



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 23, 2020

Via Electronic Mail mmignogna@mwm-law.com only

Michael R. Mignogna, ESQ.
Mattleman, Weinroth & Miller, P.C.
401 Route 70 East, Suite 100
Cherry Hill, New Jersey 08034

Re: Request for Reconsideration of Ineligibility Determination
Mattleman, Weinroth & Miller, P.C. - E-Cigarette Litigation

Dear Mr. Mignogna,

This letter is in response to your correspondence on behalf of Mattleman, Weinroth & Miller, P.C. (“MWM”), to the Acting Director of the Division of Purchase and Property (the “Division”), dated December 31, 2019. In that letter, you request reconsideration of the Chapter 51 Review Unit’s (the “Review Unit”) determination that MWM is ineligible for the State of New Jersey’s Special Counsel designation for potential E-Cigarette Litigation. The record of this matter reveals that MWM was deemed ineligible for a contract award due to political contributions made to county Political Party Committees (“PCPs”).

By way of background, a Request for Qualification (“RFQ”) for Special Counsel designation for potential E-Cigarette Litigation was issued by the Office of the Attorney General on September 12, 2019. The RFQ was issued in accordance with N.J.S.A. 52:17A-13 and Executive Order 157. N.J.S.A. 52:17A-13 grants the Attorney General, with the approval of the Governor, the authority to designate Special Counsel to the State. Executive Order 157 directs that, “prior to the award of a contract for legal services, it is appropriate to require a publicly advertised process involving [RFQs] with respect to distinct legal practice areas, merit-based decision making in the selection of law firms responding to RFQs, and impartial review by an evaluation committee based upon clearly defined evaluation criteria, as well as well-defined procedures for retaining counsel for particular legal matters, absent unusual circumstances.” The intent of the RFQ is to assist the Attorney General in selecting Special Counsel for the Scope of Services in accordance with the Section 3.0 of the RFQ. (RFQ Section 1.0 *Purpose and Intent*). The proposals were due on October 3, 2019.

The Review Unit initiated a review of information provided in MWM’s Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions (“Chapter 51 form”). On December 19, 2019, the Review Unit determined MWM was ineligible for a contract award because of political contributions made by MWM to the following: (1) the Burlington County Democratic Committee on December 18, 2018, in the amount of \$500.00 and (2) the Camden County Democratic

Committee, Inc. on June 4, 2019, in the amount of \$850.00. (Review Unit’s Dec. 18, 2019 determination email). The Review Unit summarized the information provided by MWM on Part 2 of the Chapter 51 form “Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity” as follows:

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
Mattleman, Weinroth & Miller, P.C.	Same/(Managing Partner)	12/18/2018	\$500.00	Check	Burlington County Democratic Committee	Unknown
Mattleman, Weinroth & Miller, P.C.	Same/(Managing Partner)	6/4/2019	\$850.00	Check	Camden County Democratic Committee, Inc.	Unknown

The Review Unit found that both the Burlington County Democratic Committee and the Camden County Democratic Committee, Inc. are county PPCs; and therefore, determined MWM’s contributions to the PPCs disqualified it from being eligible for a contract award. Ibid. The Review Unit concluded that MWM “w[ould] be ineligible for contract award(s) through approximately January 17, 2022 or the end of the term of Governor Phil Murphy.” Ibid.

In MWM’s December 31, 2019 Request for Reconsideration, it argues:

- a) The contract has no fixed nor established value prior to the award and is rather a contingency fee contract wholly dependent on the successful outcome of the litigation by MWM; and N.J.S.A. §19:44A-20.14 specifically provides that the transaction does not exceed \$17,500.00 at the time of the award, which in this case there is no inherent value upon award.
- b) The public safety, health, and welfare of the public warrants the public exigency exemption under N.J.S.A. §19:44A-20.22 et. seq.

[MWM’s Request for Reconsideration at 2-3.]

The pertinent statute, L. 2005, c. 51 (“Chapter 51”), codified at N.J.S.A. 19:44A-20.13 to - 20.25, prohibits the State of New Jersey (the “State”) or any of the State’s purchasing agents or agencies or its independent authorities from entering into agreements or otherwise contracting with business entities, where the value of the transaction exceeds \$17,500, the business entity has 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.

The Review Unit’s finding that MWM is ineligible for a contract award at this stage of the procurement suggests that a contract between the State of New Jersey and MWM is created when MWM is placed on the Special Counsel List. The review of the RFQ reveals that by being selected for the Special

Counsel List, MWM did not enter into an agreement or otherwise contract with the State of New Jersey. Pursuant to RFQ Section 9.4 *Effect of Submitting a Proposal*, “submission of proposal in response to this [RFQ] will not bind or otherwise obligate the State of New Jersey to include the responding firm on the list of Special Counsel.” Further, RFQ Section 9.5 *Effect of Inclusion on List* “[i]nclusion of a firm on the list of designated Special Counsel will not bind or otherwise obligate the State of New Jersey to retain the listed firm for legal services. Inclusion on the list of designated Special Counsel will not guarantee any other form of employment or engagement.” Moreover, RFQ Section 11.1 *Special Counsel Designation*, “[a] Special Counsel designation, however, is not a retention for a specific matter and does not entitle a firm to be retained for a specific matter.” Finally, RFQ Section 11.2 *Retention Letter* states that “[a] firm **may not represent the State unless it also executes a retention letter for a specific matter or class of matters.** A firm selected as Special Counsel and placed on a list may, from time to time, be contacted by the Division of Law for retention on a specific matter. **At that time, if the firm agrees to the retention, the firm may be required to submit updated certifications,**¹ as required by Exhibit A, and will receive a retention letter to countersign. The terms and conditions set forth in this Request for Qualifications shall be included in the additional terms and conditions in the Retainer Letter.” (Emphasis added.)

Based on the language of the RFQ, it was premature for the Chapter 51 Unit to disqualify MWM from being placed on the list of Special Counsel under the RFQ as MWM being placed on the special counsel list does not create an agreement or a contract with the State of New Jersey. If the Office of the Attorney General chooses to retain MWM for a specific matter, MWM will be required to submit updated certifications, including a Chapter 51 form. Only at the time that the Office of the Attorney General chooses to enter into an agreement with MWM, or any other firm on the special counsel list, would a firm’s compliance with N.J.S.A. 19:44A-20.13 through 20.25 be ripe for review by the Review Unit. At that time, if the Review Unit determines MWM is ineligible for a contract award, a request for reconsideration of the disqualification would be appropriate.

Next, MWM’s argues that N.J.S.A. 19:44A-20.14 does not apply because the contingency fee nature of the potential litigation meant that the contract has no value. When the exact value of a contract, in this case a retention agreement, is uncertain, the using agency should act in good faith and use its professional judgment—including its knowledge of the value of prior contracts for similar services to ascertain an estimated value for the contract. See, e.g., N.J.A.C. 17:44-3.2. With a contingent fee arrangement, the intent of both parties at the time of retention, i.e., contract formation is to recover for the State and to pay a specified percentage of said recovery to the retained firm at the end of the contract term. MWM’s argument is misplaced and if accepted would erode the public’s confidence in the Special Counsel retention process. Ignoring the expected or likely potential value of a contingency fee would not “protect the State and its citizens from ‘the actuality or appearance’ of corruption in the award of State contracts.” In re Earle Asphalt Co., 401 N.J. Super. 310, 322 (2008) (quoting N.J.S.A. 19:44A-20.13), aff’d o.b., 198 N.J. 143 (2009).

Finally, MWM argues it qualifies for a public exigency exemption pursuant to N.J.S.A. 19:44A-20.22. I note that the public exigency exception pursuant to N.J.S.A. 19:44A-20.22 is a determination made by the State Treasurer, not a contractor. See, N.J.S.A. 19:44A-20.22 stating nothing shall “prohibit the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of services as determined by the State Treasurer.” Since as noted above the Review Unit’s consideration of MWM’s Chapter 51 Form was premature, the Treasurer’s determination of a public exigency would also be premature.

¹ The Office of the Attorney General has advised, that at the time of a retaining a firm from one of these lists, as part of entering the retention letter, it requires the selected firm to submit updated certifications, including an updated Chapter 51 form. That form is then submitted to the Review Unit for evaluation for its compliance with Chapter 51 requirements.

Based upon the foregoing, I overturn the Review Unit's determination that MWM is ineligible for a contract award. I do so on the basis that mere placement on a Special Counsel list does not create a contract with the State. This is my final agency decision with respect to the Request for Reconsideration submitted by MWM.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RD

c: R. Storino
A. Davis
B. Mitchell, AAG