



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 26, 2018

Via Regular Mail & Electronic Mail (nick_edelman@northeastservices.org)

Nicholas C. Edelman III, President
Northeast Mechanical Services, Inc.
402 Airport Drive
Williamstown, NJ 08094

Re: IMO Chapter 51 – Northeast Mechanical Services, Inc.
Reconsideration of Chapter 51/ EO 117 Ineligibility Determination

Dear Mr. Edelman:

This letter is in response to your correspondence dated February 28, 2018, (“Letter”) 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 Northeast Mechanical Services, Inc. (“Northeast”) was ineligible for a contract award. Specifically, the Chapter 51 Unit concluded that Northeast made a political contribution to a county Political Party Committee (“PPC”), Camden County Democratic Committee, Inc., in the amount of \$2,000 on September 29, 2017, which rendered Northeast ineligible for a contract award. The Chapter 51 Unit concluded that Northeast would remain ineligible for a period of eighteen (18) months from the date of the contribution, or through March 29, 2019.

BACKGROUND

By way of background, on October 31, 2014, the Division’s Procurement Bureau (“Procurement Bureau”) issued Request for Proposal 15-X-23228 (“RFP”) to solicit proposals for the reprocurement of T-1372, HVAC, Refrigeration, and Boiler Repair, Statewide. Northeast submitted a proposal and on March 1, 2015, was awarded a contract (Vendor contract number 88690), for the central region of the State of New Jersey. The RFP advised that the contract resulting from the RFP would have a term of three (3) years, with two (2) available one-year extensions. RFP § 5.2, *Contract Term and Extension Option*.

By letter dated February 1, 2018, in anticipation of the pending expiration of the base term of the contract, the Procurement Bureau advised Northeast that the State was considering extending the contract for period of twelve (12) months and solicited Northeast’s interest in extending. The letter also advised Northeast that it was under a continuing obligation to report any changes to the information originally reported to the State on the following forms: *Ownership Disclosure Form; Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form; Disclosure of Investment Activities in Iran Form; Two-Year Ch 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form; Source Disclosure Form; Subcontractor Utilization Form*; and, as applicable, *Chapter 271 Vendor*

Certification and Political Contribution Disclosure Form (collectively, "Disclosure Forms"). Where there were changes to the information originally reported on the Disclosure Forms, the letter advised that an updated form was requested.

On February 2, 2018, Northeast responded to the Procurement Bureau's letter, agreeing to extend the current contract. Northeast also indicated that there had been changes to the information reported on the Disclosure Forms, and attached a completed *Chapter 271 Political Contribution Disclosure Form* ("*Chapter 271 Form*").¹ On the *Chapter 271 Form*, Northeast disclosed two contributions as follows:

Contributor Name	Recipient Name	Date	Dollar Amount
Northeast Mechanical Services, Inc.	EFO Young for Freeholder	5/31/17	\$2500.00
Northeast Mechanical Services, Inc.	Camden County Democratic Committee, Inc.	9/29/17	2000.00

On February 22, 2018, the Procurement Bureau requested that Northeast submit an updated *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form* ("*Chapter 51 Form*") as the form that was on file had expired. Later the same day, Northeast provided the updated *Chapter 51 Form* reporting four separate contributions:

Full Legal Name of Recipient EFO CAPPPELLI FOR FREEHOLDER
 Address of Recipient 2240-15 ROUTE 70 WEST CHERRY HILL, NJ 08002
 Date of Contribution 1/17/17 Amount of Contribution 1,500.-
 Type of Contribution (i.e. currency, check, loan, in-kind) CHECK
 Contributor Name NORtheast MECHANICAL SERVICES, INC.
 Relationship of Contributor to the Vendor N/A - 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.

Full Legal Name of Recipient EFO MCDONNELL FOR FREEHOLDER
 Address of Recipient _____
 Date of Contribution 9/28/16 Amount of Contribution \$2,000.-
 Type of Contribution (i.e. currency, check, loan, in-kind) CHECK
 Contributor Name NORtheast MECHANICAL SERVICES, INC.
 Relationship of Contributor to the Vendor N/A - 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.

¹ The *Chapter 271 Form* was not required because the contract was "required by law to be publicly advertised for bids[.]" N.J.S.A. 19:44A-20.26.

Full Legal Name of Recipient EFO Young For Freeholder

Address of Recipient _____

Date of Contribution 5-31-17 Amount of Contribution \$2,500.-

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

Contributor Name Northeast Mechanical Services, Inc.

Relationship of Contributor to the Vendor N/A - 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.

Full Legal Name of Recipient EFO Nash For Freeholder

Address of Recipient 2240-15 Route 70 West, Cherry Hill, NJ 08002

Date of Contribution 1-31-18 Amount of Contribution \$1,500.-

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

Contributor Name Northeast Mechanical Services, Inc.

Relationship of Contributor to the Vendor _____

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.

The Procurement Bureau forwarded the February 22, 2018 *Chapter 51 Form* to the Chapter 51 Unit for review. The Chapter 51 Unit noted that the \$2,000 contribution to the Camden County Democratic Committee made on September 29, 2017, which had been reported on the earlier *Chapter 271 Form*, was not reported on the *Chapter 51 Form*. Noting that contribution could potentially be disqualifying, the Chapter 51 Unit, through the Procurement Bureau, requested Northeast provide a corrected form including this contribution along with a copy of the cancelled check.

The same day, Northeast responded with an updated *Chapter 51 Form*, adding the following disclosure:

Full Legal Name of Recipient Camden County Democratic Committee, Inc.

Address of Recipient _____

Date of Contribution 9-29-17 Amount of Contribution \$2,000.-

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

Contributor Name Northeast Mechanical Services, Inc.

Relationship of Contributor to the Vendor N/A - 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.

In addition to providing the updated *Chapter 51 Form*, Northeast explained the Camden County Democratic Committee contribution was inadvertently omitted from the earlier *Chapter 51 Form* as an oversight. See Edelman email dated February 22, 2018. Northeast noted that “[a]s our past records will show, we have never made a contribution to any political committee directly. This contribution should have followed our previous practice and have been directed to one of the Freeholders.” *Ibid.* Further, Northeast explained that it “saw that there was an option to request a full reimbursement from the recipient; however, we saw that option is time sensitive. If that is still an option, please let us know and we will pursue that.” *Ibid.* Northeast concluded by advising that it was working on obtaining a copy of the cancelled check that had been requested. *Ibid.*

On February 23, 2018, Northeast provided a copy of the cancelled check, confirming that by check dated September 29, 2017, “Northeast Mechanical Services, Inc.” made a contribution to “Camden County Democratic Committee, Inc.” See Edelman email dated February 23, 2018, 3:07 p.m.; Newfield National Bank statement dated February 22, 2018, check 25565. Along with the cancelled check, Northeast explained:

In getting this check back from the bank, I was made aware that it was not signed by an Officer of the Company, however he has bank signing rights within our Company. This explains how our past donation process to the Freeholders was circumvented with this event. The two shareholders of the Company were away at the time the check was written, and the top box on the donation request form was inadvertently checked.

[Edelman email dated February 23, 2018, 3:07 p.m.]

The Chapter 51 Unit thereafter requested a copy of “donation request form” referenced by Northeast. Northeast provided the following (hereinafter the “invitation”):

LOUIS CAPPELLI, JR. Freeholder Director	Camden County Democratic Committee Chairman Senator James Beach	NILSA CRUZ-PEREZ State Senator
EDWARD T. MCDONNELL Freeholder Deputy Director	Invites you to the	FRED H. MADDEN State Senator
JEFFREY L. NASH Freeholder	30th Annual Seafood Gala	LOUIS D. GREENWALD Assembly Majority Leader
CARMEN G. RODRIGUEZ Freeholder	HONORING	PAMELA ROSEN LAMPITT Assemblywoman
JONATHAN L. YOUNG, SR. Freeholder	Hon. James J. Florio Former Governor of New Jersey	PATRICIA EGAN JONES Assemblywoman
WILLIAM F. MOEN, JR. Freeholder	Hon. Joseph J. Roberts, Jr. Former Speaker of the NJ General Assembly	ARTHUR BARCLAY Assemblyman
SUSAN SHIN ANGILO Freeholder	Hon. Donald W. Norcross U.S. Representative	PAUL D. MORIARTY Assemblyman
MICHELLE A. GENTEK-MAYER Surrogate	Hon. Robert E. Andrews Former U.S. Representative	GABRIELA MOSQUERA Assemblywoman
JOSEPH RIPA County Clerk	and	
GILBERT "WHIP" WILSON Sheriff	FORMER COMMITTEE CHAIRS	
	George E. Norcross, III	
	Robert Messick · Joseph Borreggine · Sandra Love	
	Louis R. Meloni · Michael Keating · David A. Lutfman	
	Wednesday, October 4, 2017	
	6:00 PM at Tavistock Country Club	
	\$1,000 per Individual Guest	
	Checks made payable to any of the following:	
	Camden County Democratic Committee, Inc.	
	EFO Cappelli for Freeholder	
	EFO Young for Freeholder	
	Contributions are not tax deductible. Additional information enclosed.	
	<small>Congressman Donald Norcross is appearing at this event only as an honored guest. All funds collected in connection with this event are by CDDC and not by Congressman Donald Norcross.</small>	

REVERSE SIDE MUST BE COMPLETED AS WELL <small>Please mail all contributions to 2240-15 Route 70 West, Cherry Hill, NJ 08002</small> New Jersey Election Law prohibits some state and county vendors and prospective state and county vendors from contributing to county political party committees and certain county candidate committees. Please refer to http://www.njleg.state.nj.us/2004/Bills/P1/05/51_PDF and http://www.njleg.state.nj.us/2004/Bills/P1/04/19_PDF for more information and check below: <input checked="" type="checkbox"/> I have read the above statement The New Jersey Election Law Enforcement Commission requires the following contributor information: Name: <u>VINCENT ALTIMARI</u> Home Address: <u>51 LAKEVIEW DR.</u> City: <u>TABERNACLE</u> State: <u>NJ</u> Zip: <u>08068</u> Home Phone: <u>609 268 8226</u> E-mail: <u>VINCE.ALTIMARI@NORTHEASTSERVICES.ORG</u> Employer: <u>NORTHEAST MECH SVCS</u> Occupation: <u>OPERATIONS MAN.</u> Employer Address: <u>402 AIRPORT DR</u> City: <u>WILLIAMSTOWN</u> State: <u>NJ</u> Zip: <u>08094</u> Office Phone: <u>856 262 7305</u> Office Fax: <u>856 262 2307</u> <small>Fold for by Camden County Democratic Committee, Inc., EFO Cappelli for Freeholder and EFO Young for Freeholder 2240-15 Route 70 West, Cherry Hill, NJ 08002</small>	REVERSE SIDE MUST BE COMPLETED AS WELL <small>Please mail all contributions to 2240-15 Route 70 West, Cherry Hill, NJ 08002</small> I will attend. Enclosed is my check for \$ <u>2,000.00</u> Number attending <u>2</u> I cannot attend, but I am pleased to support. Enclosed is my check for \$ _____ Contribution made payable to (please check below): <input checked="" type="checkbox"/> Camden County Democratic Committee, Inc.* <small>(Maximum Allowable Contributions: From Individuals, Corporations or PACs - \$37,000)</small> <input type="checkbox"/> EFO Cappelli for Freeholder <small>(Maximum Allowable Contributions: From Individuals or Corporations - \$2,600 / From PACs - \$8,200)</small> <input type="checkbox"/> EFO Young for Freeholder <small>(Maximum Allowable Contributions: From Individuals or Corporations - \$2,600 / From PACs - \$8,200)</small> <small>*Camden County Democratic Committee (CCDC) accepts contributions made via credit card. Please see the enclosed credit card contribution form or call (856) 424-5757 for more information.</small>
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Northeast explained that the invitation was “filled out by our Operations Manager who is also not an Officer of our Company. We have instructed our entire Team that going forward, any donations are to be reviewed and approved directly by an Officer of the Company.” See Edelman email dated February 23, 2018, 4:37 p.m. It is noted that the invitation provided a cite to the Chapter 51 law and cautioned attendees that “New Jersey Election Law prohibits some state and county vendors . . . from contributing to county political party committees and certain county candidate committees.” Further, an affirmative “I have read the above statement” box regarding the potential prohibition was marked.

On February 26, 2018, the Chapter 51 Unit determined that Northeast was ineligible for contract award based upon the contribution to the Camden County Democratic Committee, Inc., a county PPC. See Storino email dated February 26, 2018. The Chapter 51 Unit further determined that this ineligibility extended for eighteen (18) months from the date of the contribution, or through March 29, 2019. *Ibid.*

By letter dated February 28, 2018, Northeast requested the Director reconsider the Chapter 51 Unit’s ineligibility determination. Northeast explained:

Northeast Mechanical Services, Inc. inadvertently made a contribution to the wrong itemized line item for a County Democratic Committee, when it should have been checked off to one of the Freeholders on the same list. As our past records will show, we have never made a contribution to any political committee directly. This contribution should have followed our previous practice and have been directed to one of the Freeholders. A copy of the donation form is attached showing that the form was not filled out by an Officer of the Company, but by a Company employee. The check itself was signed by an approved employee for banking purposes, but also not by an Officer of the Company. We do realized [(sic)] that ultimately it is the responsibility of the Company to make sure this paperwork is correct, and we have instructed our entire Team that any and all donations moving forward must be reviewed by and [(sic)] Officer of the Company prior to submission.

Northeast Mechanical Services, Inc. was awarded this contract in 2015, and it was our 1st time on the list. Our rate structures for this agreement are the 2nd lowest of the 3-year awarded contractors on this list.

We have a reputation in our industry of providing excellent service and response times which was immediately welcomed by a multitude of State Agencies. . . .

We respectfully request consideration for our excellent track record of providing Trade Services to the State and its associated Agencies, and allow us to participate in the existing contract extension.

In consideration of Northeast's request for reconsideration, I have reviewed the Chapter 51 Unit's record of this matter, including 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.

DISCUSSION

N.J.S.A. 19:44A-20.13 through 20.25 ("Chapter 51") imposes a duty on the State to assure the public that the award of State contracts is based upon merit and not political contributions made by prospective contractors. See, N.J.S.A. 19:44A-20.13. Chapter 51 was adopted 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. Therefore, Chapter 51, in part, prohibits the State, 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 PPC within specified time frames. N.J.S.A. 19:44A-20.13 to -20.25.² The Legislature enacted Chapter 51 to prohibit awarding government contracts to business entities which contribute to certain candidates, political parties and the holders of public office with a goal of protecting the integrity of government contractual decisions and to improve the public's confidence in government. See, N.J.S.A. 19:44A-20.13. The statute does not provide an exception even for honest mistakes.

A. The Ineligibility Determination is Consistent with New Jersey Statutes and Regulations.

First, while Northeast asserts that the contribution to the Camden County Democratic Committee, Inc. was a mistake and that the contribution should have been made to one of the Freeholders, unfortunately the record reflects that the contribution, however inadvertent, was in fact made to the Camden County Democratic Committee Inc., a county PPC registered with the New Jersey Election Law Enforcement Commission ("NJ ELEC"). See Form R-3, Receipts and Expenditures Quarterly Report, Camden County Democratic Committee, Inc., dated October 16, 2017. In fact, the Camden County Democratic Committee, Inc. reported the contribution from "Northeast Mechanical" to NJ ELEC as being received on September 30, 2017. Ibid.

The relevant provision of Chapter 51 states:

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

² Effective November 15, 2008, Executive Order Number 117 (Corzine) ("EO 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, election fund, or State or county PPC referenced in Chapter 51.

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, . . . to any State or county political party committee: (i) within the eighteen months immediately preceding the commencement of negotiations for the contract or agreement. . . .

[N.J.S.A. 19:44A-20.14 (emphasis added).]

Further, Chapter 51 states that “[i]t shall be a breach of the terms of the government contract for a business entity to: (i) make or solicit a contribution in violation of this act[.]” N.J.S.A. 19:44A-20.21.

Notwithstanding the fact that the contribution was unintentional, Chapter 51 only provides a single means for correcting an inadvertent or mistaken contribution. N.J.S.A. 19:44A-20.20 permits a business entity to request that the contribution be withdrawn. However, in order to rely on this withdrawal, the request must be in writing, and the repayment of the contribution must be received within thirty (30) days of the date of the contribution. N.J.S.A. 19:44A-20.9. Importantly, however, “[i]t shall be presumed that contributions made within 60 days of a gubernatorial primary or general election were not made inadvertently.” N.J.S.A. 19:44A-20.20. Such is the case here, as Northeast made the contribution to the Camden County Democratic Committee, Inc. on September 30, 2017, only thirty-eight (38) days before the general election on November 7, 2017. Therefore, pursuant to N.J.S.A. 19:44A-20.9, the statute’s presumption is that the contribution was not inadvertent because it was made within sixty days of the general election on November 7, 2017, and withdrawal of the contribution is not possible. Even without this presumption, N.J.S.A. 19:44A-20.20 requires both the request for a refund and receipt of the refund to occur within thirty days of the date of the contribution. Therefore, even if the contribution was not within the sixty day window of the gubernatorial election, Northeast would not be able to perfect the withdrawal of the contribution because the thirty day window expired on October 29, 2017.

Accordingly, the record demonstrates that Northeast in fact made a contribution, albeit unintentionally, to a county PPC, and therefore the determination that Northeast is ineligible for a term of eighteen months from the date of the contribution is affirmed.

B. The Contribution was Properly Attributed to Northeast.

Next, Northeast asserts that contribution was not made by an officer of Northeast, but was “signed by an approved employee for banking purposes[.]” *See*, Northeast reconsideration letter dated February 28, 2018. I have interpreted this statement to be a challenge to the Chapter 51 Unit’s conclusion that the contribution was made by and attributable to Northeast.

As noted above, Chapter 51 prohibits the State from entering a contract where the “business entity” made a reportable contribution. N.J.S.A. 19:44A-20.14. Chapter 51 defines “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 any other state or foreign jurisdiction. The definition of a business entity includes: (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or

indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing therewith, are also included within this definition.

[N.J.S.A. 19:44A-20.17.³]

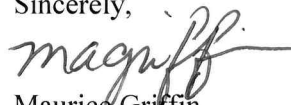
Here, the contribution was attributed to Northeast because the September 29, 2017 check was issued by "Northeast Mechanical Services, Inc." See Newfield National Bank statement dated February 22, 2018, check 25565. Because the contribution was made directly by Northeast, the fact that the check was processed by an employee rather than an officer or principal with ownership or control over Northeast has no impact on the ultimate ineligibility determination. Accordingly, the contribution was correctly attributed to Northeast.

Finally, Northeast explains that it was awarded the contract in 2015, and it offered the second lowest pricing of the awarded vendors. Northeast states it has a reputation of providing excellent services and response times, and has an excellent track record of providing services to the State. I have no reason to doubt any of these statements. However, in the area of public contracting, and specifically with regard to Chapter 51 and EO 117, the public's interest and overriding public policy is to avoid both the actuality and the possible public perception of favoritism, improvidence, extravagance, and corruption. See, N.J.S.A. 19:44A-20.13; In re Earle Asphalt, 401 N.J. Super 310, 321-22 (App. Div. 2008) aff'd 198 N.J. 143 (2009). Accordingly, while Northeast does offer advantageous pricing and appears to have been awarded work by a number of public entities throughout the State, Chapter 51 provides me no discretion to set aside the statutorily required ineligibility determination.

CONCLUSION

Based upon this review and for the reasons discussed above, I am unable to overturn the Chapter 51 Unit's determination that Northeast 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 Northeast.

Sincerely,



Maurice Griffin
Acting Director

MAG: REG

c: A. Davis
R. Storino
K. Anderson-Thomas
D. Albin

³ As noted above EO 117 expanded upon this definition, but in ways that are not relevant here.