



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

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August 12, 2015

Mark L. Fleder, Esq.
Connell Foley LLP
88 Livingston Avenue
Roseland, New Jersey 07068

**Re: Della Pello Paving, Inc.
Reconsideration of Chapter 51/EO117 Ineligibility, Department of Transportation**

Dear Mr. Fleder:

This letter is in response to your letters to me dated June 19 and July 9, 2015 ("Letter" or "Letters"). The Letters "appeal" or seek reconsideration of an initial ineligibility determination by the Chapter 51 Unit of the Division of Purchase and Property that a contribution made by Della Pello Paving, Inc. ("Della Pello Paving"), to the Somerset County Republican Executive Committee, a county political party committee ("CPPC"), in the amount of \$500.00 on April 9, 2014, rendered Della Pello Paving ineligible for a contract award by the New Jersey Department of Transportation ("DOT").

The pertinent statute, P.L. 2005, c. 51 ("Chapter 51"), prohibits the State of New Jersey ("State") or any of the State's 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 Number 117, among other things, expanded upon Chapter 51 to include contributions made 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 selection 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.

I begin with a brief review of the facts. The DOT issued a bid for paving services related to the DOT's Route 46, Fox Hill Road to Columbus Way, Contract No. 044133320 project. As a required part of the procurement process, Della Pello Paving submitted a New Jersey Division of Purchase and Property Two-Year Chapter 51/EO117 Vendor Certification and Disclosure of Political Contributions ("Certification") to the DOT. The DOT forwarded the Certification to the Chapter 51 Unit for review. Della Pello Paving's Certification, certified by Valentino Della Pello,

Jr., President of Della Pello Paving, showed that on April 9, 2014, Della Pello Paving made a \$500.00 contribution ("Contribution") by check to the Somerset County Republican Organization, located at 66 East Main Street, Somerville, New Jersey 08876. The CPPC, or the Somerset County Republican Executive Committee, also seems to use the name "Somerset County Republican Organization." The CPPC files its name as the Somerset County Republican Executive Committee with the New Jersey Election Law Enforcement Commission ("ELEC"). The CPPC is nevertheless a county political party committee as referenced in Chapter 51. The Chapter 51 Unit determined the contribution to be disqualifying. This reconsideration request followed.

Della Pello Paving's primary contention is that the ineligibility determination is in error because the Contribution was intended to support the pending election of Peter Palmer and Robert Zaborowski to the Somerset County Freeholder Board, not the Somerset County Republican Committee. Della Pello Paving's secondary contention is that the Contribution was returned to Della Pello Paving within 30 days of it being brought to Della Pello Paving's attention and as a result of Della Pello Paving's request for a return of the Contribution. I address these and other allegations below.

Della Pello Paving's first contention is that the Chapter 51 Unit's ineligibility determination was in error because the Contribution inadvertently went to the CPPC. Rather, the Contribution should have gone to the Committee to Elect Palmer and Zaborowski.

In documentary support of this contention, the June 19th reconsideration request Letter attaches the "invitation and RSVP card" that Della Pello Paving received and to which it responded (Exhibit B) and a copy of the Contribution check (Exhibit C). The invitation states that "Al Gaburo, Chairman and the Somerset County Republican Executive Committee, Cordially Invite You to a COCKTAIL RECEPTION." The invitation also states: "Paid for by the Somerset County Republican Organization, Jo-Anne Schubert, Treasurer, 66 East Main Street, Somerville, NJ 08876." However, a review of the invitation reveals that it lacks any reference that it is in support of the freeholder candidates, Palmer and Zaborowski. While the RSVP card that was enclosed with the invitation does give a contributor the option to: "Please make checks payable to one of the following: Somerset County Republican Organization or Committee to Elect Palmer and Zaborowski," the RSVP card again reiterates that the event is sponsored and paid for by the Somerset County Republican Organization with corresponding return contact information as on the invitation.

The Contribution check also submitted in support of Della Pello Paving's contention is problematic. Della Pello Paving's Contribution check is made payable to one of the invitation's contributor options, the Somerset County Republican Organization. However, the Contribution check reads: "Somerset County Republican Org to Elect Provenzano." The Contribution is neither made payable to the Committee to Elect Palmer and Zaborowski as the RSVP card permits, nor does it reference Palmer and Zaborowski at all. What the Contribution check does show is that it was made payable to the Somerset County Republican Organization (front of check) and deposited in the CPPC's account (back of check). Unfortunately, the reconsideration request Letters do not explain the discrepancy with the Contribution check additionally being made payable "...to Elect Provenzano" when the Contribution was purportedly in support of the election of Palmer and Zaborowski. Neither the invitation nor the RSVP card references "Provenzano." In order to gain understanding into the discrepancy, ELEC records were reviewed, which disclosed that the candidate Frank Provenzano, Somerset County Sheriff, last ran for re-election in 2013, not 2014. Therefore, I must find Della Pello Paving's first contention unpersuasive.

Della Pello Paving's other contention is that the inadvertent Contribution to the CPPC was cured by the CPPC's return of the Contribution. The July 9th reconsideration request Letter asserts: "please be advised that the allegedly disqualifying contribution has been returned to Della Pello Paving within 30 days of it being first brought to Della Pello Paving, Inc.'s attention and as a result of Della Pello's immediate request for return of its funds." The July 9th Letter also asserts that it was not until Della Pello Paving received the DOT's June 10, 2015 letter concerning the disqualification, that Della Pello Paving discovered that its Contribution was deposited by the CPPC into the CPPC's account.

Della Pello Paving's refund contention is inconsistent with both the governing statute and binding precedent. Chapter 51 provides a narrow window within which a business entity may neutralize the effect of an inadvertent contribution and maintain its eligibility for State contracts. N.J.S.A. 19:44A-20.20 provides in part:

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.

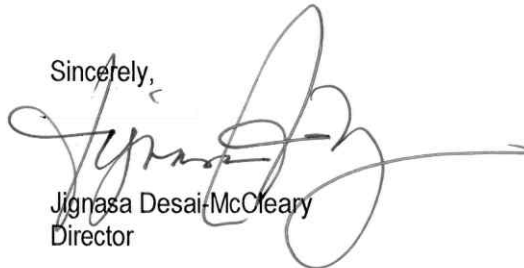
The instant Contribution was made on April 9, 2014. As the July 9, 2014 Letter concedes, Della Pello Paving did not request and receive a return of the Contribution until after June 10, 2015, more than a year after it made the Contribution.

Chapter 51 requires that a refund must be received within 30 days after the contribution is made. In Re Earle Asphalt, 401 N.J. Super. 310, 326-28 (App. Div. 2008), aff'd o.b., 198 N.J. 143 (2009) (affirming that both the request for reimbursement and actual receipt of the reimbursement must occur within 30 days of the disqualifying contribution). To the extent that Della Pello Paving seeks to apply a "discovered" rule as to the inadvertent contribution, it is unavailing. N.J.S.A. 19:44A-20.20 does not contain any such discovery rule or relaxation provision. Della Pello Paving did not request and receive a return of the Contribution within 30 days. Therefore, according to law, the ineligibility determination cannot be reversed.

Finally, Della Pello Paving has requested that, based upon this request for reconsideration of the Chapter 51 Unit's disqualification, the Division of Purchase and Property either: take urgent action to withhold the award by the DOT of the above contract to any other party except Della Pello Paving, or confirm that no award of the DOT contract will be made by the DOT until the reconsideration request is made final. Please be advised that these requests are beyond the nature and scope of this Chapter 51 request for reconsideration.

I have reviewed the information submitted as it relates to the provisions of Chapter 51 and Executive Order Number 117. Based upon this review and for the reasons discussed above, I am without discretion to overturn the initial ineligibility determination rendered by the Division of Purchase and Property in this matter. By copy of this letter, I am notifying the DOT of this decision.

Sincerely,



Jignasa Desai-McCleary
Director

c: A. Davis, DPP
R. Shaughnessy, DPMC
L. Barber, DOT