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Federal Election Commission
1050 First Street NE Washington, DC 20463

VIA E-MAIL: cela@fec.gov

Re: MUR 7887: Response for Hamilton Company

We write on behalf of Hamilton Company (“Hamilton”) in response to a complaint that alleges that Hamilton made a prohibited contribution to Americans for Prosperity Action (“AFP Action”), an independent expenditure-only political committee. Specifically, the Complaint alleges that Hamilton is a federal government contractor, and therefore was prohibited from making a contribution to AFP Action. When Hamilton made its contribution to AFP Action, Hamilton did not believe that it was a government contractor, as Hamilton has never bid on or been awarded a government contract from any branch of the United States government through a request for proposal (RFP). Upon review of the federal government contractor contribution ban (“the contractor ban”), as codified in 11 C.F.R. § 115.2, Hamilton maintains that it should not be considered a government contractor.

First, the contract ban has only previously been applied to businesses that acknowledged and/or admitted to being awarded long-term government contracts through the RFP process.¹ Hamilton has never bid on or been awarded a government contract through the RFP process, but rather provided goods to certain government agencies pursuant to purchase orders (aka receipts

¹ Response for Suffolk Construction Company, MUR 7099 (Suffolk Construction Company) (acknowledging holding government contracts with the United States Navy); Response for Alpha Marine Service Holdings LLC, MUR 7568 (Alpha Marine Service Holdings) (acknowledging that it was awarded two contracts with the federal government through the RFP process); Response for Ring Power Corp. at 2, MUR 7451 (Ring Power) (acknowledging that Ring Power made a contribution to New Republic PAC while it had a government contract), *See also* Statement of Cynthia L. Bauerly, Chair, Federal Election Commission, *Reporting Requirements and the Treatment of Federal Contractors Under the Federal Election Campaign Act and FEC Regulations*, House Committee on Oversight and Government Reform and the House Committee on Small Business (May 10, 2011) (“The [federal government contractor]prohibition is in force between the earlier date of the commencement of negotiations or the sending out of requests for proposals and the later date of the completion of performance of the contract or termination of negotiations for the contract. 11 CFR 115.1(b).”), available at https://www.fec.gov/resources/about-fec/commissioners/bauerly/statements/bauerly_statement_05_10_2011.pdf

of purchase), which are materially different. While the guidance on the federal government contractor ban is limited, there is no enforcement matter that we have found that has classified businesses that sold goods to the United States government pursuant to a purchase order as federal government contractors.

Second, and more broadly speaking, there are significant policy concerns with considering all businesses that have sold or may sell goods to a federal agency as federal government contractors. Hamilton's alleged status as a federal government contractor is solely based on the fact that certain agencies of United States government have purchased items from Hamilton. If the contractor ban applies this broadly, business that do not intend to become government contractors could inadvertently become contractors solely because the federal government purchased goods from them. To provide an example, if the federal government buys printer equipment from Office Depot, under the Complainant's view of the ban, Office Depot would be considered a federal government contractor at the time of the purchase order. If Office Depot were to make a political contribution to a Super PAC, such as AFP Action, during the time of the purchase order, it could be in violation of the contractor ban without even knowing it was a government contractor. Certainly, if this is how the Commission applies the contractor ban, thousands of businesses are likely in violation of the law without realizing it. The purpose of the contractor ban is to prevent the corruption or the appearance of corruption from officeholders awarding government contracts to their political supporters. We understand and agree that contributions to an officeholder from a company in the midst of an RFP process could create an untoward appearance. That, however, is not the case here. We hope that if the Commission is going to broadly interpret the law to include even isolated sales, it will promptly release public guidance on the subject.²

Notwithstanding the above arguments, Hamilton requested and received a refund for its contribution to AFP Action once Hamilton learned of the Complainant's allegations. We believe that the refund of the contribution should resolve any of the Complainant's concerns.

We hope that the Commission will consider our concerns with the applicability of the contractor ban when reviewing this matter, and promptly dismiss the Complaint.

Respectfully submitted,



Charlie Spies
Katie Reynolds
Counsel to Hamilton Company

² This aggressively broad interpretation of the government contractor ban raises constitutional overbreadth implications, as this interpretation would silence the political voices of thousands of private businesses solely based on one-time purchases by government actors.