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NEWSLETTER

Federal Contractor Slapped with Civil Penalty for Prohibited Contributions to Super PAC

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A Massachusetts corporation, Suffolk Construction Company (Suffolk), agreed in September to pay a civil penalty of $34,000 to the Federal Election Commission (FEC) because it made prohibited political contributions as a federal contractor to a federal super PAC in 2015. According to media sources, this is the first time a federal contractor has been fined by the FEC for contributing to a super PAC.

Although Suffolk works primarily as a general contractor and construction manager for privately funded projects, a small portion of its work has included federal contracts. According to FEC Matter Under Review (MUR) 7099, from December 2015 to August 2016 it completed two construction projects for the U.S. Army Corps of Engineers (USACE) stemming from an earlier contract. On July 7, 2015, Suffolk received USACE's modified contract (MOD 28) for the first project; on September 18, 2015, USACE then issued an amendment to MOD 28 for a second project.

On July 20, 2015, just thirteen days after receiving USACE's modified contract, Suffolk contributed $100,000 to Priorities USA Action, an ideologically progressive federal super PAC. Suffolk then made a second $100,000 contribution to Priorities USA on December 17, 2015.

After a complaint was brought against Suffolk, the FEC in an enforcement matter found reason to believe that Suffolk's contributions as a federal contractor violated the Federal Election Campaign Act (FECA). Relevant federal campaign finance law states that "any person . . . [w]ho enters into any contract with the United States . . . for the rendition of personal services or furnishing any material, supplies, or equipment to the United States" is prohibited from making a contribution "to any political party, committee, or

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Practice Areas

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candidate for public office or to any person for any political purpose or use." This prohibition applies at the beginning of contract negotiations or when proposal requests are sent out, whichever occurs first, and ends when the contract is performed or when negotiations are terminated, whichever occurs last.

Specifically, in MUR 7099 the FEC found that it could reasonably infer that MOD 28 in July was "either a contract proposal or a negotiated work order, thus making Suffolk a federal contractor" when it made its July 20, 2015 contribution to Priorities USA. Further, Suffolk's work on these projects was apparently already underway when it made its second contribution on December 17, 2015. Thus, Suffolk's contributions to the super PAC violated FECA. The FEC also rejected Suffolk's argument that its federal contract work only represented a "small fraction" of its total business: although the value of its federal contract work may have been a *de minimis* portion of Suffolk's overall work, its $200,000 contribution to Priorities USA was certainly not *de minimis*.

On September 20, 2017, the FEC accepted Suffolk's conciliation agreement where it acknowledged that its contributions violated the law and agreed to pay a $34,000 fine to the FEC. Because the record indicated that Priorities USA did not "knowingly solicit the . . . contributions at issue," however, no enforcement was brought against the committee.

As this case illustrates, violations of "pay-to-play" laws can result in costly penalties to contributors. Wiley Rein's Election Law and Government Ethics Practice has extensive experience assisting companies seeking or holding federal or state contracts in complying with federal, state, and local pay-to-play laws. Additionally, our State and Municipal Pay-to-Play Survey provides a comprehensive summary of pay-to-play laws in states and major municipalities, as well as the pay-to-play policies that many public agencies have adopted on their own, and is available as a subscription service for a fee. To order, please contact D. Mark Renaud at 202.719.7405 or mrenaud@wiley.law.