



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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June 11 2018

Via Regular & Electronic Mail ([palper@jci-kci.com](mailto:palper@jci-kci.com))

Theodore J. Whitmyer, President  
Jersey Construction, Inc.  
838 Piney Hollow Road  
P.O. Box 557  
Hammonton, NJ 08037

Re: Jersey Construction, Inc.  
Reconsideration of Chapter 51/ EO 117 Ineligibility Determination

Dear Mr. Whitmyer:

This letter is in response to your correspondence of May 29, 2018, on behalf of Jersey Construction, Inc. (Jersey Construction), to the Director of the Division of Purchase and Property (Division) requesting that the Division reconsider and rescind the decision of the Chapter 51 Review Unit (Chapter 51 Unit) which found that Jersey Construction was ineligible for a contract award through March 29, 2019. Specifically, Jersey Construction requests reconsideration of the Chapter 51 Unit's determination that Jersey Construction had made a disqualifying political contribution to a County Political Party Committee, in the amount of \$1,000, which rendered it ineligible for a contract award.

By way of background, on or about May 18, 2018, the South Jersey Transportation Authority (SJTA) submitted Jersey Construction's *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions* (Form) to the Chapter 51 Unit for review. With the Form, Jersey Construction included the Business Entity Annual Statement which detailed political contributions made in 2017. The Chapter 51 Unit's review of the Form revealed that Jersey Construction had made a potentially disqualifying contribution to a County Political Party Committee. As shown in the screenshot below, on September 29, 2017, Jersey Construction had made a contribution in the amount of \$1,000 to the Camden County Democratic Committee:

**Part 5: Contributions Made** (Please provide each contributor's information followed by all related contributions)

**Contributor Information**

Name JERSEY CONSTRUCTION, INC Type Other Business Organization

Address 1 838 PINEY HOLLOW ROAD

Address 2 P. O. BOX 557

City HAMMONTON State New Jersey Zip 08037

Recipient Name CAMDEN COUNTY DEMOCRATIC COMMITTEE

Political Office or Committee Type Political Committee Contribution Type Check

Contribution Date September 29, 2017 Contribution Amount \$1,000.00  
*(If Refund, Enter a Negative Number -) (Enter numbers only)*

Accordingly, on May 18, 2018, the Chapter 51 Unit, through SJTA, wrote to Jersey Construction advising that the "Form reveals a potentially disqualifying political contribution made to a County Political Party Committee (PPC)." The Chapter 51 Unit requested a copy of the cancelled check for the political contribution noted below:

| Contributor Name          | Relationship of Contributor to the Vendor | Date of Contribution | Amount of Contribution | Type of Contribution (i.e. currency, check, loan, in-kind) | Recipient (Full legal name)        | Address of Recipient |
|---------------------------|---|----------------------|------------------------|--|------------------------------------|----------------------|
| Jersey Construction, Inc. | Same                                      | 9/29/17              | \$1,000.00             | Check  | Camden County Democratic Committee | Not provided         |

Later that same day, Jersey Construction provided a copy of the cancelled check for the listed political contribution. Thereafter, the Chapter 51 Unit issued its decision finding that Jersey Construction was ineligible for contract award based upon the political contribution to the Camden County Democratic Committee. In reaching its ineligibility determination the Chapter 51 Unit noted in part:

... Based upon a review of the documents submitted, the Review Unit has determined that the named vendor is ineligible for contract award at this time because of political contribution made to a County Political Party Committee (PPC).

Public Law 2005, Chapter 51, N.J.S.A. 19:44A-20.13 et seq. ("Chapter 51") does not permit the award of State contracts in excess of \$17,500 to any business entity that has made "reportable contributions" to any State or County Political Party Committee or to the campaign or election committee of any gubernatorial candidate. Effective November 15, 2008, Executive Order 117 ("E.O. 117") expanded upon Chapter 51 to include any Legislative Leadership Committee, Municipal Political Party Committee and campaign or election committee of any Lieutenant Governor. [For the full text of Chapter 51 and E.O. 117 see

[http://www.njleg.state.nj.us/2004/Bills/PL05/51\\_.PDF](http://www.njleg.state.nj.us/2004/Bills/PL05/51_.PDF) and  
<http://www.nj.gov/infobank/circular/eojsc117.htm>].

As documented in the Chapter 51 form submission and the attached FORM BE, the named vendor and/or its "business entity" (including shareholders, members, partners, officers or controlled subsidiaries or political committees) made the following contribution(s):

| Contributor Name          | Relationship of Contributor to the Vendor | Date of Contribution | Amount of Contribution | Type of Contribution (i.e. currency, check, loan, in-kind) | Recipient (Full legal name)        | Address of Recipient |
|---------------------------|---|----------------------|------------------------|--|------------------------------------|----------------------|
| Jersey Construction, Inc. | Same                                      | 9/29/17              | \$1,000.00             | Check  | Camden County Democratic Committee | Not provided         |

(See p. 6 of 1st attachment; see also 2nd attachment). The "Camden County Democratic Committee" is a County PPC.

Based upon the above listed contribution(s) to a County Political Party Committee, the vendor will be ineligible for contract award for a period of eighteen (18) months from the date of the contribution pursuant to Chapter 51 and E.O. 117. Therefore, the vendor will be ineligible for contract award through March 29, 2019, which is eighteen (18) months from the September 29, 2017 political contribution.

...

[Chapter 51 Unit May 18, 2018 email.]

On May 30, 2018, pursuant to N.J.A.C. 17:12-5.5, Jersey Construction filed a request for reconsideration. In support of its request for reconsideration, Jersey Construction notes that it sought and obtained a refund of the political contribution; therefore, Jersey Construction requests that the ineligibility determination be overturned.

In consideration of Jersey Construction's request for reconsideration, I have reviewed the record of this matter, including all documentation, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed decision on the merits of the appeal. I set forth herein the Division's Final Agency Decision.

The State is charged with the duty of assuring the public that the award of State contracts is based upon merit and not political contributions made by prospective contractors. The legislative intent is to safeguard the integrity of the procurement process against "political contributions that pose the risk of improper influence, purchase of access, or appearance thereof." N.J.S.A. 19:44A-20.13. The pertinent statute, N.J.S.A. 19:44A-20.13 through 20.25 ("Chapter 51 Law"), prohibits the State of New Jersey, any of its purchasing agents, agencies, or its independent authorities from contracting with business entities that have solicited or made certain contributions of money to any candidate committee, election fund of any candidate, any holder of the office of the Governor or Lieutenant Governor, or to any State or county political party committee within specified time frames. Therefore, to protect the integrity of government contractual decisions and to improve the public's confidence in government, the Legislature enacted the Chapter 51 Law to prohibit awarding government contracts to business entities which contribute to certain

candidates, political parties and the holders of public office. See, N.J.S.A. 19:44A-20.13. Specifically, the Chapter 51 Law provides:

The State or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure from any business entity services or any material, supplies or equipment, or to acquire, sell, or lease any land or building, where the value of the transaction exceeds \$17,500, if that business entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee or election fund of any candidate or holder of the public office of Governor or of Lieutenant Governor, or to any State or county political party committee: (i) within the eighteen months immediately preceding the commencement of negotiations for the contract or agreement; (ii) during the term of office of a Governor and a Lieutenant Governor, in the case of contributions to a candidate committee or election fund of the holder of one of those offices, or to any State or county political party committee of a political party nominating such Governor and Lieutenant Governor in the last gubernatorial election preceding the commencement of such term; or (iii) within the eighteen months immediately preceding the last day of the term of office of Governor and Lieutenant Governor, in which case such prohibition shall continue through the end of the next immediately following term of the office of Governor and Lieutenant Governor, in the case of contributions to a candidate committee or election fund of the holder of one of those offices, or to any State or county political party committee of a political party nominating such Governor and Lieutenant Governor in the last gubernatorial election preceding the commencement of the latter term.

[N.J.S.A. 19:44A-20.14.]

The governing regulations go on to define a reportable contribution as:

“Contribution reportable by the recipient” shall mean a currency contribution in any amount or a contribution or contributions in excess of \$300 in the aggregate per election made to or received by a candidate committee or joint candidates committee or per calendar year made to or received by a political party committee or legislative leadership committee.

[N.J.A.C. 19:25-24.1.]

The Chapter 51 Law does provide an opportunity, albeit narrow, within which a business entity may neutralize the effect of an inadvertent and/or prohibited political contribution in order to maintain its eligibility for State contracts. N.J.S.A. 19:44A-20.20 provides in part:

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.

*[Emphasis added.]*

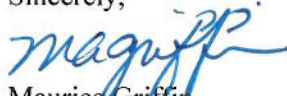
The requirement that a refund be received within 30 days after the contribution is made has been upheld by the Appellate Division in In Re Earle Asphalt, 401 N.J. Super. 310 (App. Div. 2008) aff'd o.b. 198 N.J. 143 (2009), wherein the court affirmed that both the request for reimbursement and actual receipt of reimbursement must occur within 30 days of the disqualifying contribution.

In the present matter, Jersey Construction exceeded the legal threshold when it made its contribution to the Camden County Democratic Committee in the amount of \$1,000 which is in excess of the \$300 threshold and failed to obtain a refund within the statutorily permitted timeframe. Subsequent to the Chapter 51 Unit's ineligibility determination, a refund was requested and the refund check was issued May 25, 2018, 238 days later.<sup>1</sup> However, because the refund was not requested and received within 30 days of the contribution being made, Jersey Construction is not able to neutralize the effect of the disqualifying contribution. Therefore, the Chapter 51 Unit properly determined that Jersey Construction is ineligible for contract award.

Based upon this review and for the reasons discussed above, I am unable to overturn the Chapter 51 Unit's determination that Jersey Construction is ineligible for a contract award for a period of 18 months through March 29, 2019. This is my final agency decision with respect to the request for reconsideration submitted by Jersey Construction.

By copy of this letter, I am notifying the South Jersey Transportation Authority of this decision.

Sincerely,



Maurice Griffin  
Acting Director

MAG: RUD

c: A. Davis (via email only)  
R. Storino (via email only)  
D. Adamo (via email only)

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<sup>1</sup> In addition, I note that N.J.S.A. 19:44A-20.20 does not contain any "discovery" rule or relaxation provision which would permit a period greater than 30 days for receipt of the refund. The Court in In Re Earle Asphalt had the opportunity to carve out a discovery rule exception and chose not to do so.