



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MAY 31 2017

RE: MUR 7099
Suffolk Construction Company, Inc.

Dear Ms. Poppey:

On July 12, 2016, the Federal Election Commission (the "Commission") notified your client, Suffolk Construction Company, Inc. ("Suffolk") of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Suffolk at that time.

After reviewing the available information and your client's response, the Commission, on May 23, 2017, found reason to believe that your client violated 52 U.S.C. § 30119(a)(1) by making prohibited federal contractor contributions. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650 or rluckett@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. No action by the Commission or any person and no information derived in connection with any conciliation attempt by the Commission may be made public by the Commission without the written consent of the respondent and the Commission. 52 U.S.C. § 30109(a)(4)(B). The Commission may proceed to the next step in the enforcement process if the Committee is not interested in pre-probable cause conciliation or a mutually acceptable conciliation agreement cannot be reached within 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT:** Suffolk Construction Company, Inc.

MUR: 7099

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8 **I. INTRODUCTION**

9 This matter was generated by a Complaint filed by Paul S. Ryan, the Campaign Legal
10 Center through J. Gerald Herbert, and Democracy 21 through Fred Wertheimer. For the reasons
11 described below, the Commission finds reason to believe that the Suffolk Construction
12 Company, Inc. ("Suffolk") violated 52 U.S.C. § 30119(a)(1) by making contributions as a federal
13 contractor.

14 **II. FACTUAL BACKGROUND**

15 Suffolk is a Massachusetts corporation involved in various construction projects. While
16 Suffolk maintains that it primarily served as a general contractor and construction manager for
17 privately funded projects, it acknowledges that a "small fraction" of its work over the past five
18 years included federal contracts.¹ Suffolk contributed \$100,000 to the Committee on July 20,
19 2015, and another \$100,000 to the Committee on December 17, 2015.² The Committee
20 disclosed receipt of these contributions on its 2015 Year-End Report.³

21 The Complaint notes that on April 7, 2016, the Center for Public Integrity reported that
22 the Committee received the two \$100,000 contributions, and that the federal government had

¹ Suffolk Resp. at 1. (Sept. 1, 2016).

² Priorities USA Action 2015 Year-End Report at 11-12 (Jan. 31, 2016), available at <http://docquery.fec.gov/pdf/767/201601319005016767/201601319005016767.pdf>.

³ *Id.*

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1 awarded Suffolk more than \$168 million worth of contracts since fiscal year 2008.⁴ According
2 to the Complaint, Suffolk had been awarded \$1,278,500 in federal contracts in Fiscal Years 2015
3 and 2016 (a period including October 1, 2014, to September 30, 2016) for projects involving the
4 Department of Defense.⁵

5 Suffolk responds that the contract work that it performed for the U.S. Army Corps of
6 Engineers ("USACE") was its only work that might be relevant to this matter.⁶ According to
7 Suffolk, its USACE contract involved multiple construction projects at a Motor Pool facility in
8 West Point, New York. Suffolk states that this contract, which began in March 2009, provided
9 that Suffolk would assist the USACE in relocating a Motor Pool.⁷ In 2014, two years after the
10 original work on the Motor Pool concluded, Suffolk states that the USACE modified the contract
11 in three phases.

12 The third phase of the modified contract covers the period during which Suffolk made the
13 two \$100,000 contributions to the Committee.⁸ On July 7, 2015, Suffolk "received" MOD 28,
14 which called for the installation of a new green filter at the Motor Pool, among other things.⁹
15 On September 18, 2015, USACE issued Amendment P00002 to MOD 28, which involved
16 furnishing and installing an effluent line at the Motor Pool. Suffolk states that its "work on these

⁴ Compl. at 4. See Harper Neideg and Jonathan Swan, *Exclusive: Pro-Hillary Group Takes \$200K in Banned Donations*, THE HILL (June 29, 2016).

⁵ *Id.* at 3.

⁶ Suffolk Resp. at 3.

⁷ *Id.*

⁸ *Id.* The first phase, Contract Modification ("MOD") 26, called for the design of a waste water treatment plant and was completed on December 14, 2014. The second phase, MOD 27, called for work on the boiler and propane supply system at the Motor Pool, which ended on January 22, 2015.

⁹ *Id.* at 4.

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1 projects spanned from December 2015 to August 2016.”¹⁰

2 On June 30, 2016, the Committee refunded Suffolk’s \$200,000 total contributions.

3 **III. LEGAL ANALYSIS**

4 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a federal
5 contractor may not make contributions to political committees.¹¹ Specifically, the Act prohibits
6 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of
7 personal services or furnishing any material, supplies, or equipment to the United States or any
8 department or agency thereof” from making a contribution “if payment for the performance of
9 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”¹²

10 These prohibitions begin to run at the beginning of negotiations or when proposal requests are
11 sent out, whichever occurs first, and end upon the completion of performance of the contract or
12 the termination of negotiations, whichever occurs last.¹³ And these prohibitions apply to a
13 federal contractor who makes contributions to any political party, political committee, federal
14 candidate, or “any person for any political purpose or use.”¹⁴

15 The available record indicates that Suffolk was a federal contractor when it made the
16 contributions. Suffolk states that it “received” MOD 28 to perform additional services to
17 USACE on July 7, 2015, thirteen days before Suffolk’s first \$100,000 contribution to the

¹⁰ *Id.*

¹¹ 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

¹² 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

¹³ 52 U.S.C. § 30119 (a)(1); 11 C.F.R. § 115.1(b).

¹⁴ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

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1 Committee on July 20, 2015.¹⁵ Suffolk does not explain the significance of “receiv[ing]” MOD
2 28, but it is reasonable to infer that it was either a contract proposal or a negotiated work order,
3 thus making Suffolk a federal contractor at that point.¹⁶ On September 18, 2015, USACE
4 “issued” an amendment to perform additional services in conjunction with MOD 28. According
5 to Suffolk, its “work on these projects spanned from December 2015 to August 2016,”
6 apparently including December 17, 2015, the date of Suffolk’s second contribution. Thus, the
7 available information supports a reasonable inference that Suffolk made prohibited federal
8 contractor contributions to the Committee.

9 Suffolk’s argument that its federal contract work represented a “small fraction” of its
10 business does not negate the company’s status as a federal contractor. Suffolk further asserts that
11 “any inadvertent violation that may have occurred would have been *de minimis* and immediately
12 remedied by Suffolk before any harm could have possibly resulted.” While Suffolk may
13 consider its federal contract work a “*de minimis*” portion of its overall work, its \$200,000 in
14 contributions to the Committee are not *de minimis*.¹⁷ And Suffolk’s July 2015 and December
15 2015 contributions were not refunded for nearly one year, and more than six months,

¹⁵ Suffolk describes the July 7, 2015, MOD 28 as “call[ing] for, among other things, the installation of a new green filter at the Motor Pool.” Suffolk Resp. at 4. Although Suffolk speaks to possible differences of opinion with USACE as to whether the original contract dating from 2009 remained in effect through Fiscal Year 2016 or the MOD work was entirely new contracts, the MOD 28 information provided by Suffolk supports its status as a federal contractor at the time of both contributions. *Id.*

¹⁶ See 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

¹⁷ In support of a dismissal, Suffolk cites MUR 5424 (Foxx), in which the Commission took no further action and closed the file with an admonishment, but that matter involved only \$286.71 in impermissible soft money contributions. See MUR 5424 First General Counsel’s Report at 4-5. Thus, Foxx is factually distinguishable.

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- 1 respectively, during which time the Committee spent millions of dollars.¹⁸ Accordingly, the
- 2 Commission finds reason to believe that Suffolk violated 52 U.S.C. § 30119(a)(1).

¹⁸ See Priorities USA Action 2015 Year-End Report at 4 (disclosing total year-end disbursements of \$5,657,289) (Jan. 31, 2016) *available at* <http://docquery.fec.gov/pdf/767/201601319005016767/201601319005016767.pdf>; and Priorities USA Action Amended 2016 July Quarterly Report at 4 (disclosing total year-to-date disbursements of \$54,650,193.92) (Oct. 10, 2016) *available at* <http://docquery.fec.gov/pdf/402/201610209034276402/201610209034276402.pdf>. While Suffolk states that its contributions were refunded before the Complaint in this matter was filed, the June 30, 2016, refund occurred after the Center for Public Integrity's April 7, 2016, report on Suffolk's contributions to the Committee and a June 29, 2016, article on the subject. See Compl. at 4-5; Harper Neideg and Jonathan Swan, *Exclusive: Pro-Hillary Group Takes \$200K in Banned Donations*, THE HILL (June 29, 2016).

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