



April 23, 2021

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Jeff S. Jordan
 Assistant General Counsel
 Federal Election Commission
 1050 First Street NE
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Re: MUR 7888 – Response of Martin Marietta Materials, Inc.

Dear Mr. Jordan:

We represent Martin Marietta Materials, Inc, (“Martin Marietta”) with respect to the Complaint filed in MUR 7888. The Complaint alleges that Martin Marietta made a prohibited contribution of \$10,000 to the Senate Leadership Fund (“SLF”), an independent expenditure only political committee. Upon receipt of the Complaint, Martin Marietta investigated the matter. It determined that it could potentially meet the definition of a federal government contractor, and promptly sought and received a refund of the full \$10,000 from SLF. Moreover, Martin Marietta is in the process of implementing new policies and procedures to make certain that prohibited contributions are not made in the future.

Martin Marietta is a publicly traded company that is a leading supplier of building materials, including aggregates, cement, ready mixed concrete and asphalt, with revenue of over \$4.4 billion in 2020.¹ A very small amount of those sales are made directly to the federal government. Although the Complaint alleges about Martin Marietta has \$1.6 million in federal government contracts, Martin Marietta’s internal review suggests the number is significantly lower.

In particular, the contracts Martin Marietta has are generally contracts for providing materials when the government determines to pick up the materials. For example, the United States Army Corps of Engineers (the “Corps”) will purchase a supply of aggregate for a project FOB a Martin Marietta designated quarry. The Corps picks up a portion of the materials when it desires and makes a payment. In other words, those contracts generally provide the

¹ <https://ir.martinmarietta.com/static-files/8706eabb-26f2-40ed-a3cd-1f6e72ddc9ea>



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purchasing framework for FOB material sales on an ongoing basis. They are not contracts that require ongoing performance by Martin Marietta other than having the material available for pickup when the Army Corps is ready to pickup and transport the materials (e.g., Martin Marietta does not perform construction for the government or build equipment for the government). The information in the Complaint about the contracts suggests a higher amount than what Martin Marietta actually received from the government because the government had not purchased the full amount that it could under the contracts.

Given that the government simply picks up materials and pays Martin Marietta for them, Martin Marietta did not appreciate that it could be classified as a federal government contractor subject to 52 U.S.C. § 30119(a)(1). Moreover, given the incredibly small volume of direct federal government sales (and the lack of complex contractual arrangements with the government) it did not have processes in place to prevent the contribution from being made. Martin Marietta has identified this problem and is implementing new controls to prevent prohibited contributions from being made in the future.

This case presents a good example of a situation where the Commission should dismiss the matter based on its prosecutorial discretion. The Enforcement Priority System criteria can easily guide this analysis. Those four criteria include: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law.

Here, the contribution was very small in amount and has been remedied through a refund. Other cases involving government contractors giving to independent expenditure committees and settlements have involved significantly larger contributions:

- MUR 7568: \$100,000 contribution (\$17,000 fine)
- MUR 7451: \$50,000 contribution (\$9,500 fine)
- MUR 7099 \$200,000 contribution (\$34,000 fine)

The contribution at issue here was \$10,000 and it has been refunded. Moreover, the \$10,000 was a very small percentage of the total SLF raised in 2020, meaning it had virtually no affect on the electoral process. As noted above, Martin Marietta did not appreciate that the limited contracts it held caused it to be subject to the restrictions imposed by 52 U.S.C. §



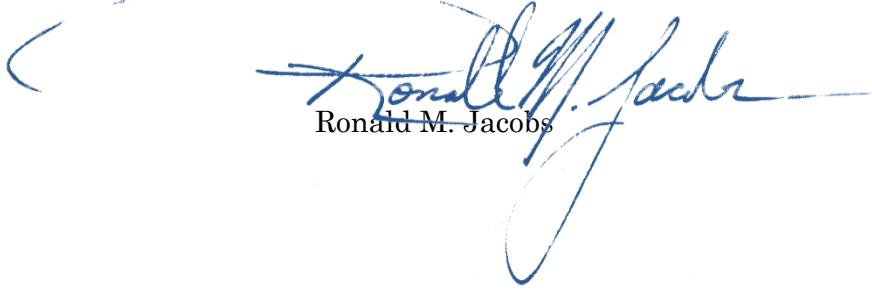
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30119(a)(1). Given these facts, Martin Marietta requests the Commission exercise its prosecutorial discretion and close this matter. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

Please do not hesitate to contact me if you have any questions or need additional information. Thank you for your time and attention to this matter, and we look forward to what we hope is a prompt resolution of this matter.

Respectfully submitted,

Ronald M. Jacobs