



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA EMAIL:

Erin Chlopak, Esq.
Sophie Gonsalves-Brown
Campaign Legal Center
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Washington, DC 20005
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March 21, 2022

RE: MUR 7887
Hamilton Company, *et al.*

Dear Ms. Chlopak & Ms. Gonsalves-Brown:

This letter is in reference to the complaint you filed with the Federal Election Commission on March 17, 2021, concerning Hamilton Company and Americans for Prosperity Action and Robert Jentgens in his official capacity as treasurer. The Commission found that there was reason to believe that Hamilton Company violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution. On March 16, 2022, a conciliation agreement signed by the Hamilton Company was accepted by the Commission. Also on March 16, 2022, the Commission dismissed the allegation that Americans for Prosperity Action and Robert Jentgens in his official capacity as treasurer violated 52 U.S.C. § 30119(a)(2) by knowingly soliciting federal contractor contributions. Accordingly, the Commission closed the file in this matter on March 16, 2020.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with Hamilton Company and the Commission's Factual and Legal Analysis is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1577 or nmueller@fec.gov.

Sincerely,

Nicholas O. Mueller
Nicholas O. Mueller
Attorney

Enclosure
Conciliation Agreement
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BEFORE THE FEDERAL ELECTION COMMISSION

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized Complaint filed with the Federal Election Commission. The Commission found reason to believe that Hamilton Company (“Respondent”), violated 52 U.S.C. § 30119(a)(1) by making contributions while Respondent was a federal government contractor.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered under 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent is a lab equipment manufacturing company that held federal contract with the U.S. Department of Defense between March 22, 2017 and March 21, 2021 and a federal contract with the U.S. Department of Health and Human Services between September 10, 2020 and April 10, 2021.

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2. On or around November 6, 2020, Respondent made a \$300,000 contribution to Americans for Prosperity Action and Robert Jentgens in his official capacity as treasurer (“AFP”), an independent expenditure-only political committee

3. On or around April 29, 2021, AFP refunded the \$300,000 contribution to Respondent.

4. Respondent contends that it did not understand itself to be a government contractor for the purpose of the Act, as the Respondent had never bid on or been awarded a government contract from any branch of the United States government through a request for proposal (“RFP”).

5. Respondent also contends that it enters into this Agreement due to the Respondent’s desire to avoid further legal costs.

V. The pertinent law in this matter is as follows:

1. The Federal Election Campaign Act of 1971, as amended (the “Act”) and the Commission’s regulations bar contributions to political committees by any person who enters into a contract with the United States or its departments or agencies for “furnishing any material, supplies, or equipment,” if payment on such contract “is to be made in whole or in part from funds appropriated by Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a). Such contributions are barred for the period between (1) the earlier of commencement of negotiations or when requests for proposal are sent out, and (2) the later of the completion of performance on or termination of negotiations for the contract. 11 C.F.R. § 115.1(b).

2. These prohibitions apply to a federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.” 11 C.F.R. § 115.2(a).

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VI. Respondent violated 52 U.S.C. § 30119(a)(1) by making federal contractor contributions.

VII. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of fifty-six thousand dollars (\$56,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30119(a)(1).

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire Agreement.

X. Respondent shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

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XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY:  Digitally signed by Charles Kitcher
Date: 2022.03.18 11:39:01
-04'00'
Charles Kitcher
Associate General Counsel
for Enforcement

3/18/22
Date

FOR THE RESPONDENT:


Charlie Spies, Esq.
Counsel for Hamilton Company

February 24, 2022
Date

FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

Respondent: Hamilton Company

MUR 7887

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).

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1 **II. FACTUAL BACKGROUND**

2 Hamilton is a lab equipment manufacturing company based in Reno, Nevada.¹ The
 3 Complaint alleges, based on information publicly available at USA Spending.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, 2017.² On November 6, 2020,
 7 during the period of performance for both of the above referenced contracts,³ Hamilton made a
 8 \$300,000 contribution to AFP.⁴

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

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

² Compl. at 2 (citing USA Spending.gov, Contract Summary, Award ID 75N95020P00548, 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); USA Spending.gov, Contract Summary, Award ID N6264517C4008, 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).

³ A current review of USA Spending.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* USA Spending.gov, Contract Summary, Award ID N6264517C4008, 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); USA Spending.gov, Contract Summary, Award ID 75N95020P00548, 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).

⁴ 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>.

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1 orders.⁵ 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.⁶

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.”⁷ Under the Act, a federal
 6 contractor may not make contributions to political committees.⁸ 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.”⁹
 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.¹⁰

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.”¹¹ 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;
 19

⁵ Hamilton Resp. at 2 (May 6, 2021).

⁶ 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>.

⁷ 52 U.S.C. § 30101(8)(A)(i).

⁸ *Id.* § 30119(a); 11 C.F.R. § 115.2.

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

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

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

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

(3) Any modification of a contract.¹²

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.”¹³ 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.”¹⁴

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.”¹⁵ 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

12 11 C.F.R. § 115.1(c).

¹³ Hamilton Resp. at 1. *See supra* note 2.

14 Hamilton Resp. at 1-2.

15 11 C.F.R. § 115.1(c)(2).

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

3 According to the description of Hamilton’s Department of Defense contract on
 4 USA Spending.gov, the contract began in 2017 for “robotics maintenance services in support of
 5 the DOD Drug demand reduction program.”¹⁷ 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.¹⁸ Pursuant to the contract, Hamilton has
 8 provided multiple maintenance and repair services and received multiple payments totaling over
 9 \$1.25 million.¹⁹ 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).²⁰ 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

¹⁶ Hamilton Resp. at 2.

¹⁷ See USA Spending.gov, Contract Summary, Award ID N6264517C4008, 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).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Factual and Legal Analysis, MUR 7099 (Suffolk Construction Company, Inc.); *see also* USA Spending.gov, Contract Summary, Award ID W912DS09C0005, 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).