



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

May 18, 2018

Via Email (shereseloblanco@aol.com) and Regular Mail

Kevin L. Breen
KLB, Inc.
315 West Pleasantview Avenue
Hackensack, NJ 07601

Re: IMO Chapter 51 - KLB, Inc.
Reconsideration of Chapter 51/ E.O. 117 Ineligibility Determination

Dear Mr. Breen:

This letter is in response to your correspondence dated April 20, 2018, 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 KLB, Inc. was ineligible for a contract award through July 20, 2018. Specifically, KLB, Inc. requests reconsideration of the Chapter 51 Unit's determination that KLB, Inc. had made a disqualifying political contribution to the campaign or election committee of gubernatorial candidate, Phillip Murphy, in the amount of \$1,000, which rendered it ineligible for a contract award through July 20, 2018.

By way of background, on or about March 9, 2018, the Chapter 51 Unit received the *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions* (Form), dated March 8, 2018, which had been completed by KLB, Inc. in connection with the extension of its existing contract with the State of New Jersey for Snow Plowing and Hauling Services – NJDOT (T0777 / Vendor Contract #82961). In response to Part 2 of the Form, KLB, Inc. identified three contributions which were attributable to the business entity. Based upon the information provided, it appeared that KLB, Inc. had made a potentially disqualifying contribution as indicated in the table 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
K. L. Breen	None [Note: Kevin L. Breen is listed as an officer of the corporation and a 100% shareholder. (See p. 1 of attachment.)]	January 20, 2017	\$1,000.00	Check	Philip Murphy (Murphy for Governor)	Hand Delivered Address not provided

In an effort to verify the contribution, on April 16, 2018, the Chapter 51 Unit, through the Division's Procurement Bureau, requested that KLB, Inc. provide a copy of the cancelled check for the above listed political contribution. On April 17, 2018, KLB, Inc. provided a copy of the cancelled check detailing the contribution that had been made to Mr. Murphy's campaign. The check revealed that contribution had been made by an entity known as K. L. Breen, Inc., not KLB, Inc.

After reviewing the information provided, on April 17, 2018, the Chapter 51 Unit determined that KLB, Inc. was ineligible for contract award based upon contribution to the campaign or election committee of a gubernatorial candidate. In reaching its decision, the Chapter 51 Unit stated:

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.

Accordingly, KLB, Inc. was deemed ineligible for a new contract award for a period of eighteen (18) months from the date of the contribution, January 20, 2017. KLB, Inc.'s period of ineligibility expires on July 20, 2018.

On April 20, 2018, pursuant to N.J.A.C. 17:12-5.5, KLB, Inc. filed a request for reconsideration stating:

We are in receipt of your email stating that we are ineligible for contract award at this time because of political contribution(s) made to an election committee of a gubernatorial candidate. Our contribution was only One Thousand Dollars (\$1,000) from another company that I am a shareholder in.

We were awarded the State contract for the same section (T#0777 Contract #82961 Loader in the Lodi, NJ Yard) on November 6, 2012 and have been asked by the State to extend the contract for the past three (3) years and have done so and currently hold it. We have also been asked by the State of New Jersey to cover other sections when needed and have always helped out. Under the circumstances we would like the opportunity to bid

since the contract does not go into effect until October 1, 2018 and as per your correspondent we are eligible effective July 20, 2018.

Please reverse our status and please accept our bid.

In consideration of KLB, Inc.'s request for reconsideration, I have reviewed the Chapter 51 Unit's record of this matter along with 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 Final Agency Decision on the merits of the request for reconsideration. 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 law provides that:

No business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor or to any State or county political party committee prior to the completion of the contract or agreement.

[N.J.S.A. 19:44A-20.15.]

The Chapter 51 Law defines a 'business entity' as "any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction." N.J.S.A. 19:44A-20.7. However, Executive Order #117, expanded the definition of 'business entity' to include "the corporation, any officer of the corporation, any person or business entity that owns or controls 10% or more of the stock of the corporation." Whether a contribution is attributable to a business entity is further governed by the New Jersey Administrative Code which states in pertinent part:

- b. For the purposes of this subchapter, when a business entity is other than a natural person, a contribution made by any of the following shall be deemed to be a contribution by the business entity:
 1. A person or other business entity having an interest in the business entity;

2. A principal, partner, officer, director, or trustee of the business entity;
3. The spouse of a principal, partner, officer, director, or trustee of the business entity;
4. A subsidiary directly or indirectly controlled by the business entity; and
5. A continuing political committee organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity.

[N.J.A.C. 19:25-26.6(b).]

The applicable regulations further define an 'Officer' as "a president, vice president with senior management responsibility, secretary, treasurer, chief executive officer, chief financial officer of a corporation or any person routinely performing such functions for the corporation." N.J.A.C. 19:25-26.1.

A review of the information provided by KLB, Inc. on the Form reveals that Kevin L. Breen is a 100% shareholder of KLB, Inc.

Part 3: Business Entity Information Please check if requesting recertification

Full Legal Business Name KLB, Inc.
(Including trade name if applicable)

Address 315 W. Pleasantview Ave.

City Hackensack State NJ Zip 07601 Phone [REDACTED]

Vendor Email [REDACTED] Vendor FEIN (SS# if sole proprietor/natural person) [REDACTED]

Check off the business type and list below the required information for the type of business selected.
MUST BE COMPLETED IN FULL

Corporation: LIST ALL OFFICERS and any 10% and greater shareholder
 Professional Corporation: LIST ALL OFFICERS and ALL SHAREHOLDERS
 Partnership: LIST ALL PARTNERS with any equity interest
 Limited Liability Company: LIST ALL MEMBERS with any equity interest
 Sole Proprietor

Note: "Officers" means President, Vice Presidents with senior management responsibility, Secretary, Treasurer, Chief Executive Officer or Chief Financial Officer of a corporation, or any person routinely performing such functions for a corporation.

All Officers of a Corporation or PC	10% and greater shareholders of a corporation or all shareholder of a PC
<u>Kevin L. Breen</u>	<u>100%</u>
_____	_____
_____	_____

The Form also revealed that a political contribution had been made to the campaign or election committee of gubernatorial candidate, Phillip Murphy.

Full Legal Name of Recipient Phil Murphy (Murphy for Governor)

Address of Recipient Hand delivered

Date of Contribution 1/20/2017 Amount of Contribution \$1,000

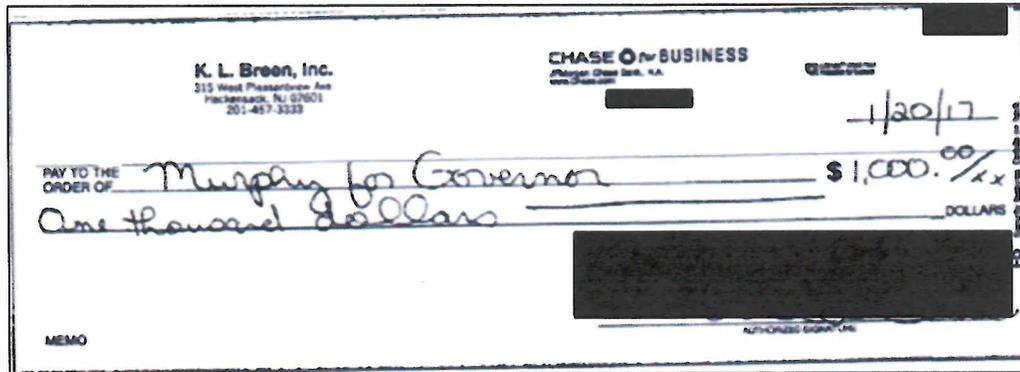
Type of Contribution (i.e. currency, check, loan, in-kind) Check

Contributor Name K.L. Breen

Relationship of Contributor to the Vendor None

If this form is not being completed electronically, please attach additional contributions on separate page. Click the "Add a Contribution" tab to enter additional contributions.

Specifically, the Form indicates that the contribution was made by K. L. Breen, not KLB, Inc. In the request for reconsideration, KLB, Inc. states that the "contribution was only One Thousand Dollars (\$1,000) from another company that I am a shareholder in." A copy of the cancelled check provided to the Chapter 51 Unit confirms that the contribution was made by K. L. Breen, Inc.



Therefore, it was necessary to determine whether the contribution made by K. L. Breen, Inc. is attributable to KLB, Inc.

In connection with the review of KLB, Inc.'s request for reconsideration, on May 7, 2018 and May 17, 2018, the Division's Hearing Unit wrote to KLB, Inc. to request an explanation of the relationship between KLB, Inc., K. L. Breen, Inc. and Kevin L. Breen. On May 18, 2018 KLB, Inc. responded stating Kevin L. Breen is the 100% owner of KLB, Inc. and K. L. Breen, Inc.

Under the applicable law, because Kevin L. Breen is a 100% owner of both entities, the contribution made by Kevin L. Breen, Inc. is attributable to KLB, Inc. See, N.J.A.C. 19:25-26.6(b). Accordingly, I am unable to overturn the Chapter 51 Unit's determination that KLB, Inc. is ineligible for a contract award for a period of 18 months through July 18, 2018.

I note that on March 16, 2018 KLB, Inc. submitted a Quote in response to the Division's advertised Bid Solicitation #18DPP00205 – T0777/Snow Plowing and Spreading Services – NJDOT. The Division is currently in the process of reviewing the Quotes submitted in response to that Bid Solicitation. If the Division's Procurement Bureau determines that KLB, Inc.'s submitted Quote is responsive and responsible, then KLB, Inc. may be eligible for a contract award after July 20, 2018.

This is my final agency decision with respect to the request for reconsideration.

Sincerely,

Maurice Griffin
Acting Director

MAG: RUD

- c: A. Davis (via email only)
R. Storino (via email only)
N. Ghorbani (via email only)