

2017 Professional Services Consulting Agreement: In November of 2017, Mott MacDonald was awarded a contract to provide an environmental assessment in connection with NJIT's acquisition of property. This contract was not required to be publicly bid under the procurement rules applicable to NJIT. Pursuant to the 2017 agreement, Mott MacDonald performed an initial environmental assessment in April 2018 as a part of NJIT's due diligence activities related to the

property's acquisition. After many years of negotiations and study, NJIT is now preparing to buy the property. NJIT must update the Phase I/Preliminary Assessment originally conducted by Mott MacDonald within six months of closing to ensure that NJIT has 'innocent purchaser' protection. The closing is set to take place forty days from the execution of the agreement, which was on November 7, 2019. NJIT seeks to have Mott MacDonald complete the required updated environmental assessment for the property pursuant to the terms of the 2017 agreement or, if necessary pursuant to a new agreement.

NJIT advises that it would be a challenge to secure another available environmental consultant on such short notice that could review the original environmental assessment of Mott MacDonald and complete the required updated assessment by the imposed deadline without jeopardizing the property sale. A new environmental consultant would need significant time to review this original assessment before performing its updated assessment, whereas Mott MacDonald can proceed with the assessment more expeditiously.

DiNichilo has recused himself from all official duties that involve Mott MacDonald while he serves on the NJIT Board of Trustees.

With respect to the 2018 on-call agreement, an EO 14 exception is warranted because Mott MacDonald was selected to provide architect/engineer professional services pursuant to an agreement made in accordance with the competitive bidding laws applicable to NJIT. Furthermore, the selection of Mott MacDonald to provide these services was made prior to DiNichilo's appointment to the NJIT Board of Trustees. Under these circumstances, an EO 14 exception also serves the public interest because granting the exception will allow NJIT to continue doing business with Mott MacDonald, a company it previously determined to be most suited to provide these services to NJIT.

With respect to the 2017 professional services consulting agreement, an EO 14 exception is warranted because Mott MacDonald was selected to provide an environmental assessment in connection with NJIT's acquisition of property prior to DiNichilo's appointment to the NJIT Board of Trustees, and the updated environmental assessment may be performed pursuant to the 2017 consulting agreement. Under these circumstances, an EO 14 exception serves the public interest because granting the exception will allow NJIT to continue doing business with Mott MacDonald, a company it previously determined to be most suited to provide these environmental assessment services to NJIT. Moreover, NJIT may not have enough time to procure another vendor to perform the due diligence environmental assessment, which could result in NJIT failing to comply with the terms of the contract. Finally, NJIT would likely incur substantially higher costs if a new vendor were required to review Mott MacDonald's original extensive report before conducting the additional assessment. The public interest is best served if Mott MacDonald, the company that performed the initial assessment, is permitted to perform the required updated assessment by the imposed deadline.

DECISION

The Commission grants an EO 14 exception to Nicholas DeNichilo permitting him to serve as a Member of the NJIT Board of Trustees while NJIT continues to do business with Mott

MacDonald pursuant to the aforementioned existing 2018 on-call agreement and the 2017 agreement, or a new agreement limited to professional consulting services related to an update of the assessment performed pursuant to the terms of the 2017 agreement. DeNichilo's fully-executed, written recusal from all official duties that involve Mott MacDonald while he serves on the NJIT Board of Trustees, previously filed with the State Ethics Commission, must remain in effect.

DECISION RENDERED BY THE
STATE ETHICS COMMISSION ON
THE 3rd DAY OF DECEMBER 2019