STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 12, 2021)

BARLETTA/AETNA I-195 WASHINGTON BRIDGE NORTH PHASE 2 JV; AETNA BRIDGE COMPANY; and BARLETTA HEAVY DIVISION, INC.	:	
Petitioners,	:	
v.	:	**C.A. No. PC-2020-06551**
STATE OF RHODE ISLAND, DEPARTMENT OF ADMINISTRATION, by and through BRETT SMILEY, in his official capacity as Chief Purchasing Officer; and STATE OF RHODE ISLAND, DEPARTMENT OF TRANSPORTATION, by and through PETER ALVITI, JR., P.E., in his official capacity as Director,	:	
Respondents,	:	
v.	:	
CARDI CORPORATION,	:	
Intervenor	:	

DECISION

TAFT-CARTER, J. Before this Court for decision are several dispositive and non-dispositive motions. These motions include three dispositive motions: (1) The Rhode Island Department of Administration (DOA), by and through Brett Smiley acting in his official capacity of Chief Purchasing Officer for the State of Rhode Island, and Rhode Island Department of Transportation's (RIDOT), by and through Peter Alviti, Jr., P.E. acting in his official capacity as Director (collectively, Respondents), January 13, 2021 Motion to Dismiss Based on Mootness; (2)

Respondents' Motion to Dismiss Cardi Corporation's Cross-Claim and Counterclaim for Failing to Join an Indispensable Party and/or a Motion for Judgment on the Pleadings; and (3) Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, Aetna Bridge Company, and Barletta Heavy Division, Inc.'s (collectively, Petitioners) Motion to Dismiss Intervenor Cardi Corporation's Counterclaims as Directed Against Petitioners. Also before the Court are several non-dispositive motions: (1) Intervenor/Defendant Cardi Corporation's (Cardi) December 3, 2020 Motion for Protective Order; (2) Cardi's December 31, 2020 Motion to Compel, Motion to Enjoin Further Procurement Proceedings, and Motion to Extend the Time to Answer or Otherwise Respond to the Petition; (3) Cardi's January 19, 2021 Motion to Compel; (4) Petitioners' December 14, 2020 Motion to Compel Intervenor/Defendant Cardi Corporation's Responses to Petitioners' Request for Production of Documents and Interrogatories and Motion to Strike Cardi's Objections Thereto; and (5) Petitioners' Motion to Vacate the Court's Scheduling Order. The Court heard these motions via WebEx on February 9, 2021. Jurisdiction is pursuant to Rules 11, 12(b)(1), 12(b)(7), and 12(c) of the Superior Court Rules of Civil Procedure and G.L. 1956 § 9-30-11.

I

Facts and Travel

This controversy arises out of a public bidding contract sought by the Respondents for a construction project relating to the I-195 Washington Bridge.[1] In December 2016, the Respondents issued a request for proposal (RFP) as to Phase 1 of the I-195 Washington North project, which was awarded to Cardi. (Petition for Declaratory Judgment, Injunctive Relief and

[1] This section is largely identical to the recitation of the facts in the Court's recent Decision on Petitioners' Motion to Amend the Complaint.

Writ of Mandamus (Petition) ¶¶ 11-12.) Cardi completed work under Phase 1 of the project until RIDOT cancelled or terminated the contract for the Phase 1 RFP. *Id.* ¶ 13.

On April 10, 2020, the Rhode Island Division of Purchases, on behalf of RIDOT, issued RFP # 76033776 for Phase 2 of the Washington Bridge North project (Phase 2 RFP). *Id.* ¶ 14. The Phase 2 RFP stated that the project "will principally consist of the rehabilitation of the I-195 Washington Bridge North Phase 2 and the associated new on and off ramps in Providence and East Providence." *Id.* ¶ 16. Section 3.1 of Part 1 of the Phase 2 RFP set forth a list of improvements to be completed as part of the Phase 2 project, including, *inter alia*, the "installation of link slabs." *Id.* ¶ 17. Additionally, the Phase 2 RFP noted that "Phase 1 of the project was the recently completed partial rehabilitation of the substructure of the bridge," but that "only a portion of the work depicted in the 2016 contract documents was completed during the Washington North Phase 1 project." *Id.* ¶¶ 16, 18.

In response to the Phase 2 RFP, three bidders submitted questions, including Petitioners, who requested clarification regarding the scope of work completed under Phase 1. *Id.* ¶ 19. According to Petitioners, the Respondents' answers to these questions contained incorrect information. *Id.* ¶ 21. Bidders also attended a site inspection for the project, where it "became evident" that "certain link slabs may have been replaced during the Phase 1 RFP," but it was not clear how many slabs were impacted. *Id.* ¶¶ 22-23. Petitioners submitted a timely bid with the required technical proposal and sealed price proposal. *Id.* ¶¶ 28-29. This bid relied upon the "State's representations that the majority of the work associated with the replacement of the link slabs had to be performed under the Phase 2 RFP." *Id.* ¶ 25.

On August 17, 2020, RIDOT issued an Apparent Best Value determination for the Phase 2 RFP, which report deemed Cardi to have the highest final score of the three bidders;

consequently, Respondents tentatively selected Cardi for the project. *Id.* ¶¶ 50-54. Ten days later, Petitioners submitted a bid protest after learning that Cardi's price proposal was significantly less than Petitioners' proposal. *Id.* ¶ 56. Petitioners asserted in the bid protest that Cardi had a "substantial and unfair competitive advantage" based on its knowledge of the scope of the work performed under the Phase 1 RFP. *Id.* Respondents' Determination in response to the bid protest revealed that Cardi had not included construction of any link slabs in its proposal. *Id.* ¶ 60. This action followed.

On September 17, 2020, Petitioners filed a three-count Petition against the Respondents requesting declaratory and injunctive relief. *Id.* at 14-19. By agreement of the parties, Cardi entered the action as an Intervenor/Respondent. *See* Consent Order, Dec. 24, 2020. Respondents and Cardi filed Motions to Dismiss the action, which were subsequently denied by this Court on December 21 and December 22, 2020, respectively.

Immediately following those decisions, the course of this litigation changed significantly. On December 23, 2020, the Federal Highway Administration (FHWA) denied concurrence with the State's tentative award of the Phase 2 RFP to Cardi.[2] *See* Ex. B to Pet'rs' Mot. to Amend Compl. (Mot. to Am.). By letter, the FHWA noted that the basis for its decision was that Cardi was "non-responsive according to the terms of the RFP." *Id.* On December 31, 2020, RIDOT rescinded its tentative selection of the project to Cardi and cancelled the solicitation in its entirety. *See* Ex. C to Pet'rs' Mot. to Am. Cardi filed a bid protest challenging the Respondents' decision to cancel the solicitation, which protest was denied on February 17, 2021. *See* Cross-Claim and

[2] The Phase 2 RFP is defined as a "Federal-aid" contract, which requires concurrence from the FHWA prior to issuance of federal funds. *See* Ex. A to Pet'rs' Mot. to Am. (Proposed Am. Pet.) ¶ 19; 23 C.F.R. § 635.114(b).

Counterclaim of Intervenor/Def. Cardi Corporation (Cardi Counterclaim) ¶ 85; Ex. B to Resp'ts' Suppl. Mem. Obj. to Pet'rs' Mot. to Am. Compl. at 7.

Following FHWA's decision of nonconcurrence, the parties filed several dispositive and non-dispositive motions. Notably, on January 13, 2021, Respondents filed a Motion to Dismiss Based on Mootness. The same day, Cardi filed a seven-count Crossclaim and Counterclaim seeking damages in addition to declaratory and injunctive relief. *See generally* Cardi Counterclaim. Both Respondents and Petitioners have moved to dismiss those claims.

On January 15, 2021, Petitioners filed a Motion to Amend the Complaint in light of the FHWA's issuance of nonconcurrence and events following therein. More specifically, Petitioners sought leave to amend the Petition to request declarations that: (1) cancellation of the solicitation was void and in violation of 23 C.F.R. § 635.114(h) and G.L. 1956 § 37-2-53; (2) the State's "failure to engage in Competitive Negotiations" with Petitioners violates the Purchasing Act, Procurement Regulations, and the RFP; (3) Cardi is a non-responsive bidder, has a conflict of interest, and an unfair competitive advantage, and is therefore precluded from engaging in Competitive Negotiations with the State; and (4) that the State is required to engage in Competitive Negotiations with Petitioners regarding the Phase 2 RFP. *See* Ex. A to Pet'rs' Mot. to Am. (Proposed Am. Pet.) at 24. Additionally, Petitioners' proposed First Amended Petition for Declaratory Judgment, Injunctive Relief and Writ of Mandamus requested that the Court issue injunctive relief voiding the cancellation of the solicitation and requiring the State to "proceed with a formal award of the Phase 2 RFP. . . by engaging in Competitive Negotiations with [Petitioners] and exclude Cardi from such negotiations[.]" *Id.* at 26. Last, Petitioners sought to amend their request for a writ of mandamus which would similarly compel the State to void cancellation of the

solicitation and require it to engage in Competitive Negotiations with Petitioners. *Id.* at 28. Both the Respondents and Cardi objected to Petitioners' Motion to Amend.

In addition to the Motions to Dismiss, several other non-dispositive motions remain pending before the Court, primarily concerning discovery. These motions include: (1) Cardi's December 3, 2020 Motion for Protective Order; (2) Cardi's December 31, 2020 Motion to Compel, Motion to Enjoin Further Procurement Proceedings, and Motion to Extend the Time to Answer or Otherwise Respond to the Petition; (3) Cardi's January 19, 2021 Motion to Compel; (4) Petitioners' December 14, 2020 Motion to Compel Intervenor/Defendant Cardi Corporation's Responses to Petitioners' Request for Production of Documents and Interrogatories and Motion to Strike Cardi's Objections Thereto; and (5) Petitioners' January 4, 2021 Motion to Vacate the Court's Scheduling Order.

Respondents submitted additional materials to the Court in an email dated February 18, 2021. Cardi objected to the email submissions and requested the right to supplement the record. The Court granted Cardi's request. Respondents filed Supplemental Memoranda relating to two of its Objections—Respondents' Objection to Petitioners' Motion to Amend and Respondents' Objection to Cardi's Motion to Compel, Enjoin, and Extend Time—and one of its dispositive motions—Respondents' Motion to Dismiss Cardi's Cross-Claim and Counterclaim for Failing to Join an Indispensable Party and/or a Motion for Judgment on the Pleadings. Respondents also filed as exhibits the State's February 17, 2021 Bid Protest Determination relating to Cardi's bid protest challenging cancellation of the solicitation, as well as the Appendices attached to that Determination, which include several communications between the parties and between the State and FHWA. *See generally* Exs. A (Cardi's Bid Protest) and B (Determination in Response to Cardi's Bid Challenge) to Resp'ts' Suppl. Memoranda. Cardi filed a memorandum supplementing

its Objection to Respondents' Motion to Dismiss Based on Mootness and Objection to Respondents' and Petitioners' Motions to Dismiss Cardi's Cross-Claim and Counterclaim. Petitioners also filed a Supplemental Memorandum and Response to Cardi's and the Respondents' Post-Hearing Submissions, as well as attached exhibits.

On March 5, 2021, the Court denied Petitioners' Motion to Amend the Complaint. The Court now turns its attention to the remaining dispositive and non-dispositive motions pending before it. These motions are addressed in the same decision in the interest of judicial economy.

II

Respondents' Motion to Dismiss Based on Mootness

Respondents argue that a justiciable controversy no longer exists following FHWA's notice of nonconcurrence, cancellation of the solicitation, and the State's intent to rebid the project. (Resp'ts' Mot. to Dismiss Based on Mootness at 5.) Respondents contend with these recent actions, "Petitioners have received their requested relief under all counts in the Petition"—cancellation of the solicitation and rebid; thus, Petitioners claims are rendered moot. *Id.* at 6. Last, Respondents assert that the exceptions to the mootness doctrine do not apply because this case does not involve matters of extreme public importance not capable of evading review. *Id.* at 7-8.

Petitioners objected to the motion on the grounds that the Court must decide its Motion to Amend before issuing a ruling on the instant motion. (Pet'rs' Obj. to Mot. to Dismiss at 3.) Cardi, too, objects to Respondents' motion, but as it relates to disposition of the entire case. (Intervenor/Defendant, Cardi Corporation's Obj. to Respondents' Mot. to Dismiss Based on

Mootness (Cardi's Obj. to Mot. to Dismiss Based on Mootness) at 2-3.) Cardi argues that it has brought counterclaims that cannot be dismissed at this juncture.[3]

1

Standard of Review

"It is well settled that a necessary predicate to th[e] Court's exercise of jurisdiction is an actual, justiciable controversy." *H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010). '"For a claim to be justiciable, two elemental components must be present: (1) a plaintiff with the requisite standing and (2) some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" *Id.* (quoting *N & M Properties, LLC v. Town of West Warwick*, 964 A.2d 1141, 1145 (R.I. 2009)). Consequently, this Court "shall not address moot, abstract, academic, or hypothetical questions." *Id.* However, the Court may still consider a matter that, '"while technically moot or deficient in some other respect, involves issues of extreme public importance, which are capable of repetition but which evade review.'" *Id.* (quoting *In re Stephanie B.*, 826 A.2d 985, 989 (R.I. 2003)).

"[A] case is moot if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy." *Associated Builders & Contractors of Rhode Island, Inc. v. City of Providence*, 754 A.2d 89, 90 (R.I. 2000). "In other words, '[a] case is moot if there is no continuing stake in the controversy,

[3] Cardi also argues that Respondents' Motion to Dismiss Based on Mootness should be summarily denied because Cardi filed a bid protest in response to the cancellation of the solicitation, which, at the time of the objection, remained pending. (Cardi's Obj. to Mot. to Dismiss Based on Mootness at 2.) Cardi asserts that under G.L. 1956 § 37-2-53, which pauses further action on a solicitation or award of a contract until the chief purchasing officer determines the bid protest, Respondents should not have filed a motion. *Id.* However, as of February 17, 2021, the bid protest has been determined by the Chief Purchasing Officer. *See* Determination in Response to Cardi's Bid Challenge at 7.

or if the court's judgment would fail to have any practical effect on the controversy.'" *Blais v. Rhode Island Airport Corp.*, 212 A.3d 604, 612 (R.I. 2019) (quoting *Boyer v. Bedrosian*, 57 A.3d 259, 272 (R.I. 2012)).

2

Analysis

As the Court has denied Petitioners' Motion to Amend the Complaint, the original Petition, filed on September 17, 2020, stands as the operative pleading. In the Petition, Plaintiff requests declaratory judgment, injunctive relief, and a writ of mandamus. *See* Pet. at 16, 18, 20. One option for this relief—as evidenced by the term "and/or" in Petitioners' requests for relief—is the "cancelation and re-issuance of the Phase 2 RFP that includes information and/or documents that identifies the work performed and/or completed by Cardi under the Phase 1 RFP[.]" *Id.* Following FHWA's nonconcurrence, the State cancelled the original solicitation; it has represented that it seeks to rebid the project. Consequently, Plaintiff has received part of its requested relief, albeit not from this Court. *See H.V. Collins Co.*, 990 A.2d at 848 ("Thus, it is clear to this Court that there is no viable relief available to plaintiff at this point."). Furthermore, Petitioners have conceded that the original Petition is moot. In their Motion to Vacate the Court's Scheduling Order, which currently remains pending before this Court, Petitioners assert that "based on [FHWA's nonconcurrence and the State's subsequent cancellation of the solicitation] the Petition, as plead, has become moot." (Pet'rs' Mot. to Vacate Scheduling Order at 2.)

Moreover, the exceptions to the mootness doctrine do not apply. "Issues of extreme public importance usually implicate 'important constitutional rights, matters concerning a person's livelihood, or matters concerning citizen voting rights.'" *H.V. Collins Co.*, 990 A.2d at 848 (quoting *In re New England Gas, Co.*, 842 A.2d 545, 554 (R.I. 2004)). These factors are not at

issue here. Additionally, this case is largely fact specific, and is not one that is "likely to recur in such a way as to evade judicial review." *Associated Builders*, 754 A.2d at 90. Accordingly, the Respondents' motion to dismiss the Petition based on mootness is granted. This ruling, however, does not implicate Cardi's Counterclaims and Cross-Claims, and the Court shall next address the viability of those claims.

III

Motions to Dismiss for Failure to Join an Indispensable Party

Petitioners and Respondents have each filed motions to dismiss arguing that Cardi's failure to join FHWA as an indispensable party is fatal to its claims pursuant to Rule 12(b)(7) and § 9-30-11 of the Uniform Declaratory Judgments Act. The Court addresses these motions together to avoid duplicative analysis.

1

Standard of Review

A party may bring a motion to dismiss under Rule 12(b)(7) for failure to join an indispensable party. *See* Super. R. Civ. P. 12(b)(7). "'A court may not assume subject-matter jurisdiction over a declaratory-judgment action when a plaintiff fails to join all those necessary and indispensable parties who have an actual and essential interest that would be affected by the declaration.'" *Rosano v. Mortgage Electronic Registration Systems, Inc.*, 91 A.3d 336, 340 (R.I. 2014) (quoting *Meyer v. City of Newport*, 844 A.2d 148, 152 (R.I. 2004)).

Pursuant to § 9-30-11 of the Uniform Declaratory Judgments Act, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Our Supreme Court has held that § 9-30-11 is "mandatory" and consequently,

"'failure to join all persons who have an interest that would be affected by the declaration is fatal.'" *Burns v. Moorland Farm Condominium Association*, 86 A.3d 354, 358 (R.I. 2014) (quoting *Abbatematteo v. State*, 694 A.2d 738, 740 (R.I. 1997)).

Rule 19(a) of the Superior Court Rules of Civil Procedure requires that:

> "A person who is subject to service of process shall be joined as a party in the action if: (1) [i]n the person's absence complete relief cannot be accorded among those already parties; or (2) [t]he person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (A) [a]s a practical matter impair or impede the person's ability to protect that interest. . ."

"[A]n indispensable party [is] one whose interests could not be excluded from the terms or consequences of the judgment . . . as where the interests of the absent party are inextricably tied in to the cause . . . or where the relief really is sought against the absent party alone." *Rosano*, 91 A.3d at 340 (quotation omitted).

2

Analysis

Both Petitioners and Respondents move to dismiss Cardi's Counterclaims and Cross-claims for failure to join an indispensable party pursuant to Rule 12(b)(7) and § 9-30-11. More specifically, Petitioners argue that as to Counts I-III, "[t]here is no question that Cardi is seeking from the Court relief against the FHWA." (Pet'rs' Mot. to Dismiss Intervenor Cardi Corporation's Counterclaims as Directed Against Pet'rs (Pet'rs' Mot. to Dismiss Counterclaims) at 10.) Petitioners further assert that FHWA's rights "will be prejudiced" if they are not joined as a party because "Cardi seeks to have the Project awarded to Cardi" despite nonconcurrence, that Cardi "seeks to compel RIDOT and FHWA to have discussions relative to FHWA reconsidering its decision and seeks communications . . . that may well be protected by deliberative process

privilege." *Id.* at 11. According to Petitioners, "[i]n essence, Cardi is expressly asking this Court to find that FHWA's determination was erroneous or outside of FHWA's scope of authority." (Pet'rs' Suppl. Mem. and Resp. to Cardi's and the State's Post-Hearing Submissions (Pet'rs' Suppl. Mem.) at 5.) Petitioners alternatively contend that the Court "may consider whether it has the authority to invoke Rule 19 and join FHWA in the case." (Pet'rs' Mot. to Dismiss Counterclaims at 14.) Petitioners also assert that the Court does not have jurisdiction to issue the relief sought by Cardi related to the FHWA and that Cardi would not be able to obtain certain documents from the federal agency. *Id.* at 15.

Respondents similarly contend that FHWA is an indispensable party and that Cardi's failure to join the FHWA requires dismissal. (Resp'ts' Mot. to Dismiss Cardi Corporation's Cross-claim and Counterclaim for Failing to Join an Indispensable Party and/or a Mot. for J. on the Pleadings (Resp'ts' Mot. to Dismiss Crossclaims) at 9.) Respondents argue that "the relief sought by Cardi and the basis for its allegations is inextricably linked to FHWA[.]" *Id.* at 10. Respondents assert that Cardi would not be afforded "complete relief" unless FHWA is joined as a party to this action, and "somehow this Court were to require FHWA to give its concurrence." *Id.* at 11.

Cardi responds that the issues herein may be determined without FHWA's participation because it is asking the Court to review: "(1) whether FHWA was provided appropriate information by RIDOT . . . as specifically set forth in the RFP; (2) whether RIDOT properly cancelled all proposals and unilaterally decided to re-solicit the Project; and (3) whether Respondents should address any issues which prevent FHWA concurrence . . . pursuant to 23 CFR Part 636." (Intervenor/Defendant, Cardi Corporation's Obj. to Resp'ts' Mot. to Dismiss Cardi Corporation's Cross-Claim (Cardi Obj. to Resp'ts' Mot. to Dismiss) at 8.) Cardi further disputes Respondents and Petitioners' characterization that it cannot be afforded complete relief without

the FHWA. *Id.* at 13. Specifically, Cardi argues that it "does not seek to enjoin FHWA to issue concurrence or to have the contract 'awarded' in the absence of FHWA's concurrence." *Id.* Rather, Cardi asserts that it "seeks, in part, . . . to cure any misinformation and/or interference on the part of RIDOT with regard to the concurrence process," to "enjoin Respondents' unilateral decision to cancel all proposals . . . and to require Respondents to avail themselves to the procedures under the Design-Build Regulations, 23 CFR Part 636[.]" *Id.* Alternatively, Cardi argues that this question is premature and that this issue should be reviewed after RIDOT produces relevant discovery related to communications with the FHWA. *Id.* at 18-20.

The parties point to persuasive authority from other state and federal courts for support of their respective positions. In particular, Petitioners argue that *Boles v. Greeneville Housing Authority*, 468 F.2d 476 (6th Cir. 1972), *McCowen v. Jamieson*, 724 F.2d 1421, 1423-24 (9th Cir. 1984), and *Aztec Minerals Corp. v. Romer*, 940 P.2d 1025, 1033-34 (Colo. App. 1996) support the position that FHWA is a necessary party in this matter. (Pet'rs' Suppl. Mem. at 5.) In *Boles*, the Court of Appeals for the Sixth Circuit determined that the Department of Housing and Urban Development (HUD) was an indispensable party in a challenge to a local housing authority's project plan that HUD had approved. *Boles*, 468 F.2d at 479. The court determined that relief would require it to "set aside a HUD project without hearing a single word from HUD." *Id.* Next, in *McCowen,* the court held that a challenge to the grant of a waiver by two federal agencies to a state agency in issuing replacement food coupons required joinder of those federal agencies. *McCowen*, 724 F.2d at 1423-24. Finally, in *Aztec Minerals Corp.*, the Colorado Court of Appeals affirmed a trial court ruling holding that the EPA was an indispensable party where two constitutional claims in the complaint challenged conduct by state actors who allegedly committed those violations by "assisting the EPA." *Aztec Minerals Corp.*, 940 P.2d at 1028-29, 1033-34. The

court held that these claims "essentially challenge[d] the reasonableness of the EPA's removal action" and consequently, the EPA was an indispensable party. *Id.*

Cardi, on the other hand, points to state courts which have declined to hold that FHWA is an indispensable party. (Cardi's Obj. to Resp'ts' Mot. to Dismiss at 9.) For example, Cardi cites a West Virginia appellate decision in *State ex. rel. Affiliated Construction Trades Foundation v. Stucky*, 729 S.E.2d 243 (W. Va. 2012), in which the court held that FHWA was not an indispensable party where the issues related to whether the state "failed to solicit competitive bids" and whether the construction contract needed to "contain a prevailing wage clause." *Stucky*, 729 S.E.2d at 249-50. The court reasoned that "[n]o relief has been requested from FHWA" and that "the respondents failed to demonstrate that the declaratory judgment action will impair or impede any interest of FHWA." *Id.* at 250.

While these cases are instructive, the Court must apply the standard for joinder set forth in § 9-30-11 as to Cardi's claims for declaratory relief and determine whether the FHWA would have "*any* interest which would be affected by the declaration[.]" Section 9-30-11 (emphasis added); *see Burns*, 86 A.3d at 358. More specifically, the Court must be sure that "[b]efore any proceeding for declaratory relief is entertained, all persons who have an actual, present, adverse, and antagonistic interest in the subject matter should be before the court." *Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1037 (R.I. 2017). For this determination, the Court turns to the allegations and relief requested in Cardi's Counterclaims and Cross-Claims.

(i)

Counts I and II

Counts I and II of Cardi's Counterclaims and Cross-Claims involve requests for declaratory and injunctive relief. *See* Cardi Counterclaim ¶¶ 74-97. Unquestionably, the factual allegations

underpinning Cardi's Cross-Claims and Counterclaims, and in particular, Counts I and II, involve the FHWA. Indeed, FHWA's nonconcurrence is at the heart of Cardi's allegations of bad faith and palpable abuse of discretion against the Respondents in this matter. *See* Cardi Counterclaim ¶ 52 ("RIDOT's actions in connection with FHWA concurrence were . . . in bad faith and a palpable abuse of discretion resulting in a disadvantage to Cardi, who had satisfied all conditions to the award of contract."); *id.* ¶ 81 ("[T]he State provided grounds to FHWA for non-concurrence in bad faith in violation of the RFP, the Procurement Regulations and laws applicable to the procurement of a design-build contract."). It is also true that certain statements in the pleading directly implicate the FHWA. *See, e.g.,* Cardi Counterclaim ¶ 47 ("FHWA's non-concurrence failed to set forth any basis for the purported determination of non-responsiveness."). Moreover, although Cardi insists that it "does not seek to enjoin FHWA to issue concurrence or to have the contract 'awarded' in the absence of FHWA's concurrence," in its introduction to the Counterclaims and Cross-Claims, Cardi notes that one of the rulings it seeks from this Court is that "Cardi is entitled to an award of contract for the Project *and FHWA's* concurrence, therein, in accord with the RFP[.]" *See* Cardi Obj. to Resp'ts' Mot. to Dismiss at 13; Cardi's Counterclaim at 3 (emphasis added).

As to relief, on Count I, Cardi requests, *inter alia,* declarations that: (1) "Cardi satisfied all requirements and obligations of the RFP"; (2) "Cardi satisfied and met all of the conditions in the Notice of Tentative Selection"; (3) "Cardi is entitled to an award of the contract for the Project in accord with the RFP." Cardi's Counterclaim at 15. Furthermore, Cardi requests injunctive relief that (1) "[t]he State be enjoined or ordered to communicate in writing" those declarations "to FHWA"; (2) "[i]f FHWA refuses to re-consider and provide concurrence, that the State be enjoined and ordered to address any issues with Cardi as the Apparent Best Value Respondent"; and (3)

"[a]ny purported cancellation of all proposals and/or re-solicitation of the Project be enjoined pending further order of this Court and then, be rescinded[.]" *Id.* at 15-16. In Count II, Cardi asserts that the State has failed to satisfy certain conditions prior to cancellation of the proposal and resolicitation, including concurrence from the FHWA in that cancellation. *Id.* ¶¶ 91-94. Cardi further requests, in part, declaratory and injunctive relief "[e]njoining or ordering the State to address any issues raised by FHWA with Cardi as the Apparent Best Value Respondent pursuant to 23 CFR Part 636[.]"[4] *Id.* at 17.

After review, the Court finds that FHWA clearly has an interest in this matter that would be affected by the declaration, should the Court rule in Cardi's favor on Count I. *See* § 9-30-11. First, while the language contained in the Counterclaims and Cross-Claims is purportedly aimed only at State action, underlying those claims and requests for relief alleged in Count I is a controversy over the merits of FHWA's concurrence determination. Here, the State formally requested concurrence from the FHWA, and in response, the FHWA issued a determination stating that it would not concur. *See* Cardi Counterclaim ¶¶ 42, 45 ("In [the September 16, 2020 and December 4, 2020] communications, RIDOT formally requested FHWA's concurrence[.]"). In its Objection, Cardi argues that "[t]he FHWA's authority to withhold concurrence is statutory limited" by 23 U.S.C. § 112(b)(1). (Cardi Obj. to Resp'ts' Mot. to Dismiss at 16.) Consequently,

[4] Cardi also seeks the following declarations and injunctive relief pursuant to Count II: (1) "[r]estraining and/or staying any further solicitation of the Project until further order of this Court"; (2) "[e]stablishing protective protocols prior to any re-solicitation, if allowed by the Court, to protect confidential information while allowing Cardi to recover its $150,000.00 stipend"; (3) "[a]ppointing a Special Master to report to the Court, prior to any re-solicitation if allowed by the Court, whether Petitioners secured or were provided information regarding Cardi's Price Proposal, Technical Proposal and/or weighting criteria or evaluations related thereto in a manner deemed to be an unfair competitive advantage pursuant to the terms of the RFP"; (4) "[a]n award of costs under the Rhode Island Uniform Declaratory Judgment Act"; and (5) "[s]uch other relief as this Court deems fair and appropriate." (Cardi Counterclaim at 17.)

Cardi indirectly attacks FHWA's determination by placing blame on the State for inducing that decision. *See* Cardi Counterclaim ¶ 81 ("[T]he State provided grounds to FHWA for non-concurrence in bad faith . . ."). Clearly, if this Court were to grant Cardi's requested relief under Count I—that it declare Cardi satisfied all obligations, is entitled to the award of the contract, and that the State be ordered to communicate with FHWA regarding these findings—it would also be implicitly ruling that FHWA's original determination of nonconcurrence was improper because it was based on incorrect information. Therefore, under the broad terms of § 9-30-11, the Court concludes that the FHWA would have an interest in a determination which would implicate the merits of one of its decisions.

Furthermore, the requested relief on this Count also involves FHWA's participation. While Cardi does not ask this Court to require FHWA to reconsider its decision or issue federal concurrence, it does seek State action aimed at requesting as much from the FHWA. *See* Cardi Counterclaims at 15 (requesting that "[t]he State be enjoined or ordered to communicate in writing the findings" that Cardi satisfied all requirements of the RFP and is entitled to the award of the contract to FHWA, and that "[i]f FHWA refuses to re-consider and provide concurrence, that the State be enjoined and ordered to address any issues with Cardi"). Consequently, a ruling from this Court in favor of Cardi would, in essence, require the State to engage with the FHWA to seek concurrence on this project again. Indeed, this is one of the goals Cardi seeks to accomplish through its requested relief. *See* Cardi's Obj. to Resp'ts' Mot. to Dismiss at 16-17 ("Cardi expects discovery in this matter to show that Cardi did fully satisfy all pre-conditions to an award of contract, and Cardi is entitled to present that evidence, so that this Court can determine that fact and *require/enjoin RIDOT to then, resubmit to FHWA for concurrence based upon correct information*.") (emphasis added). Surely, the FHWA would have a clear interest in a determination

requiring the State to communicate to its agency certain judicial findings and likely seeking its reconsideration of FHWA's decision.[5]

Cardi's arguments in its Supplemental Memorandum further demonstrate FHWA's indispensability in this matter. More specifically, these additional arguments make clear that Cardi seeks to deduce the reasoning behind FHWA's nonconcurrence and whether blame may fairly be placed on the State for the allegedly improper decision. *See* Intervenor/Defendant, Cardi Corporation's Suppl. Mem. in Supp. of its Obj. to Resp'ts' Mot. to Dismiss Based on Mootness and in Supp. of its Objs. to Pet'rs' and Resp'ts' Motions to Dismiss Cardi Corporation's Counterclaim and Cross-Claim (Cardi Suppl. Mem.) at 8) (arguing that "as of September 16, 2020, RIDOT had provided FHWA with everything needed for FHWA to issue concurrence-in-award," asking "[w]hy was FHWA concurrence not forthcoming at that point?" and contending that subsequent communication sent to FHWA by the State gave a "partial answer" to that question). For example, Cardi asserts that "the December 4, 2020 correspondence [between FHWA and the State] clearly indicates that FHWA may have been questioning Cardi's Technical Approach scoring based upon misinformation from RIDOT[.]" *Id.* at 11. This argument is merely speculative and illustrates to the Court that, at bottom, resolution of this claim involves factual questions surrounding FHWA's reasons for nonconcurrence, whether that determination was

[5] Petitioners also argue that privilege issues may preclude Cardi from obtaining certain documents, and that this Court does not have the authority to compel production of documents from a federal agency. (Pet'rs' Mot. to Dismiss Counterclaims at 16-19.) Cardi objects to this argument on the basis that Petitioners have no standing to assert these privilege issues on behalf of Respondents or the federal agency, and that the deliberative process privilege may not apply in these circumstances. (Cardi's Obj. to Pet'rs' Mot. to Dismiss at 8-9.) This question is premature. As Cardi argues, it has sought discovery from the State, and there are no privilege claims before the Court at this time.

proper, and whether the State's actions contributed to or induced a wrongful determination from the FHWA.

Count II also seeks declaratory and injunctive relief, but is primarily aimed at the State's cancellation of the project. *See* Cardi Counterclaim at 16. Certain allegations preceding the requests for declaratory and injunctive relief on this count clearly relate to the FHWA. *See* Cardi Counterclaim ¶¶ 93-95 (alleging that RIDOT's failure to seek concurrence for resolicitation with the FHWA amounted to bad faith and a palpable abuse of discretion). However, part of the claim is likely rendered moot based on FHWA's issuance of concurrence with RIDOT's cancellation and re-solicitation of the project. *See* Determination in Response to Cardi's Bid Challenge, Appendices M and N. Additionally, with respect to requests for relief "c" and "d" under Count II, declarations in Cardi's favor would not directly implicate any interest of the FHWA; but, as these requests concern certain actions tied to a resolicitation—which has not yet been issued by the State—they are likely not ripe for determination. *See* Cardi Counterclaim at 17 (asking this Court to "establish[] protective protocols prior to any re-solicitation . . . to protect confidential information while allowing Cardi to recover its $150,000.00 stipend" and "appoint[] a Special Master to report to the Court, prior to any re-solicitation if allowed by the Court, whether Petitioners secured or were provided" confidential information); *see also Sasso v. State*, 686 A.2d 88, 91 (R.I. 1996) ("[T]hat which is not ripe for decision cannot and should not be decided in a declaratory-judgment action.").

Furthermore, the Court finds that a portion of the requested relief under Count II involves FHWA's interests. Cardi's request for relief "b" seeks that the Court "[e]njoin[] or order[] the State to address any issues raised by FHWA with Cardi as the Apparent Best Value Respondent pursuant to 23 CFR Part 636[.]" Cardi Counterclaim at 17. Indeed, Cardi alleges that "[s]uch law

allows the State to discuss and resolve any issues raised by FHWA with Cardi . . . in a design-build procurement as opposed to re-solicitation." *Id.* ¶ 96. This request is nearly identical to relief sought under Count I, part "e," which asks, "[i]f FHWA refuses to re-consider and provide concurrence, that the State be enjoined and ordered to address any issues with Cardi as the Apparent Best Value Respondent as pursuant to 23 CFR Part 636, so as to allow for the final award of contract[.]" *See id.* at 15. The Court has already discussed why the FHWA would have an interest in such relief sought pursuant to Count I.

Moreover, as noted above, the Supreme Court has defined an indispensable party under Rule 19(a) as "one 'whose interests could not be excluded from the terms or consequences of the judgment . . . as where the interests of the absent party are inextricably tied in to the cause . . . or where the relief really is sought against the absent party alone.'" *Rosano*, 91 A.3d at 340 (quoting *Root v. Providence Water Supply Board*, 850 A.2d 94, 100 (R.I. 2004)). The FHWA clearly fits within that definition. Cardi argues that if the Court agrees with Petitioners and Respondents' indispensability arguments, "then every time there is a bid protest on a federally funded, design-build project, it will be argued that FHWA is an indispensable party." (Cardi's Obj. to Resp'ts' Mot. to Dismiss at 7.) The Court disagrees. Some bid protests may be purely related to state action, but here, Cardi's dispute stems from the determination made by the FHWA, and FHWA's interests are "inextricably tied" to Cardi's causes of action in Counts I and II. *See Rosano*, 91 A.3d at 340 (quoting *Root*, 850 A.2d at 100).

This Court "may not assume subject-matter jurisdiction over a declaratory-judgment action when a plaintiff fails to join all those necessary and indispensable parties who have an actual and essential interest that would be affected by the declaration." *Id.* (quoting *Meyer*, 844 A.2d at 152). Accordingly, the Court concludes that Respondents and Petitioners' Motions to Dismiss should be

granted as to Counts I and II on the basis that Cardi has failed to join an indispensable party pursuant to Rule 12(b)(7) and § 9-30-11.[6]

(ii)

Counts IV-VII

While the FHWA is clearly an indispensable party as to the counts of the Counterclaim and Cross-Claim seeking declaratory and injunctive relief, the same cannot be said for the final four claims brought by Cardi. Counts IV and V allege breaches of contract against Respondents generally and for a $150,000 stipend related to preparation and submission of the Technical Proposal. *See* Cardi Counterclaim ¶¶ 105-115. In Count VI, Cardi brings a claim for promissory estoppel against Respondents. *Id.* ¶¶ 116-121. Finally, in Count VII, Cardi alleges that RIDOT interfered with its expectancy in the award of the contract of the Project. *Id.* ¶¶ 122-126. In its Objection to Respondents' Motion to Dismiss, Cardi argues that its alternative "claims are clear and certainly, do not require FHWA to participate in this matter." (Cardi's Obj. to Resp'ts' Mot. to Dismiss at 27.) The Court agrees.

First, these claims were not brought under the UDJA, and consequently, the standard set forth in § 9-30-11 requiring joinder of "parties who have or claim *any* interest which would be affected by the declaration" does not apply. (Emphasis added.) Therefore, the Court analyzes FHWA's indispensability to these claims under Rule 19 of the Superior Court Rules of Civil Procedure and must determine whether FHWA's "interests could not be excluded from the terms

[6] While Petitioners also argue that Count III should be dismissed for failure to join FHWA as an indispensable party, the Court finds that this claim is likely moot. In Count III, titled "Injunctive Relief," Cardi alleges that it has filed a contemporaneous bid protest and that, "[i]n accord with the Procurement Regulations, any further solicitation of the Project should cease." Cardi Counterclaim ¶¶ 99-100. As noted herein, that Bid Protest was resolved by the Chief Purchasing Officer on February 17, 2021. *See* Determination in Response to Cardi Bid Protest at 7.

or consequences of the judgment . . . are inextricably tied in to the cause . . . or where the relief really is sought against the absent party alone." *Rosano*, 91 A.3d at 340 (quoting *Root*, 850 A.2d at 100).

Upon review, the Court finds that FHWA is not an indispensable party to the remaining claims. In all four of these claims, Cardi seeks relief solely against Respondents for conduct related either to the purported agreements between Cardi and the State, promises made by the State, or actions taken by the State which allegedly interfered with Cardi's award. *See* Cardi's Counterclaim ¶¶ 105-126. Unlike Counts I and II, "the Court is not asked to adjudicate the rights of absent parties." *Patterson v. Bonnet Shores Fire District*, No. WC-2020-0130, 2020 WL 7638840, at *6 (R.I. Super. Dec. 17, 2020). Moreover, while a judgment in favor of Cardi on these claims may include a reference to the undisputed fact that FHWA did not concur in the award to Cardi, it would not require the Court to express an opinion on the merits of FHWA's decision or direct Respondents to take any particular action in the procurement process which may involve the FHWA. Rather, Cardi seeks monetary damages from the State for these claims. Accordingly, FHWA is not needed to afford Cardi "complete relief" on these counts. Super. R. Civ. P. 19(a)(1).

In sum, the Court finds that the FHWA is an indispensable party as to Cardi's claims for declaratory judgment and injunctive relief in Counts I and II of the Counterclaim and Cross-Claim and failure to join the FHWA is fatal to those claims under § 9-30-11. However, the Court also finds that Counts IV-VII—Cardi's claims for breach of contract, promissory estoppel, and tortious interference against the State—do not require joinder of FHWA as Cardi may be afforded complete relief from the State should judgment enter in its favor.

IV

Judgment on the Pleadings

Respondents argue that if the Court concludes dismissal is not proper for failure to join indispensable parties, they are entitled to judgment on the pleadings. (Resp'ts' Mot. to Dismiss Crossclaims at 12.) Respondents broadly request dismissal of all claims in its motion, but as the Court has determined that some claims survive the Motion to Dismiss, it will analyze Respondents' request for judgment on the pleadings only as to Counts IV-VII of Cardi's Counterclaims and Cross-Claims.

1

Standard of Review

"'Rule 12(c) provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided.'" *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Chariho Regional School District v. Gist*, 91 A.3d 783, 787 (R.I. 2014)). A motion for judgment on the pleadings under Rule 12(c) is reviewed under the same standard as a motion to dismiss pursuant to Rule 12(b)(6). *See id.* "'A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim.'" *Id.* (quoting *Tri-Town Construction Co. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 478 (R.I. 2016)). For this review, the Court must assume the allegations in the pleading are true and view "the facts in the light most favorable" to the nonmoving party. *Goodrow v. Bank of America, N.A.*, 184 A.3d 1121, 1125 (R.I. 2018) (quoting *Warfel v. Town of New Shoreham*, 178 A.3d 988, 991 (R.I. 2018)).

"Ordinarily, when ruling on a motion to dismiss brought under Rule 12(b)(6) or Rule 12(c), 'a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment.'" *Id.* at 1126 (quoting *Alternative Energy, Inc. v. St. Paul Fire & Marine Insurance Co.*, 267 F.3d 30, 33 (1st Cir. 2001)). However, a well-established exception to this rule exists for "'documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint.'" *Goodrow*, 184 A.3d at 1126 (quoting *Chase*, 160 A.3d at 973).

2

Analysis

Respondents argue that they are "entitled to judgment on the pleadings because the complete relief requested is not within [the] State's control." (Resp'ts' Mot. to Dismiss Crossclaims at 12.) Respondents further assert that based on the communications between RIDOT and FHWA, there is "no evidence of any bad faith, fraud or a palpable abuse of discretion." (Resp'ts' Mot. to Dismiss Cardi Corporation's Cross-Claim and Counterclaim for Failing to Join an Indispensable Party and/or a Mot. for J. on the Pleadings—Suppl. Mem. (Resp'ts' Mot. to Dismiss Cardi Counterclaim Suppl. Mem.) at 3.) In Respondents' Supplemental Memorandum following the determination of Cardi's bid protest, Respondents argue that the Court should consider the Bid Protest Determination and attached Appendices demonstrating the communications between RIDOT and FHWA either under an exception to the typical rule or convert the motion to one for summary judgment. *Id.* Respondents further argue that these documents demonstrate that the State sought concurrence from the FHWA and that there was no bad faith, fraud, or palpable abuse of discretion. *Id.* Rather, Respondents say that the Chief

Purchasing Officer has affirmed both the decision to cancel and the rescission of Cardi's tentative selection, and that the "Chief Purchasing Officer's decision is entitled to a statutory presumption of correctness in accordance with R.I. Gen. Laws § 37-2-51." *Id.*

In response, Cardi argues that Respondents are not entitled to judgment on the pleadings because Cardi has pled that Respondents provided information to FHWA intended to secure non-concurrence, which amounts to bad faith and a palpable abuse of discretion. (Cardi's Obj. to Resp'ts' Mot. to Dismiss at 22-23.) Moreover, Cardi argues that Respondents have not addressed Cardi's other claims, including "alternate counts seeking to safeguard Cardi's Technical Approach if the matter is re-solicited, to reimburse Cardi its expenses per express contract with Respondents, and for other damages." *Id.* at 27.

Respondents' argument in support of its Rule 12(c) request primarily relates to the claims involving the FHWA, and, as Cardi suggests, does not address the other remaining claims. Taking the allegations in Counts IV-VII as true, Cardi has sufficiently pled claims for breach of contract, promissory estoppel, and tortious interference against Respondents.[7] Consequently, the Court finds that Respondents are not entitled to judgment on the pleadings under Rule 12(c) on those claims.

[7] The Court is mindful of the statutory presumption of correctness afforded decisions made by "any official, board, agent, or other person appointed by the state concerning any controversy arising under or in connection with the solicitation or award of a contract" and that this presumption may impact the merits of these claims. Section 37-2-51. However, "[t]he availability of a Rule 12(c) motion to terminate litigation is severely limited in light of the rules of pleading" in that "[t]he plaintiff is not required to plead the ultimate facts that must be proven in order to succeed on the complaint . . . All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted." *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992). Moreover, "[t]he standard for prevailing on a Rule 12(c) motion is an especially difficult one to meet when the questions of law applicable to the controversy are fact intensive." *Id*. Consequently, Cardi's claims pass muster at this stage of the litigation.

V

Non-Dispositive Motions

As noted, several non-dispositive motions were heard on February 9, 2021 and remain pending in this matter. Those motions include: (1) Cardi's December 3, 2020 Motion for Protective Order; (2) Cardi's December 31, 2020 Motion to Compel, Motion to Enjoin Further Procurement Proceedings, and Motion to Extend the Time to Answer or Otherwise Respond to the Petition; (3) Cardi's January 19, 2021 Motion to Compel; (4) Petitioners' December 14, 2020 Motion to Compel Intervenor/Defendant Cardi Corporation's Responses to Petitioners' Request for Production of Documents and Interrogatories and Motion to Strike Cardi's Objections Thereto; and (5) Petitioners' Motion to Vacate the Court's Scheduling Order.

First, the Court agrees with Petitioners that the December 4, 2020 Scheduling Order should be vacated following the shift in the course of this action with FHWA's issuance of non-concurrence on December 23, 2020. The December 4, 2020 Scheduling Order contemplated discovery related to the original Petition. *See* Scheduling Order, Dec. 4, 2020. Since that time, new issues have been raised and additional claims have been filed. Accordingly, Petitioners' Motion to Vacate the Court's Scheduling Order is granted.

Furthermore, the remaining four motions relating to discovery were either filed prior to FHWA's December 23, 2020 decision or before the Court's determination on the dispositive motions herein. Consequently, the scope of discovery has changed entirely, and many of the requests in these motions are no longer relevant to the remaining claims in this case. Therefore, these motions will be denied without prejudice to refiling.[8]

[8] The Court pauses to note that one of these motions—Cardi's Motion to Compel, Motion to Enjoin Further Procurement Proceedings, and Motion to Extend the Time to Answer or Otherwise Respond to the Petition—contains two requests outside of the scope of discovery. First, Cardi

VI

Rule 11 Sanctions

In their initial briefing on the Motion to Dismiss Cardi's Counterclaims and Cross-Claims, Petitioners challenge a specific allegation in Cardi's Counterclaim and Cross-Claim related to alleged potential communications between Petitioners and RIDOT regarding information contained in Cardi's proposal. (Pet'rs' Mot. to Dismiss Counterclaims at 20.) Petitioners argue that Cardi should be "required to provide a factual basis" for this allegation and contend that it will not be able to source such an allegation. *Id.* In their Supplemental Memorandum and Response to Cardi and the State's Post-Hearing Submissions, Petitioners go one step further and say that counsel for Cardi has made false representations in both papers and its recent email to the Court regarding "Petitioners alleged communications with RIDOT/RIDOA," and request that the Court "subject him and/or his client to sanctions, pursuant to Rule 11[.]" (Pet'rs' Suppl. Mem. at 12-13.) In response to the initial argument, Cardi contends that the "facts supporting [its] conclusion are clearly set forth in Cardi's Counterclaim . . . and Cardi is clearly entitled to investigate that illegal disclosure." (Cardi's Obj. to Pet'rs' Mot. to Dismiss at 3.)

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asks that this Court enjoin any further steps in the procurement process "until discovery can be taken into these issues and a full disclosure can be made for the Court in order to all [*sic*] the Court to rule on certain of these issues." (Cardi's Mot. to Compel, Mot. to Enjoin Further Procurement Proceedings, and Mot. to Extend the Time to Answer or Otherwise Respond to the Pet. (Cardi's Mot. to Enjoin) at 10.) Cardi also notes that there could be further bid protest issues and that procurement proceedings may not continue during bid protests. *Id.* Since the filing of this motion, Cardi submitted a bid protest on January 12, 2021, which was denied by the Chief Purchasing Officer on February 17, 2021. (Ex. B to Resp'ts' Suppl. Memoranda at 1, 7.) The Court's rulings herein have also changed the posture of Cardi's claims in this matter. Consequently, the Court denies without prejudice Cardi's request that the Court enjoin any further procurement proceedings. Second, Cardi also requests an extension of time to respond to the initial Petition. (Cardi's Mot. to Enjoin at 9.) On January 13, 2021, Cardi filed an Answer to the Petition and its own Counterclaims and Cross-Claims. Accordingly, Cardi's request for an extension of time is moot.

"Rule 11 requires attorneys to 'make [a] reasonable inquiry to assure that all pleadings, motions and papers filed with the court are factually well-grounded, legally tenable and not interposed for any improper purpose.'" *Burns*, 86 A.3d at 361 (quoting *Pleasant Management, LLC v. Carrasco*, 918 A.2d 213, 217 (R.I. 2007)). Pursuant to this rule of civil procedure, trial courts have "wide-ranging authority 'to impose sanctions against attorneys for advancing claims without proper foundation[.]'" *Pelumi v. City of Woonsocket*, No. PC 10-3875, 2015 WL 412883, at *17 (R.I. Super. Jan. 12, 2015) (quoting *Pleasant Management, LLC*, 918 A.2d at 216). For example, sanctions have been imposed under Rule 11 where a party has "acted in bad faith with the purpose and intent to harass the plaintiff and filed numerous frivolous motions that forced the plaintiff to incur additional legal fees," *Smith v. Smith*, 207 A.3d 447, 451 (R.I. 2019), or where an attorney made "egregious misrepresentations" in an affidavit that were "not well founded in fact . . . not filed in food faith, and was interposed for the improper purposes of harassing the individual defendants, causing an unnecessary delay, and needlessly increasing the cost of the litigation," *Huntley v. State*, 109 A.3d 869, 874-75 (R.I. 2015).

"However, 'Rule 11 should not be used to raise issues of legal sufficiency that more properly can be disposed of by a motion to dismiss or a motion for a more definite statement or a motion for summary judgment.'" *Pelumi*, 2015 WL 412883, at *17 (quoting *Dome Patent L.P. v. Permeable Techs., Inc.*, 190 F.R.D. 88, 90 (W. Dist. N.Y. 1999)). The Court has "broad discretion" to impose or deny sanctions under Rule 11, and sees no reason to take such action in these circumstances. *See Ballard v. SVF Foundation*, 181 A.3d 27, 41 (R.I. 2018).

VII

Conclusion

Therefore, for the reasons stated above, this Court finds that Petitioners' original Petition is moot and therefore grants Respondents' Motion to Dismiss Based on Mootness. Additionally, the Court finds FHWA to be an indispensable party under § 9-30-11 as to Counts I and II seeking declaratory and injunctive relief and therefore grants, in part, Respondents' Motion to Dismiss Cardi Corporation's Cross-Claim and Counterclaim for Failing to Join an Indispensable Party and/or a Motion for Judgment on the Pleadings and grants, in part, Petitioners' Motion to Dismiss Intervenor Cardi Corporation's Counterclaims as Directed Against Petitioners. The Court finds that the FHWA is not an indispensable party to Counts IV-VII of Cardi's Counterclaim and Cross-Claims. The Court also denies Respondents' request for judgment on the pleadings as to the remaining claims.

Additionally, the Court grants Petitioners' Motion to Vacate Scheduling Order, and denies without prejudice: (1) Cardi's December 3, 2020 Motion for Protective Order; (2) Cardi's December 31, 2020 Motion to Compel, Motion to Enjoin Further Procurement Proceedings, and Motion to Extend the Time to Answer or Otherwise Respond to the Petition; (3) Cardi's January 19, 2021 Motion to Compel; and (4) Petitioners' December 14, 2020 Motion to Compel Intervenor/Defendant Cardi Corporation's Responses to Petitioners' Request for Production of Documents and Interrogatories and Motion to Strike Cardi's Objections Thereto.

Counsel shall submit an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, et al. v. State of Rhode Island, Department of Administration, et al.**
CASE NO:	**PC-2020-06551**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 12, 2021**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Jackson C. Parmenter, Esq.; Erin A. Hockensmith, Esq.; Michael A. Kelly, Esq.**
For Defendant:	**Daniel W. Majcher, Esq.**
For Intervenor:	**Jeremy Ritzenberg, Esq.; William M. Russo, Esq.**