



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**VIA ELECTRONIC MAIL**

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1825 Eye Street, NW, Suite 900  
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RE: MUR 7887  
Hamilton Company

Dear Mr. Spies & Ms. Reynolds:

On March 22, 2021, the Federal Election Commission notified your client, Hamilton Company, of a complaint alleging that your client violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on January 11, 2022, found reason to believe that your client violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

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.

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 your client 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 your client violated the law. Enclosed is a conciliation agreement for your consideration

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If your client is interested in engaging in pre-probable cause conciliation, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or [nmueller@fec.gov](mailto:nmueller@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. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is 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/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

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.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson  
Chairman

Enclosures:  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 Respondent: Hamilton Company

MUR 7887

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7 **I. INTRODUCTION**

8 This matter was generated by a Complaint filed with the Federal Election Commission  
9 alleging that Hamilton Company (“Hamilton”) violated the federal contractor prohibition of the  
10 Federal Election Campaign Act of 1971, as amended (the “Act”), by making a \$300,000  
11 contribution to Americans for Prosperity Action and Robert Jentgens in his official capacity as  
12 treasurer (“AFP”), an independent expenditure-only political committee (“IEOPC”), while  
13 Hamilton was a federal government contractor.

14 Hamilton argues that it was not a federal contractor within the meaning of the Act, and  
15 therefore did not violate the prohibition, because its sales to the federal government were not  
16 awarded through the request for proposal process but, instead, were made pursuant to purchase  
17 orders. It contends that purchase order agreements are “materially different” from government  
18 contracts that are awarded through the request for proposal process.

19 As explained below, Hamilton was a federal contractor at the time of the contribution  
20 because even if its argument were correct, it was party to other contracts with the federal  
21 government during the relevant period. Therefore, Hamilton was prohibited from making  
22 contributions while its contracts were being performed. Accordingly, the Commission finds  
23 reason to believe that Hamilton violated 52 U.S.C. § 30119(a)(1).

## 1 II. FACTUAL BACKGROUND

2 Hamilton is a lab equipment manufacturing company based in Reno, Nevada.<sup>1</sup> The  
3 Complaint alleges, based on information publicly available at USASpending.gov, that Hamilton  
4 was a party to numerous federal contracts, including a contract with the Department of Health  
5 and Human Services for \$1.2 million that began on September 10, 2020, and a contract with the  
6 Department of Defense for \$871,233 that began on March 22, 2017.<sup>2</sup> On November 6, 2020,  
7 during the period of performance for both of the above referenced contracts,<sup>3</sup> Hamilton made a  
8 \$300,000 contribution to AFP.<sup>4</sup>

9 Hamilton acknowledges the facts regarding both its contribution to AFP and its sales to  
10 the federal government, but disputes the legal conclusion that it was a federal contractor within  
11 the meaning of the Act because its sales of goods or services to the federal government were not  
12 awarded through the request for proposal process but, instead, were made pursuant to purchase

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<sup>1</sup> Compl. at 2 (Mar. 17, 2021); *About Us*, Hamilton Company, <https://www.hamiltoncompany.com/about-us> (last visited Sept. 1, 2021).

<sup>2</sup> Compl. at 2 (citing USASpending.gov, Contract Summary, Award ID 75N95020P00548, [https://www.usaspending.gov/award/CONT\\_AWD\\_75N95020P00548\\_7529\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_75N95020P00548_7529_-NONE_-NONE-) (last visited Mar. 16, 2021) (showing a \$1,237,587.54 contract from the U.S. Department of Health and Human Services to Hamilton Company with a period of performance of September 10, 2020 through April 10, 2021); USASpending.gov, Contract Summary, Award ID N6264517C4008, [https://www.usaspending.gov/award/CONT\\_AWD\\_N6264517C4008\\_9700\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_N6264517C4008_9700_-NONE_-NONE-) (last visited Mar. 16, 2021) (showing a \$871,233 contract from the U.S. Department of Defense to Hamilton Company with a period of performance of March 22, 2017 through March 21, 2021).

<sup>3</sup> A current review of USASpending.gov is consistent with Complainant's allegations that the referenced contracts were being performed on the date that the contribution was made to AFP, and also indicates that because of the exercising of an option in the contract with the Department of Defense, the total value of the contract with the Department of Defense is now nearly \$1.3 million. See USASpending.gov, Contract Summary, Award ID N6264517C4008, [https://www.usaspending.gov/award/CONT\\_AWD\\_N6264517C4008\\_9700\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_N6264517C4008_9700_-NONE_-NONE-) (last visited Nov. 2, 2021) (showing a \$1.3 million contract between the Department of Defense and Hamilton with a period of performance of March 22, 2017 through March 21, 2021); USASpending.gov, Contract Summary, Award ID 75N95020P00548, [https://www.usaspending.gov/award/CONT\\_AWD\\_75N95020P00548\\_7529\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_75N95020P00548_7529_-NONE_-NONE-) (last visited Nov. 2, 2021) (showing a \$1.2 million contract between the Department of Health and Human Services and Hamilton with a period of performance of September 10, 2020 through April 10, 2021).

<sup>4</sup> Americans for Prosperity Action, 2020 Post-General Election Report, FEC Form 3X at 22 (amended Jan. 31, 2021), <https://docquery.fec.gov/pdf/707/202101319424073707/202101319424073707.pdf>.

1 orders.<sup>5</sup> Upon receiving the Complaint, Hamilton states that it requested a refund of its  
2 contributions, and on April 29, 2021, AFP refunded Hamilton’s contribution.<sup>6</sup>

### 3 **III. LEGAL ANALYSIS**

4 A “contribution” is defined as “any gift . . . of money or anything of value made by any  
5 person for the purpose of influencing any election for Federal office.”<sup>7</sup> Under the Act, a federal  
6 contractor may not make contributions to political committees.<sup>8</sup> Specifically, the Act prohibits  
7 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of  
8 personal services or furnishing any material, supplies, or equipment to the United States or any  
9 department or agency thereof” from making a contribution “if payment for the performance of  
10 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”<sup>9</sup>  
11 These prohibitions begin to run at the beginning of negotiations or when proposal requests are  
12 sent out, whichever occurs first, and end upon the completion of performance of the contract or  
13 the termination of negotiations, whichever occurs last.<sup>10</sup>

14 The federal contractor contribution prohibition applies to any federal contractor who  
15 makes contributions to any political party, political committee, federal candidate, or “any person  
16 for any political purpose or use.”<sup>11</sup> Commission regulations define “contract” to include:

17 (1) A sole source, negotiated, or advertised procurement conducted  
18 by the United States or any of its agencies;  
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<sup>5</sup> Hamilton Resp. at 2 (May 6, 2021).

<sup>6</sup> Hamilton Resp. at 2; *see* Americans for Prosperity, 2021 May Monthly Report at 15 (May 20, 2021), <https://docquery.fec.gov/pdf/792/202105209447319792/202105209447319792.pdf>.

<sup>7</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>8</sup> *Id.* § 30119(a); 11 C.F.R. § 115.2.

<sup>9</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>10</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>11</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

1 (2) A written (except as otherwise authorized) contract, between  
2 any person and the United States or any of its departments or  
3 agencies, for the furnishing of personal property, real property, or  
4 personal services; and

5  
6 (3) Any modification of a contract.<sup>12</sup>

7 Hamilton does not dispute the existence of its transactions with the Department of Health  
8 and Human Services or the Department of Defense, nor that these contracts were being  
9 performed when it made the \$300,000 contribution to AFP, but it asserts that it nonetheless  
10 “should not be considered a government contractor.”<sup>13</sup> Instead, Hamilton argues for a limited  
11 understanding of government contracts consisting only of “long-term government contracts  
12 through the [request for proposal] process” and asserts that “Hamilton has never bid on or been  
13 awarded a government contract through the [request for proposal] process, but rather provided  
14 goods to certain government agencies pursuant to purchase orders, ” which, it asserts, are  
15 “materially different.”<sup>14</sup>

16 The regulation at 11 C.F.R. § 115.1(c)(2) defines “contract” to include a “contract  
17 between any person and the United States or any of its departments or agencies, for the  
18 furnishing personal property . . . or personal services.”<sup>15</sup> While Hamilton claims that its “alleged  
19 status as a federal government contractor is solely based on the fact that certain agencies of  
20 United States government have purchased items from Hamilton,” and that this should not suffice  
21 to render it a federal contractor, the available information undermines this assertion and suggests

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<sup>12</sup> 11 C.F.R. § 115.1(c).

<sup>13</sup> Hamilton Resp. at 1. *See supra* note 2.

<sup>14</sup> Hamilton Resp. at 1-2.

<sup>15</sup> 11 C.F.R. § 115.1(c)(2).

1 that Hamilton held more sophisticated, long-term services contracts with the federal  
2 government.<sup>16</sup>

3 According to the description of Hamilton’s Department of Defense contract on  
4 USASpending.gov, the contract began in 2017 for “robotics maintenance services in support of  
5 the DOD Drug demand reduction program.”<sup>17</sup> The government categorizes the agreement as a  
6 “definitive contract,” and public information indicates that the agreement is for a period of five  
7 years and has been subject to supplemental agreements.<sup>18</sup> Pursuant to the contract, Hamilton has  
8 provided multiple maintenance and repair services and received multiple payments totaling over  
9 \$1.25 million.<sup>19</sup> The Commission has previously found that the holders of similar “definitive  
10 contracts” with the federal government for long-term services to be federal contractors subject to  
11 52 U.S.C. § 30119(a).<sup>20</sup> Because the available information suggests that Hamilton’s Department  
12 of Defense maintenance contract was a contract under 11 C.F.R. § 115.1(c)(2), it is unnecessary  
13 for the Commission to decide whether all purchase orders or point-of-sale contracts fall under  
14 52 U.S.C. § 30119(a)(1).

15 Therefore, it appears that Hamilton was a federal contractor within the meaning of  
16 Commission regulations at the time of its contribution to AFP, and that the contribution was

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<sup>16</sup> Hamilton Resp. at 2.

<sup>17</sup> See USASpending.gov, Contract Summary, Award ID N6264517C4008, [https://www.usaspending.gov/award/CONT\\_AWD\\_N6264517C4008\\_9700\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_N6264517C4008_9700_-NONE_-NONE-) (last visited Nov. 2, 2021) (showing a \$1.3 million contract between the Department of Defense and Hamilton with a period of performance of March 22, 2017 through March 21, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Factual and Legal Analysis, MUR 7099 (Suffolk Construction Company, Inc.); see also USASpending.gov, Contract Summary, Award ID W912DS09C0005, [https://www.usaspending.gov/award/CONT\\_AWD\\_W912DS09C0005\\_9700\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_W912DS09C0005_9700_-NONE_-NONE-) (detailing the Suffolk Construction “definitive contract” at issue in the matter).

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- 1 therefore prohibited by section 30119. Accordingly, the Commission finds reason to believe that
- 2 Hamilton violated 52 U.S.C. § 30119(a)(1).