement to the State Comptroller” and it warned that the County was on notice of its obligation “to provide the State Comptroller notice ‘at the earliest time practicable,’ N.J.S.A. 52:15C-10(b)(1), of its intention to procure a new contract after expiration of the CCS agreement.” (Pa28-29.) The Court also expressed the need to “respect the legislative preference to have the county’s procurement process for a new agreement reviewed in the first instance by the State Comptroller.” (Pa29.) Despite these admonitions, the County again moved forward with a

⁴ “Pb” and “Pa” denote the County’s brief and appendix, respectively. The Comptroller’s appendix is denoted as “Ra.”

⁵ This unpublished decision, Cnty. of Hudson v. State of N.J., Off. of State Comptroller, No. A-3088-18T1, 2020 N.J. Super. Unpub. LEXIS 2568 (App. Div. Dec. 30, 2020), is cited as relevant earlier procedural history under Rule 1:36-3 and not as precedent.

procurement that disregarded the statutory framework set forth by the Legislature.

Between late July and early August of 2023, the County sent specifications for the HCCC contract to several self-selected vendors. (Pa799-1272.) The County did not publicly advertise the procurement. (Pa765.) Nor did the County notice the Comptroller of the procurement. Instead, in Section 1.2a of the Specifications, the County represented that it would “be awarding a Professional Services Contract for one (1) year with the potential for two (2), one (1) year extensions pursuant to N.J.S.A. 40A:11-15(29).” (Pa805.)

The Specifications sought onsite and offsite healthcare, fiscal management, and administrative services, including 27 program objectives. Specifically, the Specifications sought “appropriate, timely, cost effective and quality medical, dental, and behavioral health services” for inmates and required that a “comprehensive network of accessible, high-quality and cost-effective community providers shall be made available by the provider to meet the healthcare needs of the inmates when their health status cannot be maintained in the onsite medical facilities.” (Pa800.) The Specifications also required that the contractor provide “comprehensive health care management, mental health care management, MAT management, and fiscal management services to inmates at the [HCCC],” and “[t]o provide professional health care administrative services,

including the planning, implementation and monitoring of services and on-site medical record keeping[.]” (Pa820.) Further, the Specifications required pricing for electronic records management (“EMR”) software. (Pa884.)

The Specifications also required the contractor to maintain a “high quality and comprehensive fiscal management program” by providing inmate Medicaid or health insurance enrollment services under the Affordable Care Act, performing medical claims audits, processing inmate medical claims, initiating and managing third-party reimbursement, procuring and overseeing subcontractors, preparing 1099 year end reports, preparing an annual management plan and reporting utilization statistics, and preparing daily, weekly, monthly, quarterly, and annual reports to cover a range of activities regarding the overall management and operation of services at HCCC. (Pa897-98, Pa767-68.) The County discussed the Specifications with its selected potential vendors and, on September 22, 2023, received six proposals. (Pa37-38.) The County’s evaluation committee selected the incumbent vendor, Wellpath, and the parties negotiated contract terms. (Pa44.)

C. The Comptroller’s Review of the Procurement and Determination that the Procurement Violates the LPCL

On November 17, 2023, the County notified the Comptroller, for the first time, of its intent to award a “Professional Services Contract, Non-Fair and Open” to Wellpath for “medical services at the [HCCC]” in the amount of

\$13,488,000 for a one-year period commencing on December 20, 2023. (Pa1278.) The County made clear that it sent the Specifications to “selected vendors” without publicly advertising the procurement. (Pa1275-76.)

On November 30, 2023, the Comptroller advised the County that the procurement was “not approved to move forward while [the Comptroller] is reviewing the submission and additional information provided by Hudson County.” (Pa1274.) Thereafter, on December 12, 2023, the Comptroller issued an eleven-page written determination that the County had improperly relied on the professional services exception to the public bidding requirement and, therefore, failed to comply with the LPCL. (Pa1279-89.)

Among other reasons, the Comptroller determined that the “non-professional staff positions” such as medical assistant, medical records clerk, pharmacy technician, and dental assistant did not meet the definition of “professional services.” (Pa1286.) The Comptroller also found that the County violated the notice provisions of N.J.S.A. 52:15C-10(b) because the County did not notice the Comptroller until after it had reached a proposed agreement with Wellpath, which was more than three months after it commenced the private solicitation. (Pa1280, Pa1283-85.) Accordingly, the Comptroller directed the County not to proceed with the procurement and to provide a corrective action plan by December 21, 2023, which would include a timeline for the proposed

re-procurement and identify whether the County would comply with the LPCL by either (1) publicly bid the contract and award it to the lowest responsible bidder, or (2) follow competitive contracting procedures. (Pa1287-88.) The County never provided a corrective action plan.

The Comptroller and the County subsequently exchanged multiple letters regarding the procurement. (See e.g., Pa30-34, Pa35-46, Pa543-44, Pa545-47, Pa740-41, and Pa743-53; Ra288-90, Ra301-02, Ra374-75, Ra376-80.) The County also provided additional documents and information. (Pa35-542, Pa545-739.) The additional documents provided by the County included an analysis by Dr. Amanda Parsons, an outside medical consultant. (Pa666-68.) The Comptroller also interviewed Donato Battista, County counsel, and Christine Moro, the purchasing agent for the County. (Ra303-335, Ra336-373.)

After further developing and thoroughly considering the administrative record, on March 21, 2024, the Comptroller issued a comprehensive, seventeen-page written decision. (Pa760-76.) The Comptroller found that the County improperly conducted the procurement and reiterated its prior directive that the County not proceed with the contract award. (Ibid.) The Comptroller determined, among other things, that “[t]he County’s reliance on the professional services exception to award this contract is a departure from both

the plain text of . . . N.J.S.A. 40A:11-5(a)(1)(i) and judicial interpretations of the LPCL.” (Pa767.)

Specifically, the Comptroller determined that the text of the LPCL, namely the separate statutory provision governing inmate patient care services at county facilities, compelled its conclusion. The Comptroller concluded that “relying on the professional services exception to hire a management firm to provide inmate patient care services at HCCC ignores the plain reading of the statute and renders meaningless N.J.S.A. 40A:11-4.1(h), which expressly authorizes counties to procure inmate patient care services at HCCC through the issuance of a request for proposals awarded based on price and other factors using competitive contracting.” (Pa762.)

The Comptroller also found that “[t]he scope of work in the 2023 Specifications include[d] an array of tasks to provide inmate patient care services . . . to be provided by a management company that employs both licensed professionals and unlicensed administrative staff.” (Pa767.) In support of that finding, the Comptroller enumerated more than a dozen examples of administrative, fiscal, and management services that were not professional services and identified a number of staff positions that would not meet the statutory definition of professional services. (Pa767-68; Pa771.)

As to the County's medical consultant's analysis, the Comptroller concluded that it failed to adequately address the criteria that must be satisfied under the professional services exception and did not analyze whether staff positions would qualify as professional services. (Pa769, Pa771.) The Comptroller further found that:

Appropriately applying the LPCL statutory definition to the scope of work, OSC finds that the staff associated with the cost categories Other Third Party Direct Medical Costs (Labs, X-ray, etc.), Insurance Costs, and Management & Oversight (Regional Oversight Staff & Travel, Payroll Processing, Legal Support, etc.) do not meet the first criterion of the definition of professional services. OSC further finds that the medical consultant did not conduct the analysis on an individual staff position basis, but rather grouped together costs by category. The medical consultant's chart does not appear to analyze whether staff such as medical assistants, unit coordinators, administrative coordinators, medical records administrators, medical records clerks, and X-ray technicians meet the statutory definition. Additionally, incorporating the provision of and pricing for EMR into the 2023 Specifications at Appendix L further reduces the percentage of the costs that fall within the professional service exception.

[Pa771.]

The Comptroller also considered but rejected the County's reliance on the analyses in Autotote Ltd. v. N.J. Sports and Exposition Auth., 85 N.J. 363 (1981), and Nachtigall v. N.J. Tpk. Auth., 302 N.J. Super. 123 (App. Div. 1997), to justify its procurement of the HCCC contract as a professional service. The

Comptroller found that the County and its consultant misapplied the holdings in those cases and that neither supported the County's position. (Pa769-71.) Lastly, the Comptroller again found that the County failed to timely notice the procurement, in violation of N.J.S.A. 52:15C-10(b). (Pa766-67.)

Based on all these findings, the Comptroller determined that the procurement did not comply with the LPCL and again directed the County not to proceed with the contract award and to submit a corrective action plan. (Pa775.)

D. The County Ignored the Comptroller's Directive Not to Proceed and Awarded the Contract to Wellpath

Without prior notice to the Comptroller—and in open defiance of the Comptroller's March 21 determination—the County awarded the contract to Wellpath on March 28, 2024, for inmate medical services at HCCC in the amount of \$13,488,000 for a one-year term to commence just a few days later on April 1, 2024 (the "Contract"). (Pa1293-94; Pa1295-1320.) The County notified the Comptroller that it had executed the Contract with Wellpath the same day. (Pa754, Pa780.) However, the County failed to submit the required contract compliance form or associated contract documents, including the Contract itself, for more than forty-five days. (Pa1321.)

Then, on June 28, 2024, the County notified the Comptroller that, prior to the March 31, 2025 expiration of the current Contract, the County intended to

re-procure the contract as “either a one year professional services contract to Wellpath or to employ an informal process similar to that undertaken by the County this past year.” (Pa1322.) The County recognized that it was proceeding despite the Comptroller’s “disagreement as to whether the medical services contract may be legally awarded in the manner previously utilized.” (Ibid.)

E. The Final Agency Decision and Remediation Plan

The Comptroller issued a Final Agency Decision and Remediation Plan on August 5, 2024, incorporating its March 21, 2024 reasoning and finding that the County: (a) failed to provide timely notice of the procurement as required by N.J.S.A. 52:15C-10(b); and (b) improperly procured and awarded the Contract in violation of the LPCL. (Pa782-86.) The FAD directed that:

(1) The County shall not take any actions to renew or award a contract for medical and fiscal management services valued at \$12.5 million or greater for the period beginning April 1, 2025 in reliance upon the professional services exception to bidding under N.J.S.A. 40A:11-5(a)(i) or any informal process similar to the process used by the County to award the current Contract; and

(2) The County shall not advertise or release any solicitation for medical and fiscal management Services at the HCCC valued at \$12.5 million or greater that has not been reviewed and approved by [the Comptroller].

[Pa785.]

F. The Enforcement Action and Subsequent Proceedings

Given the County's stated intent to re-procure the Contract in a manner that again violated the LPCL, and its prior refusals to comply with the Comptroller's directives, on August 5, 2024, the Comptroller filed an Order to Show Cause and one-count Verified Complaint to enforce the FAD pursuant to Rule 4:67-6. (Pa787-98.) Following the trial court's entry of the Order to Show Cause on August 6, 2024, the County appealed the FAD on August 30, 2024. (Ra421-24; Pa1326-29.)

In response to the Order to Show Cause, the County did not challenge its noncompliance with the FAD, and instead cross-moved for an evidentiary hearing on the validity of the FAD and a stay of the enforcement action pending this appeal. The trial court denied the County's request to stay the enforcement action but granted the evidentiary hearing so that it may consider "whether the determination that is made by the [Comptroller] is correct." (Pa1332-33, Pa1340.) The trial court also denied enforcement of the FAD pending the hearing. (Pa1343-46.)

On the Comptroller's emergent motion, this Court summarily vacated both trial court orders on November 6, 2024, explaining that "the County is attempting in this enforcement action to do precisely what Rule 4:67-6(c)(3) prohibits it from doing: attacking collaterally the Comptroller's final decision."

(Pa1355.) In response, the County moved to remand this appeal, again seeking an evidentiary hearing and to stay the FAD. (Pa1357-59.) This Court denied the County's motion on December 17, 2024. (Pa1390-91.) The next day, the trial court entered an order enforcing the FAD.⁶ (Pa1392.) The County's appeal of the Comptroller's August 5, 2024 FAD is now before this Court.

LEGAL ARGUMENT

POINT I

THE FAD SHOULD BE AFFIRMED BECAUSE THE COUNTY HAS NOT SHOWN THAT THE FAD IS ARBITRARY, CAPRICIOUS OR BASED UPON A PLAINLY UNREASONABLE INTERPRETATION OF THE LPCL

The Comptroller determined that the LPCL does not permit the County to use the professional services exception to procure the HCCC Contract. That determination is based on its reasonable interpretation of the statute's plain text and should be affirmed.

A. The FAD is Entitled to Substantial Deference

"Appellate courts have 'a limited role' in the review of" administrative agency determinations. In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). Accordingly, "courts

⁶ In early January 2025, the Comptroller received a pre-advertisement submission from the County proposing to procure the HCCC contract under a competitive contracting process, which is currently under review.

review the decision of a public agency to determine whether it was ‘arbitrary, capricious, or unreasonable, or . . . lack[ed] fair support in the record.’” E. Bay Drywall, LLC v. Dep’t of Labor & Workforce Dev., 251 N.J. 477, 494 (2022) (quoting Allstars Auto Grp., Inc. v. Motor Vehicle Comm’n, 234 N.J. 150, 157 (2018)).

Reviewing courts are thus “bound to defer to the agency’s factual findings if those conclusions are supported by the record,” and courts will “defer to an agency’s interpretation of both a statute and implementing regulation, within the sphere of the agency’s authority, unless the interpretation is plainly unreasonable.” E. Bay Drywall, 251 N.J. at 493 (quoting In re Election L. Enf’t Comm’n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (internal quotation marks omitted)). This enhanced deference “comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” Ibid. (quoting Advisory Op. No. 01-2008, 201 N.J. at 262). As the party challenging the administrative action, the County bears the burden to overcome this deferential review. See In re Arenas, 385 N.J. Super. 440, 443–44 (App. Div. 2006).

Here, the Comptroller issued the FAD under authority conferred by the Legislature to review certain public procurements for compliance with the LPCL

and to exercise plenary authority to block noncompliant procurements. See N.J.S.A. 52:15C-10(b). As New Jersey’s compliance watchdog, the Comptroller has unique expertise in the procurement processes under its authority, and the Comptroller’s interpretation of the LPCL is entitled to enhanced deference. See E. Bay Drywall, 251 N.J. at 493 (“We review a decision made by an administrative agency entrusted to apply and enforce a statutory scheme under an enhanced deferential standard”); Acoli v. N.J. State Parole Bd., 224 N.J. 213, 229 (2016) (noting that when an agency is charged with enforcing a statute, “deference is given to the interpretation of statutory language by the agency charged with the expertise and responsibility to administer the scheme”).

Because the County has not shown that the FAD is arbitrary, capricious or based upon a plainly unreasonable interpretation of the LPCL, it must be affirmed.

B. The County’s Reliance on the Professional Services Exception to Procure the HCCC Contract Disregards the Plain Text of the LPCL

The Legislature has designated the “[p]erformance of patient care services by contracted medical staff at county . . . correctional facilities,” as a “specialized” service under N.J.S.A. 40A:11-4.1(h), which must be publicly advertised and procured either through competitive contracting or to the lowest

responsible bidder. Thus, as set forth in the Comptroller's March 21, 2024 directive, and incorporated by reference into the FAD,

relying on the professional services exception to hire a management firm to provide inmate patient care services at HCCC ignores the plain reading of the statute and renders meaningless N.J.S.A. 40A:11-4.1(h), which expressly authorizes counties to procure inmate patient care services at HCCC through the issuance of a request for proposals awarded based on price and other factors using competitive contracting.

[Pa762.]

The County does not, and cannot, argue that the patient care services provision in N.J.S.A. 40A:11-4.1(h) does not apply, let alone establish that the Comptroller's analysis is plainly unreasonable. In fact, the County itself acknowledges, (Pb33), and the Specifications and Contract clearly reflect, (Pa803, Pa1295), that the purpose of the HCCC Contract is for the performance of patient care services at a county correctional facility. Nor is this interpretation novel. N.J.S.A. 40A:11-4.1(h) has been used to procure patient care services at county correctional facilities through competitive contracting. See, e.g., CFG Health Sys., LLC v. County of Essex, 411 N.J. Super. 378 (App. Div. 2010).

Accordingly, the Comptroller did not act arbitrary, capriciously, or plainly unreasonably, in rejecting an interpretation of the LPCL as allowing a county to procure those same services as a "professional" service excepted entirely from the public procurement process under N.J.S.A. 40A:11-5(1)(a)(i).

1. The LPCL Distinguishes Between Contracts for Professional Services and Those for Specialized Services

The LPCL requires that “certain contracts entered into by [counties] be procured through a public bidding process detailed in that statute.” Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 140 (2001); N.J.S.A. 40A:11-2(1)(a) (applying LPCL to “any county” along with other local public entities). Under the LPCL, unless an exception applies, the default rule is that “every contract” for goods and services that exceeds a threshold amount must be publicly bid and awarded to the “lowest responsible bidder.”⁷ See N.J.S.A. 40A:11-4(a).

In 2000, the Legislature amended the LPCL to loosen the rigid, publicly advertised low bid, *i.e.*, “public bidding,” requirements by permitting certain contracts to be procured by “competitive contracting.” The Competitive Contract in Lieu of Public Bidding amendments to the LPCL, N.J.S.A. 40A:11-4.1 to -4.5, “provide[] public entities with an alternative method to solicit proposals for public projects.”⁸ Weidner v. Tully Env’t, Inc., 372 N.J. Super.

⁷ The “lowest responsible bidder” is defined as the bidder “(a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.” N.J.S.A. 40A:11-2(27).

⁸ Under “competitive contracting,” “formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.” N.J.S.A. 40A:11-2(23).

315, 318 (App. Div. 2004). The amendments were intended “to provide a flexible method to award bids by the use of a scoring and evaluation process,” in a manner that “entitles the contracting body to deference in its evaluation of the needs of the contracting unit.” Id. at 326. But regardless of whether a contract is procured by public bidding or competitive contracting, the county must still publicly advertise the procurement. See N.J.S.A. 40A:11-4, -23; see also N.J.S.A. 40A:11-4.5.

The Legislature, however, limited the availability of competitive contracting to goods and services identified in the statute as “specialized goods and services.” As relevant here, the list of “specialized goods and services” includes the “[p]erformance of patient care services by contracted medical staff at county hospitals, correctional facilities and long term care facilities.” N.J.S.A. 40A:11-4.1(h). For such “specialized” services, “competitive contracting may be used by [a county] in lieu of public bidding[.]” N.J.S.A. 40A:11-4.1.

The Legislature has also enacted certain exceptions to the LPCL that permit a county to award a contract without public procurement. N.J.S.A. 40A:11-5. These exceptions “generally apply[] to situations in which public bidding would be meaningless or impractical.” Nat’l Waste Recycling, Inc. v. Middlesex Cnty. Improvement Auth., 150 N.J. 209, 223 (1996) (internal quotation marks and citation omitted). Among other exceptions, a county may

award without public bidding a contract for “professional services,” N.J.S.A. 40A:11-5(1)(a)(i), which the statute defines as: “[i] services rendered or performed by a person authorized by law to practice a recognized profession, [ii] whose practice is regulated by law, and [iii] the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.” N.J.S.A. 40A:11-2(6). All three components must be present to satisfy the statutory definition, and “[c]ourts have construed the LPCL exceptions strictly so as not to dilute the public policy or permit a public body to avoid pertinent legislative enactments.” Nat’l Waste Recycling, 150 N.J. at 223 (internal quotation marks and citation omitted) (cleaned up).

The dispute here turns on the LPCL’s distinction between “specialized goods and services” listed in N.J.S.A. 40A:11-4.1, and “professional services” as defined in N.J.S.A. 40A:11-2(6). As explained further below, the designation of “patient care services by contracted medical staff at county . . . correctional facilities” as a “specialized” service for which counties may use either competitive contracting or public bidding, N.J.S.A. 40A:11-4.1(h), means that those same services cannot be “professional” services within the meaning of N.J.S.A. 40A:11-2(6) and N.J.S.A. 40A:11-5(1)(a)(i), which are altogether

exempt from public procurement requirements. Such a reading comports with the plain text of the LPCL, applicable case law and legislative history.

2. The Performance of Patient Care Services By Contracted Medical Staff at a County Correctional Facility is Not a Professional Service Under the LPCL

When interpreting a statute, courts start with the text because where, as here, “the plain language of a statute is clear,” courts “are duty-bound to apply that plain meaning.” State v. Fede, 237 N.J. 138, 148 (2019). In the competitive contracting amendments to the LPCL, the Legislature expressly carved out certain “specialized goods and services” from the general requirement that counties award “goods or services” contracts that exceed the threshold amount to the lowest responsible bidder after public advertising. N.J.S.A. 40A:11-4(a); N.J.S.A. 40A:11-4.1. For those enumerated “specialized” services, a county may use competitive contracting “in lieu of,” *i.e.*, “instead of,” public bidding. N.J.S.A. 40A:11-4.1; Black’s Law Dictionary (7th ed. 1999) (defining “in lieu of” to mean “[i]nstead of or in place of[.]”); Spade v. Select Comfort Corp., 232 N.J. 504, 522 n.7 (2018) (noting that the Court may rely on dictionary definitions in use at the time of a statute’s enactment to assist “[i]n construing legislative language”). In other words, *but for* their designation as “specialized goods and services,” the enumerated goods and services would be subject to public bidding.

The County presumes that inmate patient care services can simultaneously be a “professional” and a “specialized” service. But that would effectively grant counties carte blanche to forego public procurements entirely whenever they procure inmate patient care services and “renders meaningless,” (Pa762), the provision which expressly requires that the “[p]erformance of patient care services by contracted medical staff at county . . . correctional facilities” be acquired through either competitive contracting or public bidding, N.J.S.A. 40A:11-4.1(h). See In re Att’y Gen.’s “Directive on Exit Polling: Media & Non-Partisan Pub. Int. Grps.”, 200 N.J. 283, 297–98 (2009) (“[Courts] must presume that every word in a statute has meaning and is not mere surplusage.”).

The Legislature’s specific enumeration of patient care services at a county correctional facility in N.J.S.A. 40A:11-4.1(h), must control over the more general and non-specific definition of “professional services” in N.J.S.A. 40A:11-2(6). See e.g., Williams v. N.J. State Parole Bd., 255 N.J. 36, 47 (2023) (“A statute or provision relating to a specific subject may be understood as an exception to a statute or provision relating to a general subject” such that “where one section of an act deals with a subject in general terms . . . and another deals with a part of the same subject in a more detailed way . . . , the two always should be harmonized”) (internal quotation marks and citations omitted); see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645

(2012) (noting that it is a “commonplace of statutory construction that the specific governs the general,” which is “particularly true” when the two provisions are part of the “same statutory scheme”) (internal quotation marks and citations omitted). Undoubtedly, the Legislature was aware of the “professional services” exemption when it crafted the listing of “specialized goods and services” at N.J.S.A. 40A:11-4.1. See State v. Goodwin, 224 N.J. 102, 113 (2016) (“The Legislature is presumed to be thoroughly conversant with its own prior legislation and the judicial constructions of its statutes.”) (internal quotation marks and citation omitted) (cleaned up). Thus, when “apply[ing] the ordinary canons of statutory interpretation,” State v. Tier, 228 N.J. 555, 564 (2017), the better and more harmonious reading of the LPCL is that the Legislature’s decision to define “specialized” services to include the “[p]erformance of patient care services by contracted medical staff at county . . . correctional facilities,” prevails over the general definition of “professional services.”

The Legislature’s choices regarding which goods and services to designate as “specialized goods and services” also must be given effect. Particularly, the competitive contracting amendments removed two services previously exempted from public bidding and reclassified those services as “specialized” services. There, the Legislature struck both “[h]omemaker--home health services,” and

“[e]mergency medical services,” from the list of bidding exceptions and reinserted those services into the enumerated listing of “specialized goods and services” that a county may procure through competitive contracting. Compare L. 1999, c. 440, § 9, with L. 1999, c. 440, § 1. The obvious result is that a county could no longer procure emergency medical services or homemaker services by exemption, and could only procure those services through public bidding or competitive contracting. Thus, removing some services previously exempted from public bidding and reclassifying those same services as “specialized” services further evidences the Legislature’s intent that the “specialized” services identified in N.J.S.A. 40A:11-4.1 not be comingled with exempted services, including professional services, under N.J.S.A. 40A:11-5. Again, the Legislature’s deliberate choices cannot be ignored and must be given effect.

Also, had the Legislature wanted to exempt inmate patient care services from public bidding it certainly knows how to add exceptions. Since the Legislature first enacted the LPCL in 1971, the Legislature has amended the list of exemptions in N.J.S.A. 40A:11-5 multiple times, including in the same legislation that enacted the competitive contracting amendments, see L. 1999, c. 440, § 9, and has steadily grown the list to more than thirty.

Moreover, applicable legislative history further reinforces the conclusion that the Legislature plainly intended to distinguish “specialized” goods and

services eligible for competitive contracting from those exempt entirely from public bidding. The competitive contracting amendments were intended to strike a balance between “provid[ing] contracting units . . . with greater discretion in entering into contracts with qualified vendors than is permitted under the normal requirements of public bidding” while also “provid[ing] greater public oversight of the contracting process than is available under the current exceptions to public bidding for professional or extraordinary unspecifiable services.” Sponsor’s Statement to A. 3519 104 (L. 1999, c. 440). In other words, the Legislature intended to craft a means of procurement for certain “specialized goods and services” as a middle ground between the rigidity of low bid procurement on the one hand, and the lack of transparency and accountability associated with procurements by exception on the other. The Statement again evidences the Legislature’s intent to treat “specialized goods and services” as distinct from professional services.

The County fails entirely to challenge the Comptroller’s determination that it improperly relied on the professional services exception to procure the HCCC Contract given the enumeration of inmate patient care services as a “specialized” service at N.J.S.A. 40A:11-4.1(h).⁹ (Pb33.) In fact, the County

⁹ The County wrongly claims that “[t]he [Comptroller’s] preferred method for the award of the medical services contract is through competitive contracting, as permitted by N.J.S.A. 40A:11-4.1.” (Pb33.) The Comptroller has put forth no

only passingly even references the statute. Beyond restating the definition of “professional services,” the County ignores the LPCL except to make an unremarkable point that the statute does not mandate competitive contracting. (Pb26-28, Pb33.) As the County points out, “review of the competitive contracting statute reveals that this method ‘may’ be utilized to procure medical services at a county correctional facility, N.J.S.A. 40A:11-4.1(h)” but that “[t]he statute does not require the use of competitive contracting for County correctional medical services.”¹⁰ (Pb33.) The County is entirely correct. But that fact provides the County no help.

Though the term “may” indicates that procurement by competitive contracting is permissive, the County fails to read the entire text. As set forth

such position. Instead, the Comptroller has advised the County, several times, that it may procure the HCCC using either public bidding or competitive contracting. (Pa761, Pa1280, Pa1288.) The Comptroller’s position is entirely consistent with the LPCL. See N.J.S.A. 40A:11-4.1.

¹⁰ As set forth above, the County’s acknowledgement at Pb33 that the purpose of the HCCC Contract is within N.J.S.A. 40A:11-4.1(h) defeats its own argument that it can procure the Contract by exception. Moreover, the County concedes that it previously used competitive contracting to procure patient care services at the HCCC but makes much of the fact that it had a bad experience with that vendor. (Pb4-6.) But nowhere does the LPCL allow a county to cite a prior negative experience as a basis for invoking the professional services exception. The County’s use of this example only shows that its decision to procure the HCCC Contract under the professional services exception was not grounded in an interpretation of the statute.

above, N.J.S.A. 40A:11-4.1 allows a county to choose between public bidding and competitive contracting when procuring any “specialized goods and services.” The term “may” does not permit, as the County suggests, that it can use the *professional services exception* “in lieu of” public bidding when procuring a specialized service, such as patient care services at a county correctional facility.¹¹

The County also cites two Law Division cases to make an overly broad claim that all medical services are, *per se*, professional services. (Pb27–28 (citing Capasso v. L. Pucillo & Sons, Inc., 132 N.J. Super. 542, 550 (Ch. & Law Div.), aff’d, 132 N.J. Super. 473 (App. Div. 1974)) and Baylinson v. Bd. of Comm’rs of Hous. Auth. of City of Atlantic City, 282 N.J. Super. 132, 135–36 (Law Div. 1995).) But the County’s reliance on Capasso and Baylinson to broadly suggest that the Legislature intended for all medical services to qualify as professional services is unpersuasive.

Neither Capasso nor Baylinson concerned any type of medical services, and the lone references to “medical” services in each of those cases are plainly

¹¹ The County also stresses that its self-defined procurement process “was appropriately transparent and resulted in greater competition” than its past procurements. (Pb36.) But the LPCL simply does not permit a county to create its own hybrid procurement model. Accordingly, the County’s claim that its unadvertised procurement was more competitive is irrelevant to the question of whether the procurement was lawful.

dicta. Indeed, even to the extent those Law Division opinions identify medical services as a colloquial example of a “professional” service, those opinions provide no guidance as to whether all medical services are within the statutory exception for “professional services.” And, any such *per se* rule would be contrary to the plain language of the LPCL. For example, the Legislature has never considered emergency medical services to be a “professional service” under the LPCL. As noted above, before the enactment of the competitive contracting amendments, emergency medical services was a stand-alone exception, separate from the professional services exception, see L. 1989, c. 159, § 5, and those amendments reclassified emergency medical services as “specialized goods and services,” for which competitive contracting may be used in lieu of public bidding. N.J.S.A. 40A:11-4.1(f). Thus, there is no evidence in the statute or otherwise that the Legislature intended all medical services to be *per se* professional services, let alone where medical services is one element of the contract.

* * * *

There is no dispute that the purpose of the HCCC Contract is for the provision of patient care services by contracted medical staff at a county correctional facility, which is classified as a “specialized” service under N.J.S.A. 40A:11-4.1(h). When applying the traditional tools of statutory

construction, the LPCL unambiguously requires the County to procure the Contract either through public bidding or competitive contracting, not by exception. Thus, the Comptroller's determination that the County violated the LPCL when it impermissibly awarded the HCCC Contract as a professional service contract under N.J.S.A. 40A:11-5(1)(a)(i) is neither arbitrary, capricious nor plainly unreasonable. Accordingly, the FAD must be affirmed.

POINT II

THE COMPTROLLER'S DETERMINATION THAT THE PROFESSIONAL SERVICES EXCEPTION IS INAPPLICABLE IS WELL- SUPPORTED BY THE RECORD AND IS NOT PLAINLY UNREASONABLE

Because the Legislature has conferred upon the Comptroller the statutory authority to enforce LPCL compliance, its interpretation of the LPCL and determination that the HCCC Contract is not within the professional services exception are afforded enhanced deference. See E. Bay Drywall, 251 N.J. at 493. The County has far from satisfied its burden to show that the Comptroller's interpretation and application of the LPCL in the FAD was arbitrary, capricious, or plainly unreasonable. In re Arenas, 385 N.J. Super. at 443–44. Upon a thorough review of all documents and information submitted by the County and in considering both the text of the statute and applicable case law, the Comptroller concluded that the County improperly relied upon the professional

services exception to public bidding and that the inmate patient services provision applied. Particularly because this determination is within “the agency’s special expertise and superior knowledge of a particular field,” the court “may not substitute its own judgment for the agency’s, even though the court might have reached a different result.” Stallworth, 208 N.J. at 194–95 (internal quotation marks and citations omitted). The Court should respectfully defer to the Comptroller’s well-reasoned and well-supported determination.

In fact, the Comptroller’s determination is consistent with countless precedential decisions that require a strict construction of LPCL exceptions to public bidding “so as not to dilute the public policy or permit a public body to avoid pertinent legislative enactments.” Nat’l Waste Recycling, 150 N.J. at 223 (citation omitted) (cleaned up). The Court’s “‘long-standing judicial policy’ in construing [public bidding] statutes ‘has been to curtail the discretion of local authorities by demanding strict compliance with public bidding guidelines.’” 426 Bloomfield Ave. Corp. v. City of Newark, 262 N.J. Super. 384, 387 (App. Div. 1993) (quoting L. Pucillo & Sons, Inc. v. Mayor and Council of the Borough of New Milford, 73 N.J. 349, 356 (1977) (collecting other cases)). “The Supreme Court has underscored the importance of the unique public policy concerns of the LPCL, as necessary to ‘secure for the public the benefits of unfettered competition,’ and to ‘guard against favoritism, improvidence,

extravagance, and corruption.” Bozzi v. City of Atlantic City, 434 N.J. Super. 326, 336 (App. Div. 2014) (quoting Nat’l Waste Recycling, 150 N.J. at 219). Accordingly, “in this field it is better to leave the door tightly closed than to permit it to be ajar, thus necessitating forevermore in such cases speculation as to whether or not it was purposely left that way.” 426 Bloomfield Ave., 262 N.J. Super. at 388 (quoting Hillside Twp v. Sternin, 25 N.J. 317, 326 (1957)). And the Comptroller rightly recognized its fidelity to this principle in the FAD. (Pa762.)

A. Autotote and Nachtigall are Inapposite to the HCCC Contract

Despite the Supreme Court’s oft-repeated principle that “[t]he best source for direction on legislative intent is the very language used by the Legislature,” Bozzi v. City of Jersey City, 248 N.J. 274, 283 (2021) (quoting Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 171–72 (2016)), the County relies entirely on inapplicable case law to argue that the “predominant nature” of the HCCC Contract is for medical services, thereby transforming the contract into one for a professional service. (Pb32.) Nonetheless, when applied to the facts here, neither Autotote, Ltd. v. N.J. Sports & Exposition Auth., 85 N.J. 363 (1981), nor Nachtigall v. N.J. Turnpike Auth., 302 N.J. Super. 123 (App. Div. 1997), support the County’s challenge to the FAD.

To start, neither Autotote nor Nachtigall interpreted the scope of the professional services exception defined in the LPCL. See Autotote, 85 N.J. at 365 (interpreting the public bidding provisions of the New Jersey Sports and Exposition Authority Law (“NJSEA”), N.J.S.A. 5:10-1 *et seq.*); Nachtigall, 302 N.J. Super. at 127 (reviewing procurements by a consortium of state and bi-state authorities subject to statutes other than the LPCL). That distinction is critical, as the Autotote and Nachtigall courts simply addressed a question entirely different than the question here.

In those cases, unguided by any governing statutory definition, the courts were left to determine whether the contracts at issue for integrated combinations of highly specialized and complex equipment and services were for the provision of “professional services.” In both instances, the unique, complex, and technical nature of the systems at issue drove the conclusions that those contracts were for the provision of professional services, exempt from public bidding requirements under the separate and distinct statutes at issue. See Autotote, 85 N.J. at 371; Nachtigall, 302 N.J. Super. at 136. Indeed, as the Comptroller noted, the complexity and sophistication underlying the contracts in Autotote and Nachtigall make neither comparable to the HCCC Contract. (Pa769–71.) Rather, the medical, administrative and fiscal management services at issue here are

routinely provided at county correctional facilities across the state and thus are plainly inapposite to the unique projects in Autotote and Nachtigall.

Moreover, unlike the statutes at issue in Autotote and Nachtigall, other provisions of the LPCL provide significant guidance as to the outer bounds of the LPCL's professional services exception. As set forth above, the scope of the LPCL's professional services exception cannot be interpreted without considering the statute as a whole, including the provision that expressly classifies patient care at county correctional facilities as a "specialized" service. N.J.S.A. 40A:11-4.1(h). And none of the various statutes at issue in those cases address the performance of inmate patient care services at a county correctional facility under the LPCL. Thus, even to the extent that the analyses in those cases could have provided any guidance as to the scope of the LPCL's definition of professional services before the competitive contracting amendments to the LPCL in 2000,¹² the analyses in those cases cannot now be applied without considering the impact of those amendments, including the inmate patient care services provision, on the proper interpretation and application of the LPCL.

¹² Indeed, the Autotote Court specifically noted that the definition of "professional services" in the LPCL was not helpful to interpret the scope of the exception at issue under the NJSEA statute. 85 N.J. at 371.

B. The Comptroller's Assessment of the HCCC Contract Is Well-Supported by the Administrative Record

Notwithstanding the material distinctions between the issue here and those addressed in Autotote and Nachtigall, the Comptroller analyzed the services in the Specifications under Nachtigall's "predominant nature" test and determined that, even under that test, they were not professional services. (Pa769-72.) That determination is well supported by the record.

In Nachtigall, the Court concluded that "digging the trench" for cable and laying it, for example, was far outweighed by the

predominant nature of the entire proposal, which is, essentially, . . . to provide a combination of coordinated professional services, namely traffic-consulting services; the highly specialized financial and marketing services involved in designing, operating, and servicing the CSC; the development of the highly sophisticated software essential to the running of the coordinated system; and the provision of brokerage services involving the marketing and leasing of highly technical communication access facilities.

[302 N.J. Super. at 134–35.]

But the Comptroller determined that, when viewing the HCCC proposal as a whole, much of the services are provided by unlicensed administrative staff. (Pa771.) As a starting point, the Specifications sought the services of a management firm for the overall delivery of healthcare, administrative, fiscal, and management services, not an individual physician or physician group

focused exclusively on providing patients with licensed professional medical care. (Pa799-1272.) And, based on the record, the Comptroller found that the scope of work in the Specifications includes an array of tasks to be provided by a mix of unlicensed administrative staff and licensed professionals. (Pa767-68.)

While the County now downplays the volume of non-direct patient services, (Pb32), its own Specifications say otherwise. The Comptroller identified thirteen significant non-medical services sought by the County including, but not limited to: inmate Medicaid or health insurance enrollment; medical claims auditing; processing of federal, state and County inmate medical claims; payment to hospital providers; utilization of a computerized medical claims system; procurement and oversight of subcontractors; mailing and payment to medical providers; preparation of regular and annual management reports; and the preparation of year end 1099 reports, to name a few. (Pa767-68, see also Pa820-24.) The Comptroller also identified that the scope of work required proposals to include pricing for electronic records management (“EMR”), which was initially the subject of an independent request for proposal that the County sought to procure using competitive contracting.¹³ (Pa768.) The

¹³ Through this prior competitive contract procurement, the County acknowledged that this significant component of the Specifications was not a professional service before it later decided to shoehorn that service into the broader HCCC Specifications. (Pa768, Pa884, Pa1230-69.)

Specifications further require strategic operational planning, development of administrative and operational policies, and the performance of periodic audits. (Pa876-77.) And the “Program Objectives” also sought a host of other back office administrative, fiscal, and management services. (Pa820–24.)

The contractor would also need to provide administrative and operational support to the Medication Assisted Treatment (“MAT”) program through a memorandum of understanding with the County’s clinical provider. (Pa767, Pa853.) As the Comptroller noted with respect to the MAT program, “the successful contractor is expected to provide administrative and operational support, *rather than medical services.*” (Pa767 (emphasis added).)

Taken together, and unlike Nachtigall and Autotote, the Comptroller concluded that a larger portion of the services contemplated under the Specifications are management and administrative services that would not fall within the definition of professional services. For instance, corresponding with insurance companies, ordering supplies, drafting reports, managing claims, or performing a host of financial, auditing, and administrative services are services that are not performed “by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as

distinguished from general academic instruction or apprenticeship and training.” N.J.S.A. 40A:11-2(6). Thus, even analyzing the proposed procurement under the “predominant nature” standard and reviewing the full complement of services in the Specifications as a whole, the Comptroller concluded that the HCCC Contract does not fall within the scope of “professional services” defined under N.J.S.A. 40A:11-2(6) and N.J.S.A. 40A:11-5(a)(1)(i).

Lastly, the Comptroller also considered and rejected the conclusory analysis put forth by the County’s consultant that claimed, without any legal analysis or factual support, that in the consultant’s opinion, 90–95 percent of the services completed in the HCCC Contract are “professional services.”¹⁴ (Pa668, Pa769.) But, as the Comptroller determined, the consultant failed to address or account for the statutory criteria that must be satisfied under the professional services exception. (Pa769.) The consultant did not, for instance, conduct its analysis on an individual staff position basis, but rather broadly grouped together costs by category based on the Wellpath’s cost proposal. (Pa667–68, Pa770–71.) The medical consultant’s determination was also void of any independent, fact specific analysis of whether staff such as medical assistants,

¹⁴ Though the consultant’s analysis is unsigned and undated, it was necessarily prepared *after* Wellpath submitted its proposal because it is based on Wellpath’s cost proposal. (Pa667-68, Pa768.) As a result, the analysis was not an independent analysis prepared to assist the County in deciding upon its procurement method.

unit coordinators, administrative coordinators, medical records administrators, medical records clerks, and X-ray technicians meet the statutory definition of professional service. (Pa667–68, Pa771.) Also, labor costs associated with the cost categories “Other Third Party Direct Medical Costs” do not meet the definition of a professional service because they are performed by outside “third-parties,” not the contractor itself. (Pa771.) The Comptroller similarly doubted that the “Management & Oversight” category satisfied the definition of a professional service. (Ibid.)

As the Comptroller determined, the definition of a “professional service” “does not apply to a full-service management company that performs a bundle of health care, mental health care, fiscal management, and administrative services at [the] HCCC.” (Pa762.) Instead, the HCCC Contract is one for the provision of patient care services at a county correctional facility under N.J.S.A. 40A:11-4.1(h). The County’s expansive view of a “professional” service would eclipse that provision and is antithetical to the Legislature’s intent “to secure for the public the benefits of unfettered competition.” Terminal Constr. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 410 (1975). Because the Comptroller’s determination is not arbitrary, capricious, or plainly unreasonable, the FAD must be affirmed.

POINT III

THE AGENCY RECORD IS MORE THAN SUFFICIENT TO EXERCISE APPELLATE REVIEW, AND THERE IS NO BASIS FOR AN EVIDENTIARY HEARING

In a final and futile effort to challenge the FAD, the County suggests that this Court remand for an evidentiary hearing. According to the County, the Comptroller “failed to adduce a sufficient administrative record” for this Court to adjudicate its appeal. (Pb22-23.) This argument fails for two reasons.

First, the County has never made a motion to supplement the record under Rule 2:5-5(b), and for good reason—the existing agency record is more than sufficient to assess the narrow legal questions on appeal. And, second, the County’s arguments in support of an evidentiary hearing in the Law Division, already twice rejected, continue to lack any merit. In short, the County’s request for remand should be denied.

A. The Agency Record is More Than Sufficient to Decide This Appeal

The County falls far short from meeting its burden to establish that the administrative record is so “meager,” In re State & Sch. Emples. Health Benefits Comm’ns’ Implementation of Yucht, 233 N.J. 267, 280 (2018), or “insufficient,” Am. Civil Liberties Union of N.J. v. Hendricks, 233 N.J. 181, 201 (2018), to preclude meaningful review. Without even appending the entire

Statement of Items Comprising the Record on Appeal (“SICRA”), the County brazenly asks this Court to find the record insufficient. But the voluminous record before the Court is more than sufficient to decide this appeal.

The SICRA both demonstrates the depth of the Comptroller’s examination and provides a fulsome record for this Court to exercise appellate review. In all, the SICRA amounts to over 1,900 pages of documents, and includes the bid specifications, several written submissions from the County, transcripts and audio files of interviews with County officials, the Board of Commissioners Resolution awarding the Contract, state compliance forms, and the Contract itself, among other documents.

The SICRA, which includes material provided by the County, also belies the County’s claim that the Comptroller “never provided the County with an opportunity to present affirmative witnesses or evidence.” (Pb36.) Indeed, the County affirms that it “replied to all requests for information and interviews and has been fully transparent” with the Comptroller.¹⁵ (Pb16.)

For example, the County provided, and the SICRA includes, numerous documents and submissions from both Wellpath and the County’s medical

¹⁵ It bears noting that the Comptroller requested additional documents from the County on November 17, 2023 (Pa1276-78), December 12, 2023 (Pa1279-89), December 20, 2023 (Ra288-90), January 16, 2024 (Ra301-02), February 16, 2024 (Ra374-75), and March 14, 2024 (Ra376-80).

consultant, including (1) emails and attachments between the County and its consultant regarding the Specifications including the consultant's evaluation of the procurement (Pa548-668); and (2) documents from Wellpath including its bid summary (Pa291-95), bid presentation (Pa423-31), supplemental submission (Pa512-23), interview notes (Pa524-26), summary of changes (Pa669-71), as well as the Contract (Pa1295-1320) and the Specifications (Pa799-1272.) As demonstrated by the extensive citations to evidence and information provided by the County in the Comptroller's December 12, 2023 and March 21, 2024 written determinations, and the August 5, 2024 FAD, the Comptroller fully considered the County's evidence. (Pa760-76, Pa782-86, Pa1279-89.) And the March 21, 2024 directive in particular devotes several pages to the consultant's analysis and embeds the consultant's chart directly into its written determination for reference and clarity. (Pa769-71.)

The County had every opportunity to provide the Comptroller with information, and only after the FAD was issued did the County claim, for the first time, that the record it provided was insufficient. But supplementation of the record is not appropriate where the requesting party could have provided the information it now seeks to supplement. See Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Sr. Servs., 396 N.J. Super. 477, 480 (App. Div. 2007).

The County also argues that the Comptroller did not interview the incumbent HCCC contractor, Wellpath, or its contract consultant, (Pb17), but does not claim that it requested those interviews during the Comptroller's review. Moreover, the County fails to show how testimony from Wellpath, the County's paid consultant, or County personnel—other than its counsel and purchasing agent—would cause a different outcome.¹⁶ Supplementation is thus unwarranted because such testimony would not be material to the legal issue of whether the Contract is for inmate patient care services. See Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 2:5-5(b) (2025) (citing In re Marvin Gastman, 147 N.J. Super. 101, 114 (App. Div. 1977) (noting that supplementation is not appropriate when the information was both known to the applicant and, even if included, unlikely to affect the result)).

Given the comprehensive administrative record and the sufficient opportunity for the County to present documents and information during the Comptroller's review, supplementation of the record is entirely unnecessary for the Court to decide this appeal. And even if the Court were to disagree, the only appropriate remedy would be to remand the matter to the agency. See Rule 2:5-

¹⁶ The County baldly suggests that the Comptroller's interviews with County Counsel and the Qualified Purchasing Agent were not "accurate." (Pb17.) But the County cites no factual support for its baseless claim and does not even include the transcripts from those interviews in its appendix. Nor has the County sought to settle the record under Rule 2:5-5(a).

5(b) (permitting appointment of a trial judge only in “exceptional instances”); Matter of Corbo, 238 N.J. 246, 254–55 (2019) (noting that an evidentiary hearing before a trial judge is not the “preferred remedy,” but rather “in the interest of justice,” the Court will remand to the agency to correct a deficiency).

B. This Court Has Already Twice Rejected the County’s Request for an Evidentiary Hearing, and its Request Should Again Be Denied

This Court has twice already denied requests from the County for an evidentiary hearing. First, this Court summarily reversed the trial court’s grant of a hearing in the Comptroller’s enforcement action, explaining that an evidentiary hearing to “render findings of facts and conclusions of law . . . is beyond the carefully circumscribed authority and jurisdiction the trial court has” in an enforcement action under Rule 4:67-6, which cannot be used to “attack[] collaterally” the Comptroller’s FAD. (Pa1355.) Less than two weeks later, by way of a motion in this appeal, the County again sought a remand for an evidentiary hearing, which this Court also denied. (Pa1357-59.)

Moreover, despite the County’s suggestion to the contrary, the material facts are not in dispute. Because there is no dispute that the procurement is for inmate patient care services, further fact-finding is not necessary to decide how the controlling statutory provisions should be interpreted. And the County’s claim of a right to an evidentiary hearing rests entirely on two cases that are

inapplicable. (Pb32 (citing Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995) and In re Farmers' Mut. Fire Assur. Ass'n of N.J., 256 N.J. Super. 607, 618 (App. Div. 1992).)

Both Contini and Farmers' Mutual adjudicated requests for hearing under statutes that expressly required agency hearings. See Contini, 286 N.J. Super. at 114-15, 119 (finding a statutory right to an evidentiary hearing under the Public School Education Act, N.J.S.A. 18A:7A-1 to -52, but affirming the denial of a hearing due to the lack of disputed facts); Farmers' Mut. Fire Assurance Ass'n of N.J., 256 N.J. Super at 616 (interpreting the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 to -63 to provide a statutory right to a hearing). Here, the Legislature did not provide a statutory right to a hearing. Instead, the statute expressly provides that the Comptroller's determination of a procurement's compliance with applicable law is to be based upon the County's written notice and "any accompanying documents and information."¹⁷ N.J.S.A.

¹⁷ The County does not challenge the adequacy of the statutorily prescribed process, which provided the County with "adequate notice, a chance to know opposing evidence, and the opportunity to present evidence and argument in response." US Masters Residential Prop. (USA) Fund v. N.J. Dep't of Env't. Prot., 239 N.J. 145, 160 (2019) (citation omitted). As enacted by the Legislature, the process appropriately accounts for practical procurement realities and strikes a balance between the twin legislative goals of contractual oversight and efficient procurement. The Legislature's choice of this procurement review process recognizes the need for the Comptroller to expeditiously issue a determination, and the statute sets forth certain deadlines that does not permit the time necessary for an evidentiary hearing. See N.J.S.A. 52:15C-10(b)(1)–

52:15C-10(b)(1)–(4). Similarly, because the statute expressly contemplates purely written submissions, the County’s objection to a lack of sworn testimony is also misplaced. Nothing in the statute requires the Comptroller to conduct interviews, let alone take sworn testimony. That the Comptroller went beyond the statutory minimum paper review here and conducted interviews only further demonstrates the diligence underlying the FAD.

In sum, the County’s own written submissions to the Comptroller provided ample grounds for its determination and the resulting record is sufficient for this Court to conduct its review. Accordingly, the County’s request for a remand should be denied.

(4). Requiring an evidentiary hearing before issuing a determination is contrary to the statutory procedure and would paralyze high value public procurement.

CONCLUSION

For the foregoing reasons, the Comptroller respectfully requests that this Court affirm the August 5, 2024 Final Agency Decision and Remediation Plan.

Respectfully submitted,

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April 4, 2025

Honorable Judges
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Appellate Division
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**Re: In the Matter of the Hudson County Medical/Fiscal
Administration at the Hudson County Correctional Center
Docket No: A-004144-23**

**On Appeal from a Final Decision of the New Jersey Office
of the State Comptroller**

Honorable Judges of the Appellate Division:

This letter reply brief is submitted on behalf of appellant County of
Hudson ("County") in further support of its appeal.

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**Whether the Medical Services Contract May Be Deemed a Professional
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its Respondent's Brief, Requires an Evidentiary Hearing as a Mixed Question of Law and Fact (Pa782; Pa760; Pa1279; Rb18-30, 35 and 38). 2

CONCLUSION 15

LEGAL ARGUMENT

I. Whether the Medical Services Contract May Be Deemed a Professional Services Contract, as Urged by the County, or Solely as a Contract for Specialized Services, as Claimed by the Comptroller for the First Time in its Respondent's Brief, Requires an Evidentiary Hearing as a Mixed Question of Law and Fact. (Pa782; Pa760; Pa1279; Rb18-30, 35 and 38)

In his 48 page brief, respondent Acting State Comptroller ("Comptroller") does not deny the following:

- In 2018, the County initially sought to award the contract for medical services at the Hudson County Correctional and Rehabilitation Center ("HCCRC") as a three year professional services contract in accordance with N.J.S.A. 41A:11-15(1)(29). The Comptroller advised that a professional services contract may not be awarded for a period exceeding 12 months. (Pa1366, ¶¶ 21-22) The County abided the Comptroller's guidance and awarded a one year professional services contract to a corporation performing a range of medical and ancillary services, and not to an individual or group of physicians, on notice to the Comptroller. (Rb11, Rb37-38) Indisputably, the Comptroller did not issue a Final Agency Decision in 2018 and took no action to stop the award of the professional services contract to a corporation comprised of physicians and unlicensed ancillary personnel, either before its award

or thereafter, despite his current attack on the medical services contract on both these bases.

- The County filed a declaratory judgment action in 2018, requesting a determination of whether the medical contract at the HCCRC qualified as a professional services contract. (Pa1368, ¶ 27) Indisputably, the Comptroller opposed a judicial determination on this issue. (Pa15) Had this Court rendered a determination as to the propriety of the County's procurement process, over the Comptroller's objection, in its 2020 decision, there would be no lingering dispute on this issue in 2025. (Pa17)
- Since awarding a one year professional services contract to a corporate entity performing medical and related services at the HCCRC in 2018, the County has awarded successive one year professional services contracts for the same or similar services to a corporate entity comprised of physicians and related ancillary medical and clerical personnel from 2019 through 2023. (Pa1369, ¶¶ 31-32) Indisputably, the Comptroller has been on notice of all of the HCCRC medical contracts from 2019 through 2023, all of which were awarded as professional services contracts. (Id., ¶ 31) Yet, the Comptroller did not reject and had no substantive contact with the County regarding any of these annual professional services contracts to an entity, comprised of physicians and ancillary non-licensed personnel (Rb11, Rb37-38), and took no action to stop those contracts, either before

or after their award, despite his current attack on the medical services contract on both these bases. (Id., ¶¶ 31-32)

- The bulk of the Comptroller’s legal argument is focused on an urged distinction between specialized and professional services. (Rb18-30, 35, 38) The Comptroller contends that the 2024 contract at issue qualifies as a specialized service under N.J.S.A. 40A:11-4.1(h) and, as such, cannot simultaneously be classified as a professional service contract under N.J.S.A. 40A:11-2(6) and N.J.S.A. 40A:11-5(1)(a)(i). (Rb19, 22) Despite the six prior contracts awarded as professional services contracts, each on notice to the Comptroller, the Comptroller now concludes that the contract may only be procured through lowest responsible bidding or competitive contracting. (Rb10, 18-19)

In rendering this conclusion, the Comptroller ignores that a third option – award by way of professional services – is expressly enumerated as an exception to public bidding under N.J.S.A. 40A:11-4.1(i), a provision of the Local Public Contracts Law which is wholly ignored by the Comptroller in its brief. N.J.S.A. 40A:11-4.1(i) permits the governing body, at its option, to contract for any good or service that is exempt from bidding, pursuant to N.J.S.A. 40A:11-5. In accordance with N.J.S.A. 40A:11-5(1)(a)(i), the County may award a professional services contract by resolution for “[a]ny contract the amount of which exceeds the bid threshold,” by negotiation and award by the governing body “without public

advertising for bids and bidding therefor.”

This is the provision upon which the County relied in soliciting proposals from eight nationally recognized correctional medical provider firms, which prompted six proposals to be submitted, greatly exceeding the number of bids received when the County previously awarded this contract by either competitive contracting or lowest responsible bidder prior to 2018, and enabled the County to negotiate a favorable price and award a professional services contract by resolution in 2024 and in the six contracts awarded previous to that. (Pa1295) The Comptroller’s citing of the generic platitudes of the benefits of public bidding in its brief (Rb32-33) is belied by the Legislature’s sanctioning of the professional services exemption to public bidding, by the results achieved here and by the absence of lawsuits or challenges by any of the unsuccessful bidders, by any entity which determined not to submit a proposal or deemed the specifications to be unfair or anti-competitive, or by any member of the public or taxpayer. (Rb36)

- Significantly, review of the Final Agency Decision at issue reveals that the Comptroller’s determination does not rest on and is completely silent with respect to any comparison or interpretation of specialized versus professional services under the Local Public Contracts Law advanced in the respondent’s brief. (Pa782) And while the Final Agency Decision references letters dated December 12, 2023 (Pa783; Pa1279) and March 21, 2024 (Pa784; Pa760) from the Comptroller’s Office, neither

of these communications renders any analysis of professional services as compared with specialized services. It is a fundamental principle of appellate review that “our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available ‘unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.’” Nieder v. Royal Indemnity Ins. Co., 62 N.J. 229, 234 (1973), quoting Reynolds Offset Co., Inc. v. Summer, 38 N.J. Super. 542, 548 (App. Div. 1959).

Here, the failure to have posited this alleged basis for his Final Agency Decision prior to the filing of his respondent’s brief is all the more troubling when the Comptroller has refused to undertake or permit any evidentiary hearing in this matter and was both the trier of fact and the judge of the law below. That the County is compelled to respond to this new finding in an appellate reply brief for the first time is truly prejudicial and requires this matter, at a minimum, to be remanded, as acknowledged by the Comptroller (Rb44-45) and as was the outcome in Nieder, 62 N.J. at 35, for an opportunity to be heard and to submit evidence regarding whether a medical services contract may be deemed both a professional services contract and a contract for specialized services under the Local Public Contracts Law. This is a mixed question of law and fact, and not just a legal conclusion, as posited by the Comptroller.

- It is a well-established principle that the “government must ‘turn square corners’ in its dealings with the public.” New Concepts for Living, Inc. v. City of Hackensack, 376 N.J. Super. 394, 401 (App. Div. 2005). In F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985), the Supreme Court announced the “square corners” doctrine which provides that government agencies must “comport itself with compunction and integrity,” and not “conduct itself so as to achieve or preserve any kind of bargaining or litigational advantage.” As the Court observed, “government may have to forego the freedom of action that private citizens may employ in dealing with one another.” Application of this doctrine “cannot be exercised or withheld rigidly, but [is] always subject to the guiding principles of fundamental fairness.” New Concepts, 376 N.J. Super. at 404.

As in New Concepts, *id.*, where the government’s failure to ensure proper notice deprived the plaintiff of a fair opportunity to challenge its tax liability, the Comptroller’s argument presented for the first time in its respondent’s brief is precisely the type of unfair and arbitrary conduct that the “square corners” doctrine seeks to prevent. There has been no administrative hearing available to the County. No independent body has assessed whether the Comptroller’s determination is legally or factually sound. This complete lack of oversight contravenes fundamental principles of due process and administrative fairness. Compounding this unfairness, the Comptroller has now, for the first time in his respondent’s brief, introduced a

new theory justifying his Final Agency Decision. A decision of this magnitude, which directly impacts the County's legal and financial obligations, should not be insulated from scrutiny, nor should it be based on shifting justifications that appear only after the decision has been rendered.

The Comptroller is not imbued with statutory infallibility. (Rb3, 16-18, 31) He should not be permitted to operate in a vacuum, free from oversight, while simultaneously altering his reasoning to fit his outside counsel's litigation strategy. By relying for the first time on the "specialized services" exemption enumerated in N.J.S.A. 40A:11-4.1(h) at this late stage, the Comptroller has acted in a manner inconsistent with fundamental principles of fairness and transparency. The County should not be subjected to an arbitrary and evolving set of justifications, particularly where it has had no meaningful opportunity for review or recourse. The Comptroller must be held to a standard of fairness, and he cannot use his power to create an uneven playing field to the detriment of those subject to his authority.

- The Comptroller claims that the record below is sufficient for appellate review, notwithstanding that the Comptroller has thwarted all attempts by the County for an evidentiary hearing of any kind and irrespective of his new legal justification for his Final Agency Decision advanced for the first time in his appellate brief. (Rb41-44) Notably, the Comptroller's Office determined that the professional services exemption was inapplicable in its first substantive communication with the

County on December 12, 2023 regarding the contract at issue – before receiving any of the documents supplied by the County at the Comptroller’s request thereafter. (Pa1280; Ra003-005)

In its December 12, 2023 letter, the Comptroller’s Office, having already rendered its conclusion, wrote that it “anticipates conducting interviews, and obtaining additional information and documentation regarding the County’s decisions related to this procurement, to assist OSC in its review of the corrective action plan” and not to be used to assess the propriety of the procurement – which was a foregone conclusion. (Emphasis added.) (Pa1288) Nor did the Comptroller’s Office advise the County that it had any right or even an opportunity to submit affirmative evidence or to adduce witness or expert testimony in December 2023 or at any time. (Pa1279) Rather, the Comptroller’s Office admitted that it arrived at its conclusion solely on “examination of both the Specifications and the law,” (Pa1288), and was not interested in knowing or applying the law to explicated facts.

The Comptroller acted as judge, jury and executioner before the County had any opportunity to advance its position through witnesses or documentary evidence. That the Comptroller chose to interview only lawyers – the County Counsel and the Qualified Purchasing Agent¹ (Rb10) – referred to as “pertinent County staff” (Rb2)

¹ The interviews of the County Counsel and the Qualified Purchasing Agent were unsworn and not conducted in the presence of a certified court reporter. The transcription of the interviews is unsigned and clearly was not undertaken by a

illustrates his skewed thinking that attorneys, that is, the Comptroller and his employees comprised of lawyers, were in a better and, in fact, in the only position to evaluate whether the services provided are medical in nature or met the threshold for award via a professional services contract. The Comptroller eschewed interviews with the medical personnel performing the services, or County employed physicians overseeing the contracted medical vendor, or the County's medical consultant, Amanda Parsons, M.D. who helped to develop the specifications and participated in the vendor selection process – any and all of whom would have been capable of undermining his conclusions regarding professional services.

- In his review of the specifications, the Comptroller argues that the existence of ancillary services disqualifies the contract as one for professional services. (Rb7-8; 39-40) But this defies any notion of how a modern medical practice or infirmary operates. How can a medical practitioner function without electronic medical records or x-ray technicians or the processing of medical claims? The Comptroller's

certified court reporter. (Ra303, Ra336) In fact, it is unknown who prepared these transcripts. That they are inaccurate is obvious from the very first page. The law firm for the County's outside counsel is misidentified and the Comptroller is identified as the "controller." (Ra303) The Qualified Purchasing Agent Christine Moro is referred to "Morrow" on Ra305 and as "Maro" on Ra312. Case names are wrong. (Ra308) There are unidentified markings in the right hand margins on nearly every page of the Battista interview. Objections are misstated on Ra309. The County Counsel is quoted as saying "He went to Spain" on Ra313 – which is clearly erroneous. As part of the Moro interview, there is a notation which says "Need to re-listen to this part." (Ra344) That these purported "transcripts" are unreliable is patent. (Rb42 and 44)

myopic analysis would have been undercut by any of the current practitioners at the HCCRC, County medical personnel or consultants, or any medical expert. Yet, the Comptroller has no interest in their input – for the obvious reason that it will negate his ultimate conclusion.

The Comptroller further claims without citation to the record that the services provided under the subject professional services contract “are routinely provided at county correctional facilities” and seeks to distinguish them from the “unique, complex and technical” services at issue in Autotote Ltd. v. N.J. Sports and Exposition Auth., 85 N.J. 363 (1981), and Nachtigall v. N.J. Tpk. Auth., 302 N.J.123 (App. Div. 1997). (Rb34-35) But the invidious distinction drawn by the Comptroller is not entitled to any “special deference” (Rb16-18) and should not serve to undermine the multi-faceted medical services required under the contract for an inmate capacity of up to 1,858. (Pa804) As set forth in the Specifications by way of benchmarks,

In 2022, there were approximately 6,658 admissions to the facility with 6,324 nursing screenings completed annually (monthly average of 527). An average of 230 Provider Sick Calls, 72 Nursing Sick Calls, 67 Chronic care visits and 6,490 Nursing treatments and monitoring were done each month. 22% of inmates entering the HCC&RC were placed on a detox protocol. There are approximately 127 inmates per month on detox protocols.

8,688 inmates were on medications during 2022 with 284 total inmates receiving HIV medication. 4,134

inmates were prescribed psychiatric medications and approximately 4,038 non-formulary medications were ordered.

(Id.)

The Specifications require the vendor to “operate health care services at full staffing and to use only licensed, certified and professionally trained personnel eligible and qualified to practice in New Jersey” (Pa821), among a panoply of enumerated responsibilities (Pa820-824), and include the following varied services: “Mental Health; Dental; OB/GYN; Orthopedics; Radiology; Hypertension; Asthma; Diabetes; HIV/Aids; Seizure; Tuberculosis; Sickle Cell and COVID” (Pa856) and pulmonary/respiratory conditions, kidney/renal disease including dialysis, cancer, and management of inmates with hepatitis C. (Pa858) There are required ancillary services under the contract including, but not limited to, phlebotomy, x-ray, EKG, ultrasound and optometry services including eyeglasses, laboratory services and physical therapy. (Pa863-866) The specifications require the services of a health services administrator, a medical director, psychiatrist, dentist, obstetrician gynecologist, orthopedist, ophthalmologist, oral surgeon, nurse practitioners and nurses as well as medical records clerks, medical assistants, pharmacy technicians, dental assistants and mental health counselors, all necessary to staff a complex, diverse, highly skilled medical operation. (Pa1018-1023) The specifications consist of 473 pages, due to the magnitude of the contract requirements. (Pa799-1272) The

Comptroller's efforts to minimize or re-cast this professional services contract is simply unavailing.

- The Comptroller unfairly criticizes the County for not seeking a hearing until after receipt of the Final Agency Decision. (Rb43) To be clear, the County had no reason to believe that the Comptroller ever intended to issue a Final Agency Decision, having failed to do so before or after any of the prior procurements from 2018 through 2023 and for months after the 2024 procurement process was completed. (Rb2)

On March 6 and again on March 18, 2024, the County informed the Comptroller in writing that it would be seeking approval from the Board of Commissioners to award a professional services contract to Wellpath on March 28, 2024. (Pa740; Pa743; Rb13) The Comptroller issued no Final Agency Decision prior to the March 28, 2024 contract award. The County contemporaneously notified the Comptroller that it had awarded the medical services to the Comptroller on March 28, 2024. (Pa754) Indisputably, the Comptroller's office received this communication (Pa780), yet the Comptroller did not respond and did not issue a Final Agency Decision upon notice that the contract had been awarded.

The County submitted the Contract Compliance form and related materials to the Comptroller on May 15, 2024 (Ra419) with respect to the professional services contract awarded to Wellpath. The Comptroller did not respond and did not issue a

Final Agency Decision after receipt of the Contract Compliance form. The County notified the Comptroller on June 28, 2024 that it intended to undertake a similar process for the award of the 2025 medical services contract. (Pa1322) The Comptroller did not respond to the June 28, 2024 letter and, for the first time, and without any prior notice to the County, issued a Final Agency Decision on August 5, 2024. (Pa782) It cannot be denied that the County requested a hearing in August 2024 shortly after receiving the Final Agency Decision (Pa1330) and did not receive the courtesy of a reply or that the request for a hearing was made in response to the Final Agency Decision which is based on an inadequate record, with no input by any medical professional.

- In his brief, the Comptroller contends that having an evidentiary hearing “would paralyze high value public procurement.” (Rb47) The Comptroller waited seven years to issue a Final Agency Decision and seven months have elapsed since he issued his decision. Does the Comptroller credibly claim that there was no time in the past nearly eight years for a hearing to gather facts and evidence under oath concerning whether the contract may properly be awarded as professional services contract?
- Finally, the Comptroller appears to have abandoned his “finding” in the Final Agency Decision that Wellpath was selected as the “County Counsel’s preferred vendor” and has provided neither a factual nor legal defense for this outrageous and

inflammatory accusation which should further serve to invalidate the Final Agency Decision.

CONCLUSION

Based on the above, appellant County of Hudson respectfully submits that the award of the medical services contract as a professional services contract, utilizing a non-fair and open process, is permissible under the Local Public Contracts Law, requiring a reversal of the August 5, 2024 Final Agency Decision as arbitrary, capricious and unreasonable and lacking fair support in the record. The Comptroller should be barred from raising a new justification for his Final Agency Decision for the first time in his respondent's brief. If the Court determines to consider the Comptroller's shifting rationale, this matter should be remanded for an evidentiary hearing as a mixed question of law and fact to determine whether the medical services contract qualifies as both a professional services contract and a contract for specialized services under the Local Public Contracts Law.

Respectfully,

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