

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

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ENFORCEMENT  
COMMISSION

In the Matter of a Complaint by Nabil M. Takla,  
Danbury

File No. 2010-134

AGREEMENT CONTAINING CONSENT ORDERS  
AND CIVIL PENALTIES

This agreement by and between Nabil M. Takla of the City of Danbury, County of Fairfield, State of Connecticut and Timothy Gunn, Town of Guilford, County of New Haven, State of Connecticut (hereinafter referred to as Respondents), and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The complaint and investigation in this matter concerns possible violations of Connecticut General Statutes § 9-612 (g), by two individuals employed by Morganti Group, Inc. (hereinafter "Morganti"). The Complaint was self-reported by an affidavit prepared by their attorney on behalf of Respondents Takla and Gunn.
2. Complainants sought rulings on alleged prohibited state contractor contributions by Respondents so that their employer Morganti could continue contracting with the State of Connecticut Department of Public Works (hereinafter "DPW"), an agency within the executive branch.
3. By way of background, Morganti is a business entity that operates for profit. Specifically, Morganti is a general contracting and construction management firm with an office and principal place of business in Danbury, Connecticut. Respondent is the President and CEO of Morganti and Respondent Gunn is its Vice President of Operations.
4. Morganti is listed on the State Elections Enforcement Commission "*List One - State Contractors Prohibited from contributing to both Statewide and General Assembly Candidates,*" and was so at all times relevant to the contributions made by Respondents and described herein.
5. Morganti holds a prequalification certificate issued by the Commission of Administrative Services under General Statutes § 9-4a-100. On or about August 13, 2010 Morganti received notification of its conditional selection for the "on call" construction administration contract OC-DPW-CA-007-0012 (hereinafter "Contract").

6. The pending Contract described in paragraph 5 above between Morganti and DPW remains unsigned, and Respondent Gunn would be the signor of this contract on behalf of Morganti once it issued by the DPW. Furthermore, under the aforementioned Contract Morganti provides contract administration services on particular projects should the DPW determine that such services are necessary. The aforementioned services would be performed based upon a pre-set fee structure not to exceed \$500,000 over the course of the contract. To date, Morganti has not been called upon to provide services for the DPW under the Contract.
7. Morganti acquired an Office of Policy Management (OPM) Ethics *Form 1: Gift and Campaign Contribution Certification* and submitted it as an "initial certification" when preparing documentation and affidavits to DPW in response to the conditional selection notification letter for the Contract. This OPM Form 1 was dated on August 31, 2010 and forwarded by Morganti to DPW on September 2, 2010. The form disclosed contributions by Respondents to *Jarjura for Comptroller*, a candidate committee established by Waterbury Mayor Michael Jarjura for the 2010 election (hereinafter "Committee").
8. On June 12, 2010, Respondent Takla completed a CEP Qualifying Contribution Certification Form for the Committee. Respondent Takla indicated that he was a "Corporate Executive" and that he was a principal of a state contractor with the "Executive" Branch on this form.
9. On June 25, 2010, Respondent Gunn completed a CEP Qualifying Contribution Certification Form for the Committee. Respondent Gunn indicated that he was a principal of a state contractor and identified the "Executive" and the "Legislative" branches as those branches with which there is a contract. Respondent Gunn identified himself as a "VP Operations" of Morganti on this form.
10. Respondent Takla made a \$100.00 contribution to the Committee on or about June 12, 2010 and Respondent Gunn made a \$100.00 contribution to the Committee on or about June 25, 2010. Each of the aforementioned contributions was disclosed by the Committee on its July 8, 2010 "Statement of Itemized Receipts and Expenditures" (SEEC Form 30).
11. General Statutes § 9-612 provides, in pertinent part:
  - ... (g)(1)(F) "Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, **(ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president**, (iii) an individual who is the chief

executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, *(iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

... (2)(A) No state contractor, prospective state contractor, *principal of a state contractor* or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, *shall make a contribution to*, or solicit contributions on behalf of (i) *an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer*, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(B) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract solicitation with or from the General Assembly or a holder, or principal of a holder, of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(C) *If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission*, the contracting state agency or quasi-public

agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited ***unless the commission determines that mitigating circumstances exist concerning such violation.*** No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, ***the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made, ...***

[Emphasis added.]

12. The Commission finds that Morganti, as a business entity, is a “state contractor” pursuant to General Statutes § 9-610 (g) (1) (D) and pursuant to the state contractor ban. Additionally, the Commission finds that because Morganti holds a valid prequalification certificate issued by the Commissioner of Administrative Services under General Statutes § 4a-100, it is a prospective state contractor pursuant to General Statutes § 9-612 (g) (1) (E).
13. Upon investigation the Commission finds that Respondent Takla is president of Morganti, and was so at all times relevant to this complaint and investigation.
14. The Commission concludes based on the findings in paragraph 14 above that Respondent Takla as president of Morganti, a state contractor, is a principal of a state contractor pursuant to § 9-612 (g) (1) (F) (1) (ii).
15. Upon investigation, the Commission finds that Respondent Gunn is a Morganti employee who had direct, extensive and substantive responsibilities with respect to the DPW Contract that pertains to this agreement is described in paragraphs 6 and 7 above.
16. The Commission concludes based on the findings in paragraph 16 above that Respondent Gunn in relation to the Contract between Morganti and DPW, is an employee with managerial and discretionary responsibilities over a state contract and is therefore a principal of a state contractor pursuant to § 9-612 (g) (1) (F) (1) (iv).

17. The Commission finds that on or about September 14, 2010, Respondents attempted to seek the return of the contributions from the Committee. The Committee was unable to return the contributions at this point as those contributions had already been identified by the SEEC during the grant application process and had been absorbed into the buffer and taken from the Committee by the Commission. The Commission finds therefore that these contributions did not form the basis for the grant award.
18. The Commission finds that the contributions described in paragraph 10 above were not returned within the statutory "safe harbor" of 30 days from the time of the contribution or not later than 30 days from the filing date of the reporting period in which it was made pursuant to § 9-612 (g) (2) (C).
19. The Commission concludes that the evidence supports the finding that Respondent Takla violated Statutes § 9-612 (g) by making a \$100.00 prohibited contribution to the Committee as described in paragraph 11 above as a principal of the state contractor Morganti.
20. The Commission concludes that the evidence supports the finding that Respondent Gunn violated Statute § 9-612(g) by making a \$100.00 prohibited contribution to the Committee as described in paragraph 11 above as the principal of state contractor Morganti.
21. The Commission finds that pursuant to General Statutes § 9-612(g), a mitigating circumstances analysis is not reached unless the Commission determines that a violation has occurred. Therefore, the Commission finds that the violations by Respondents as concluded in paragraphs 22 and 23, above, of the state contractor contribution ban allows the Commission to determine whether "mitigating circumstances" exist concerning such violations pursuant to General Statutes § 9-612 (g) (2) (C).
22. General Statutes § 9-612 (g) (2) (C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether mitigating circumstances exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract in its discretion if a violation of the state contractor contribution or solicitation ban occurs, even if mitigating circumstances are found.
23. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondents, as well as contracts and agreements between Morganti and the DPW, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution ban is designed to prevent.

24. The Commission notes that the contribution ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees and exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions.
25. The Commission finds a lack of evidence that the contributions described in this agreement were made in connection with any request for or offers of assistance between Respondents and the agents or representatives of the Committee, and DPW, for the purpose of obtaining agreements with DPW. In addition, there is a lack of evidence that the aforementioned contribution recipient was in the position to influence the decision making of the DPW, or that Mr. Jarjura or members or agents of the Committee were employed by or affiliated with this public agency. Finally, the Commission finds a lack of evidence that either the recipient or his agents or representatives acted on behalf of either party in relation to the agreements between Morganti and DPW.
26. It is the recommendation of counsel that "mitigating circumstances" be found, such that pursuant to § 9-612(g)(2)(C), Morganti *not* be prevented from exercising or amending its rights under future or existing contracts between it and DPW. Under the circumstances detailed herein, such mitigating circumstances could include:
  1. Respondents self reported to the Commission, by filing this complaint;
  2. Both Respondents honestly disclosed to the Committee that they were principals of a state contractor at the time of the contribution on their CEP qualifying contribution cards. These contributions should have been returned by the Committee at this point but were instead deposited;
  3. Both Respondents sought return of the contributions as soon as they realized they were impermissible;
  4. When Respondents made the aforementioned contributions to Michael Jarjura's campaign for State Comptroller, there was no discussion about Mr. Jarjura helping Morganti obtain contracts with the DPW or with any other state agency or department, and there was no expectation that Mr. Jarjura would provide assistance to Morganti in obtaining such contracts;
  5. The contributions were made because Mr. Jarjura was a personal friend of Respondents;
  6. Since Mr. Jarjura was Mayor of Waterbury at the time Respondents made these contributions, he was not in a position to influence the DPW or the State to award Morganti such contracts.

27. The Commission finds for the aforementioned factors that “mitigating circumstances” existed pertaining to the prohibited contributions made by Respondents and detailed herein pursuant to § 9-612 (g) (2) (C), such that Morganti *not* be prevented from exercising or amending its rights under future or existing contracts between it and DPW.
28. The Commission further concludes that the policy behind General Statutes § 9-612 (g) and its ban to avoid “pay-to-play” was not circumvented under the facts and circumstances of this case, and therefore allowing Contract and the contracting process to move forward, despite the prohibited contributions and violations by Respondents, does not compromise the state’s interests to insure integrity in its campaign financing system.
29. Accordingly, the Commission concludes that the mitigating circumstances concerning the violations by Respondents do not bar DPW pursuant to General Statutes §9-612 (g) from executing its current Contract with Morganti or satisfying or executing its existing or future contract obligations with Morganti, based on Respondents’ violations detailed herein.
30. Respondents admit all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
31. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
32. Respondents waive:
  - a. any further procedural steps;
  - b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
33. Upon Respondents’ compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-612 (g).

IT IS HEREBY FURTHER ORDERED THAT the Respondents shall each pay a civil penalty of five hundred dollars (\$500.00) to the Commission on or before March 16, 2011.

DATED: 3/17/11

For the State of Connecticut

BY:



Shannon Clark Kief, Esq.  
Legal Program Director and  
Authorized Representative of  
the Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

The Respondents

DATED: 3/15/11

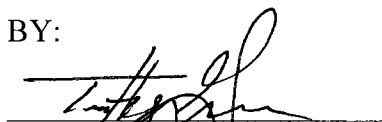
DATED: 3/15/11

BY:



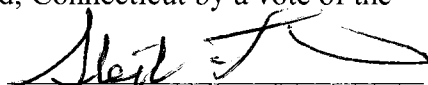
Nabil M. Takla  
19 Deer Park Road  
Danbury, Connecticut

BY:



Timothy Gunn  
138 Edgewood Drive  
Guilford, Connecticut

Adopted this 16<sup>th</sup> day of March, 2011 at Hartford, Connecticut by a vote of the Commission.



Stephen F. Cashman, Chairperson  
By Order of the Commission