



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY

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West Orange, New Jersey 07052-4101

**Re: *Worth Construction Co., Inc.*
*Reconsideration of Chapter 51/EO 117 Ineligibility, Montclair State University***

Dear Mr. Mautone:

This letter is in response to your letter ("Letter") to me dated June 11, 2015. The Letter "appeals" or seeks reconsideration of an initial ineligibility determination by the Chapter 51 Unit of the Division of Purchase and Property that a contribution made by Worth Construction Co., Inc. ("Worth Construction"), to the Passaic County Democratic Committee ("PCDC") in the amount of \$350.00 on September 2, 2014, rendered Worth Construction ineligible for a contract award by Montclair State University ("University").

The pertinent statute, P.L. 2005, c. 51 ("Chapter 51") prohibits the State of New Jersey ("State") or any of its purchasing agents or agencies, or its independent authorities, from contracting with business entities that have solicited or made certain contributions of money to any candidate committee or election fund of any candidate for, or any holder of the public office of the Governor, or to any State or county political party committee within specified time frames. Effective November 15, 2008, Executive Order Number 117, among other things, extended Chapter 51's limit on contracting with firms that have contributed to include business entities contributing to any legislative leadership committee or any municipal political party committee in the same manner as those provisions apply to a contribution to any candidate committee, election fund, or State or county political party committee identified in Chapter 51.

I begin with a brief review of the facts. The University issued RFP 1189 seeking proposals for a construction contract for the University's New School of Communication and Media Building. As a required part of their procurement process, Worth Construction submitted a New Jersey Division of Purchase and Property Two-Year Chapter 51/EO 117 Vendor Certification and Disclosure of Political Contributions ("Certification") to the University. The University forwarded the Certification to the Chapter 51 Unit for review. Worth Construction's Certification, certified by Michael Pontoriero, President of Worth Construction, disclosed that on September 2, 2014, Mr. Pontoriero made a \$350.00 contribution ("Contribution") by Worth Construction to the PCDC. The PCDC is a county political party committee as referenced in Chapter 51. The Chapter 51 Unit determined the Contribution to be disqualifying. This reconsideration request followed.

Worth Construction primarily asserts three contentions in this reconsideration request. First, Worth Construction requests a waiver of the ineligibility determination because the reported Contribution inadvertently exceeded the legal maximum limit for contributions by \$50.00. Second, the subject contract was bid "pursuant to a fair and open process." Third, Worth Construction requests reconsideration because Worth Construction requested and received a refund of the Contribution. I address these arguments and other points below.

As to the contention that the Contribution is only \$50.00 over the maximum legal limit, Chapter 51 is clear and unequivocal. Chapter 51 provides: "[f]or the purposes of this act, a 'contribution' means a contribution reportable by the recipient under 'The New Jersey Campaign Contributions and Expenditures Reporting Act,' P.L. 1973, c. 83, (C.19:44A-1 et seq.) made on or after the effective date of this act." N.J.S.A. 19:44A-20.16. A "[c]ontribution reportable by the recipient" means, among other things, a contribution or contributions in excess of \$300.00 per calendar year to or received by a political party committee. N.J.A.C. 19:25-24.1. Correspondingly, \$300.00 is the legal limit. The ineligibility determination cannot be reversed on this basis. Worth Construction requests a waiver of the ineligibility determination. However, the Legislature did not provide a waiver exception in the Chapter 51 law and I am therefore, without discretion to waive the ineligibility determination in whole or part.

Worth Construction further contends that the contract was bid pursuant to "a fair and open process" and the Contribution had no bearing on the outcome of procurement process. However, the legislative findings associated with Chapter 51 place the utmost importance on the State's compelling interests in prohibiting the award of government contracts to business entities that are contributors to certain political parties and holders of public office. N.J.S.A. 19:44A-20.13. The State is charged with the duty of assuring the public that the selection of State contracts is based upon merit and not political contributions made by such contractors. Ibid. The legislative intent is to safeguard not only against political contributions that pose the risk of improper influence or purchase of access, but also against those contributions that create the perception or appearance thereof. Ibid. Moreover, while some local pay-to-play laws may have an exception for contracts that are bid pursuant to "a fair and open process," the State's Chapter 51 statute and governing precedent have no such exception for the State contracting process.

As to Worth Construction's last contention that it requested and received a refund of the Contribution, it is unpersuasive, as explained below. Chapter 51 provides a narrow window within which a business entity may neutralize the effect of a contribution and maintain its eligibility for State contracts. N.J.S.A. 19:44A-20.20 provides:

If a business entity inadvertently makes a contribution that would otherwise bar it from receiving a contract, or makes a contribution during the term of a contract in violation of this act, the entity may request a full reimbursement from the recipient and, if such reimbursement is received within 30 days after the date on which the contribution was made, the business entity would again be eligible to receive a contract, or would no longer be in violation, as appropriate.

Chapter 51 requires that a refund must be received within 30 days after the contribution is made. In Re Earle Asphalt Co., 401 N.J. Super. 310, 326-28 (App. Div. 2008), aff'd o.b. 198 N.J. 143 (2009) (affirming that both the request for reimbursement and actual receipt of reimbursement must occur within 30 days of the disqualifying contribution). Here the Contribution was made on September 2, 2014. The reconsideration request Letter states: "Worth requested and received from the Passaic County Democratic Committee a refund of \$350.00." In support, the Letter attaches copies of Worth Construction's original Contribution check dated September 2, 2014, the PCDC refund check dated June 9, 2015, and a cover letter from the Chairman of the PCDC also dated June 9, 2015, enclosing the refund check. More than 30 days had passed from Worth Construction's Contribution until it received the PCDC refund. Therefore, according to law, the ineligibility determination cannot be reversed.

I have reviewed the information submitted as it relates to the provisions of Chapter 51. Based upon this review and for the reasons discussed above, I am unable to overturn the initial ineligibility determination rendered by the Chapter 51 Unit in this matter. By copy of this letter, I am notifying Montclair State University of this decision.

Sincerely,



Jignasa Desai-McCleary
Director

C Amy Davis, DPP
Robert Shaughnessy, DPMC
Cecilia Hetzer, Montclair State University