



State of New Jersey

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September 19, 2014

Mr. Scott E. Thomas, Esq.
Dickstein Shapiro LLP
1825 Eye Street NW
Washington, DC 20006-5403

RE: *PricewaterhouseCoopers LLP*
Reconsideration of Chapter 51/E117 Ineligibility

Dear Mr. Thomas:

This letter is in response to your letter ("Letter") to me dated June 5, 2014. 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 attributable to PricewaterhouseCoopers LLP ("PwC") to Chris Christie for Governor, Statewide Republican Primary 2013 in the amount of \$1,000, made on April 18, 2013, rendered PwC ineligible for a contract award by the College of New Jersey.

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 any contribution 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 117, among other things, extended Chapter 51's limit on contracting with firms 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.

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 award 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.

In this appeal, PwC contends primarily that the contribution attributable to PwC was inadvertent and without PwC's knowledge. PwC also contends that PwC acted as promptly as possible to arrange for a refund of the contribution and the refund was received approximately three weeks after discovery of the contribution.

I begin with a brief review of the facts. In April 2013, a PwC partner, Raymond Beier, made a \$1,000 contribution to Chris Christie for Governor, Statewide Republican Primary 2013 attributable to PwC. PwC learned of the subject contribution in late March 2014 when it was preparing PwC's March 31, 2014 New Jersey Election Law

Enforcement Commission's ("ELEC") Business Entity Report covering PwC's 2013 activity. PwC submitted an amended New Jersey Division of Purchase and Property Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions ("Certification") to the Chapter 51 Review Unit. (A copy of the Certification is attached to the Letter and incorporated herein.) PwC's Certification properly disclosed its partner's contribution and certified that PwC was reporting all contributions by PwC, as well as all individuals whose contributions are attributable to PwC, pursuant to Chapter 51 and Executive Order 117.

PwC states that the subject contribution was inadvertent, made without PwC's knowledge, and should not be attributed to PwC because its partner, Mr. Beier, owns a 1% or less partnership interest in PwC. (Letter, Page 2.) Chapter 51 and Executive Order 117, however, encompass not only the vendor or business entity, but all individuals whose contributions are attributable to the business entity. While N.J.S.A. 19:44A-20.17 defines the "business entity" as the business entity and "all principals who own or control more than 10% of the profits or assets of a business entity," Executive Order 117 extends the definition of the "business entity." Executive Order 117 defines the "business entity," in the case of limited liability partnerships like PwC, as: "the limited liability partnership and **any partner**." (Emphasis added.) Accordingly, no matter how minimal the equity interest a partner holds in the PwC partnership, the partner's contributions are attributed to the partnership. Therefore, Mr. Beier, as an equity partner in PwC, is subject to New Jersey's laws regulating campaign contributions by limited liability partnerships.

As to the assertions that the contribution was made inadvertently by Mr. Beier and without PwC's knowledge, Chapter 51 provides direction about whether a contribution is deemed inadvertent. N.J.S.A. 19:44A-20.20 states: "It shall be presumed that contributions made within 60 days of a gubernatorial primary or general election were not made inadvertently." The instant contribution was made on April 15, 2013. The 2013 gubernatorial primary election date was June 4, 2013. Correspondingly, the contribution was made within 60 days of the primary election and, by the Chapter 51 statute, is presumed not to be an inadvertent contribution. Therefore, under N.J.S.A. 19:44A-20.20, and N.J.A.C. 19:25-24.2(b), PwC is ineligible.

Further, the Regulations of ELEC provide direction by defining when a contribution is made "knowingly" and thus cannot be considered inadvertent. ELEC's Regulations are "promulgated pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, P.L. 1973, c. 83, as amended, N.J.S.A. 19:44A-1 et seq." N.J.A.C. 19:25-1.1. Chapter 51 defines a "contribution" for purposes of Chapter 51 to mean any "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] business entity shall have knowingly made a contribution if the business entity did not request, in writing, within 30 days of the date on which the contribution was made, that the recipient . . . repay the contribution and, if the business entity did not receive repayment of the contribution within those 30 days." N.J.A.C. 19:25-24.2(b); see also In re Earle Asphalt Co., 401 N.J. Super. 310 (App. Div. 2008), aff'd o.b., 198 N.J. 143 (2009). Here, PwC requested and received repayment of the contribution in April 2014, about 12 months after the contribution was made. Thus within the meaning of Chapter 51 and Executive Order 117, PwC made the contribution knowingly, and not inadvertently.

PwC asserts also that upon discovery of the contribution at issue, PwC acted expeditiously to arrange for its refund. In support, PwC submits a copy of a letter from Ronald Gravino, Treasurer, to Mr. Beier dated April 16, 2014, purportedly enclosing a refund check in the amount of \$1,000 from Christie for Governor - Primary Election. (A copy is attached to the Letter.)

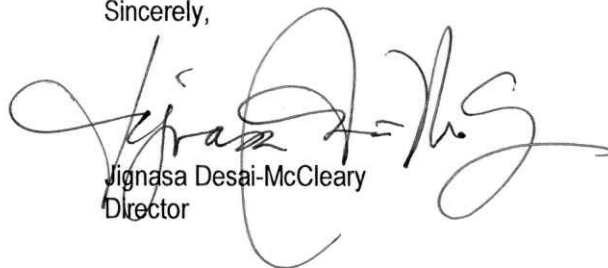
However, this does not form a basis for relief. Chapter 51 provides a narrow, statutory window within which a business entity may neutralize the effect of a prohibited contribution. N.J.S.A. 19:44A-20.20 provides:

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.

Therefore, Chapter 51 requires that a refund must be received within 30 days after a contribution is made. See In re Earle Asphalt Co., supra, 401 N.J. Super. at 328 (affirming that both the request for reimbursement and actual receipt of reimbursement must occur within thirty days of a disqualifying contribution). Here the undisputed facts are that the contribution was made in April 2013 and the refund was made a year later in April 2014. As part of the refund argument, PwC seeks to apply a "discovered" rule, arguing that once PwC learned of the contribution it acted promptly to obtain the refund. While I am sympathetic to discovery issues inside of a corporation, N.J.S.A. 19:44A-20.20 does not, however, have a discovery exception. Rather the statute mandates that the reimbursement must be "received within 30 days after the contribution was made" Ibid.

I have reviewed the information submitted as it relates to the provisions of Chapter 51 and Executive Order 117. Based upon this review and for the reasons discussed above, I am unable to overturn the initial ineligibility determination rendered by the Division in this matter. By copy of this letter, I am notifying The College of New Jersey of this decision.

Sincerely,



Jignasa Desai-McCleary
Director

C: Maurice A. Griffin, DPP
Katherine Antinoro, DPP
Robert Shaughnessy, DPMC
Mark Mehler, The College of New Jersey