

OCTOBER 28, 2020 9:53 AM

OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200

v.

MUR No. **7842**

TONERQUEST, INC.
241 37th Street, Suite 302
Brooklyn, NY 11232

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that TonerQuest, Inc. has violated FECA's prohibition on federal contractors making contributions to political committees while negotiating or performing federal contracts, 52 U.S.C. § 30119(a)(1), by contributing \$25,000 to America First Action (ID: C00637512).
2. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

3. America First Action is an independent expenditure-only political action committee (*i.e.*, a "super PAC").¹
4. So far in the 2020 cycle, America First Action has made over \$100 million in independent expenditures in the presidential election.²

¹ America First Action, Statement of Organization, FEC Form 1 at 1 (amended Nov. 7, 2019), <https://docquery.fec.gov/pdf/678/201911079165331678/201911079165331678.pdf>.

² America First Action, Independent expenditures (24- and 48-Hour Reports), 2019-20, FEC.GOV, <https://www.fec.gov/data/independent->

5. TonerQuest, Inc. is a New York-based office supply company with a mailing address of 241 37th Street, Ste. 302, Brooklyn, NY 11232, according to its website.³ Its website includes a “Welcome Government Customers!” section, where it displays information about an active ten-year contract it holds with the General Services Administration (“GSA”) and emphasizes that “[h]ere at TonerQuest.com, our mission is to make your government purchasing a great experience. That is why we offer a full line of GSA and NSN products. We also offer FSSI/BPA and GSA contract pricing on over 50,000 products for your office.”⁴
6. *GSA Advantage!*, the GSA’s “online shopping and ordering system that provides access to thousands of contractors and millions of supplies (products) and services,” describes TonerQuest as a current “contractor.”⁵
7. According to USAspending.gov, “the official source for spending data for the U.S. Government,”⁶ TonerQuest currently holds two ten-year federal supply schedule contracts with the GSA.⁷

[expenditures/?data_type=processed&committee_id=C00637512&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020](https://www.usaspending.gov/data?type=processed&committee_id=C00637512&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Oct. 26, 2020).

³ *Contact Us*, TONERQUEST, <https://www.tonerquest.com/ContactUs.aspx> (last visited Oct. 26, 2020); *About Us*, TONERQUEST, <https://www.tonerquest.com/AboutUs.aspx> (last visited Oct. 26, 2020).

⁴ *Welcome Government Customers!*, TONERQUEST, <https://www.tonerquest.com/GSA> (last visited Feb. 12, 2020). The description of the contract as displayed on this page describes a “contract period” of April 13, 2011 through April 13, 2021 and highlights that “[a]ll products offered **under this contract** are made in the USA or a country of in compliance with the Trade Agreements Act.” *Id.* (emphasis added).

⁵ *E.g.*, *Contractor Information: Contract # GS-21F-117BA*, GSA ADVANTAGE!, https://www.gsaadvantage.gov/advantage/contractor/contractor_detail.do?mapName=/s/search/&cat=ADV&contractNumber=GS-21F-117BA (last visited Oct. 26, 2020) (displaying “TonerQuest Inc.” as the “contractor” for an active contract ending July 22, 2024); *Contractor Information: Contract # GS-02F-0132X*, GSA ADVANTAGE, https://www.gsaadvantage.gov/advantage/contractor/contractor_detail.do?mapName=/catalog/product_detail&oid=1549564795&contractNumber=GS-02F-0132X&itemNumber=7530-00-990-8884 (last visited Oct. 26, 2020) (similarly displaying “TonerQuest Inc.” as the “contractor” for a contract active through April 12, 2021).

⁶ USAspending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Oct. 26, 2020).

⁷ USAspending.gov, *Indefinite Delivery Vehicle Summary*, PIID GS02F0132X, https://www.usaspending.gov/#/award/CONT_IDV_GS02F0132X_4732 (last visited Oct. 26, 2020) (showing an open federal supply schedule contract with a start date of April 13, 2011, an end date of April 12, 2021, 254 associated child award orders, and a current total value of \$1.2 million, and showing the recipient as TonerQuest Inc., 241 37th Street, Suite 302, Brooklyn, NY 11232); USAspending.gov, *Indefinite Vehicle Summary*, PIID GS21F117BA, https://www.usaspending.gov/#/award/CONT_IDV_GS21F117BA_4732 (last visited Feb. 12, 2020) (showing another open federal supply schedule contract with the GSA with a start date of July 23, 2014, an end date

8. On November 13, 2019, America First Action received a \$25,000 contribution from “Toner Quest Inc.,” 241 37th Street, Suite 302, Brooklyn, NY 11232, according to America First Action’s 2019 year-end report filed with the Commission.⁸

SUMMARY OF THE LAW

9. “Contribution” is defined as “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i).
10. Federal law prohibits a federal contractor from making any “contribution to any political party, committee, or candidate for public office” at any time between the commencement of negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).
11. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
12. The contractor contribution ban applies to any person “who enters into any contract with the United States or any department or agency thereof” for “the rendition of personal services” or for “furnishing any material, supplies, or equipment,” or for “selling any land or building,” if

of July 22, 2024, 30 associated child award orders, and a current total value of \$106,745, and showing the recipient as TonerQuest Inc., 241 37th Street, Suite 302, Brooklyn, NY 11232). According to the GSA, “GSA Schedules (also referred to as Multiple Award Schedules (MAS) and **Federal Supply Schedules**) are long-term governmentwide contracts with commercial firms providing federal, state, and local government buyers access to more than 11 million commercial supplies (products) and services at volume discount pricing.” *GSA Schedules*, GSA.GOV, <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules> (last visited Oct. 26, 2020) (emphasis added); see also 48 C.F.R. § 38.101 (a)-(b). In addition to showing these active federal supply schedule contracts, USASpending.gov shows at least one short-term child award order that TonerQuest held that was also active on November 13, 2019. USASpending.gov, Contract Summary, PIID 47QSHA19F5QQP, https://www.usaspending.gov/#/award/CONT_AWD_47QSHA19F5QQP_4732_GS21F117BA_4732 (last visited Oct. 26, 2020).

⁸ America First Action, 2019 Year-End Report, FEC Form 3X at 300 (filed Jan. 31, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202001319185922626>. The space in the name “Toner Quest, Inc.” in the America First Action report entry appears to be a typographical error, as the entry contains the exact address of the company TonerQuest, Inc., and no company by the name “Toner Quest, Inc.” with a space between “Toner” and “Quest” appears to exist. See Search results for “Toner Quest,” OPENCORPORATES.COM, https://opencorporates.com/companies?jurisdiction_code=&q=%22toner+quest%22&utf8=%E2%9C%93 (last visited Oct. 26, 2020).

“payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(a).

13. The ban applies from when a request for proposals is sent out (or when contractual negotiations commence) until the completion of performance of the contract or the termination of negotiations. 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).
14. The Commission relies on federal government contract and acquisitions law to determine whether a person is performing or negotiating a federal contract, and is thus considered a federal contractor under FECA and Commission regulations. *See* Advisory Opinion 2008–11 (Brown) at 2–4 (Oct. 14, 2008).
15. Under federal government contract and acquisitions law, a federal supply schedule is a contract, and a person holding or negotiating such a contract is a federal contractor. *See* Federal Acquisition Regulation Part 38 (describing “Federal Supply Schedule Contracting”); *see also* 48 C.F.R. § 38.101 (a)-(b) (describing acquisitions under the Federal Supply Schedule program as “contracts”).⁹
16. Since 2011, the Commission has made clear that the government contractor prohibition applies to contributions to independent expenditure-only political committees (*i.e.*, “super PACs”) following the U.S. Supreme Court’s decision in *Citizens United v. FEC*¹⁰ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.¹¹ *See, e.g.*, Advisory Opinion 2011-11 (Colbert) at 4-5, 10 (June 30, 2011); *see also* Press Release, FEC, FEC statement on Carey v. FEC reporting guidance for political committees that maintain a non-contribution account,

⁹ *See also supra* n.10.

¹⁰ 130 S. Ct. 876 (2010).

¹¹ 599 F.3d 686 (D.C. Cir. 2010).

n.1 (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>. In MUR 6403, the Commission emphasized that a contractor making a contribution to a political committee to fund independent expenditures is not itself making an expenditure; therefore, a contribution to such a committee falls “squarely within the statute’s prohibitions.” MUR 6403 (Alaskans Standing Together), Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. at 5, 9 (Nov. 10, 2011). In 2017, the Commission found reason to believe that federal contractor Suffolk Construction Company, Inc. had violated 52 U.S.C. § 30119(a)(1) by contributing \$200,000 to Priorities USA Action, a super PAC supporting then-presidential candidate Hillary Clinton. *See* MUR 7099 (Suffolk Construction Company, Inc.), Notification to Campaign Legal Center at 1 (Sep. 25, 2017). The Commission emphasized that there is no *de minimis* exception to section 30119(a)(1), finding that even if a contributor’s federal contract work is only a “small fraction” of its overall business, this “does not negate the company’s status as a federal contractor.” MUR 7099, Factual and Legal Analysis at 4-5.

17. In 2019, the Commission found reason to believe that federal contractor Ring Power Corporation violated 52 U.S.C. § 30119(a)(1) when it contributed \$50,000 to the super PAC New Republican PAC while holding active federal contracts. MUR 7451 (Ring Power Corporation), Notification to Campaign Legal Center at 1 (June 19, 2019). The Commission found reason to believe, and entered into pre-probable cause conciliation, even though the super PAC ultimately refunded the illegal contribution. MUR 7451, Conciliation Agreement at 2-3 (June 4, 2019). In recommending a reason-to-believe finding, the Commission’s Office of General Counsel emphasized that Ring Power Corporation’s assertion that the active contract constituted only a small proportion of the company’s overall revenue “does not

negate the company's status as a federal contractor under the Act, or obviate the violation.”

MUR 7451, First General Counsel’s Report at 6 (Apr. 8, 2019). “Similarly,” OGC proceeded, “Ring Power's remedial measures—obtaining a refund and other steps taken to ensure it would no longer make prohibited contributions—do not excuse the violation.” *Id.* Pursuant to the conciliation agreement, Ring Power Corporation agreed to pay the Commission a \$9,500 penalty. MUR 7451, Conciliation Agreement at 2-3.

18. Similarly, in 2020, the Commission found reason to believe that Alpha Marine Services violated 52 U.S.C. § 30119(a)(1) by contributing \$100,000 to the super PAC Congressional Leadership Fund while holding active federal contracts, notwithstanding the fact that Alpha Marine sought and obtained a refund upon learning of the complaint. MUR 7458 (Alpha Marine Services), Notification to Campaign Legal Center at 1 (July 22, 2020); MUR 7458, Conciliation Agreement at 3-4. Alpha Marine Services agreed to pay the Commission a \$17,000 penalty. MUR 7458, Conciliation Agreement at 4.
19. The federal contractor ban was upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*). The *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

CAUSE OF ACTION

I. TONERQUEST, INC. VIOLATED THE CONTRACTOR CONTRIBUTION BAN

20. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.

21. According to USAspending.gov, the GSA, federal government contract and acquisitions law, and TonerQuest's own website, TonerQuest, Inc. is a federal contractor and was a federal contractor when it made the \$25,000 contribution to America First Action on November 13, 2019.¹²
22. Consequently, there is reason to believe that TonerQuest, Inc., as a federal contractor, violated the federal contractor contribution ban by making a "contribution to any political . . . committee," namely America First Action, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

PRAYER FOR RELIEF

23. Wherefore, the Commission should find reason to believe that TonerQuest, Inc. violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
24. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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¹² See *supra* ¶¶ 5-7.

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October 28, 2020

VERIFICATION

The complainant listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

B. Fischer

Brendan M. Fischer

Sworn to and subscribed before me this 27 day of October 2020.

[Signature]

Notary Public

