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Roy Q. Lockett, Esq.
Acting Assistant General Counsel
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

VIA Electronic Mail**Re: Matter Under Review # 8021**

Sir:

Pursuant to the executed Designation of Counsel form of July 1, 2022, I represent Ohio Ordnance Works, Inc. (the "OOW") in the above captioned matter.

For the reasons set forth below, we hereby request that the Federal Election Commission (the "Commission") take no further action against my client and dismiss the Complaint in this Matter Under Review.

FACTS: OOW was not, on the date of a contribution to an Independent Expenditure-Only committee, a "government contractor, as that term is defined at 11 CFR 115.2. OOW is an American manufacturer of firearms and components, with manufacturing and repair facilities in Ohio. In the past, OOW has held supply contracts with the Department of Defense. Upon information and belief, the Club for Growth-Action committee is an Independent Expenditure-Only committee (an "IEOPC") registered as such with the Commission.

On or about February 23, 2021, OOW was directly solicited by the IEOPC to make a voluntary contribution to the IEOPC in support that committee's independent political efforts advocating for the election or defeat of various federal candidates. During that conversation, the IEOPC was asked by OOW if a corporate contribution to the committee was permissible under federal law and the IEOPC replied in the affirmative. Thereafter, the contribution from OOW to the IEOPC was executed.

Prior to the date of this solicitation by the IEOPC, OOW had held, over the previous years, one or more procurement contracts with the Department of Defense and was, in the past, deemed to be a government contractor as defined at 11 CFR. para 115.2(a).

However, at the time of the solicitation of OOW by the IEOPC, OOW not a "government contractor" and was unaware of the restriction on government contractor contributions, found at 52 U.S.C. para 30119(a)(1). OOW was unaware of the contractor prohibition because OOW had never previously been solicited to make a contribution to a federal independent expenditure committee and

had never made a contribution to an independent expenditure committee. Indeed, at the time of the solicitation of OOW by this IEOPC, the company had a good faith belief and understanding that it was not a government contractor because it had no government contracts outstanding and unfulfilled. It was not until your letter of June 30, 2022 was received that OOW first became aware of the prohibition on the making of a contribution by a federal contractor

In making the contribution to the IEOPC, OOW was simply interested in supporting the IEOPC's stated mission to support those federal candidates across the United States who stood for the same public policy values as are espoused by the IEOPC.

LAW: As the Commission understands, the so-called "government contractor" prohibition, found at 52 U.S.C. para 30119(a)(1) and at 11 CFR 115.2 requires that several definitional tests must be shown before the definition of a "government contract" is established. Those factual tests include (1) a negotiation with the government (2) for the supply of goods or services that (3) are to be paid from appropriated funds supplied by Congress, (4) the actual supply of such goods or services by the contractor, and (5) the payment by the government for such good or services. Final payment by the government constitutes completion of the contractor's performance under the contract (11 CFR 115.1(1)(b)(1)).

FACTS: The Complaint in MUR # 8021 appears founded upon what the complainant appears to assume were three "government contracts" held by OOW on the date of the contribution to the IEOPC, February 23, 2022 (see Exhibit A, appended to the complaint). Apparently, the complainant misunderstands government contracting.

Contract SPRDL1-19-D-0050, referenced in Exhibit A, was a master Contract issued by the Defense Logistics Agency in Warren, MI on February 1, 2019. That master Contract was for a five-year period with a minimum (673) and maximum (9375) number of goods that might be ordered by the government during the five-year period of the contract. The master Contract also provided that only an order for the minimum number of goods specified was guaranteed. Per the master Contract, the government would, over the course of the five- year term, issue specific Awards or Purchase Orders to OOW to fulfill the minimum requirements established in the master Contract.

Thus, Award (Purchase Order/Order for Supplies or Services), SPRDL121F0037, also referenced in Exhibit A, was simply a Purchase Order issued by the Defense Logistics Agency under the specific terms of master Contract SPRDL1-19-D-0050. It was NOT a free-standing government contract in and of itself but was simply an addition or supplement under master Contract SPRDL1-19-D-0050. Purchase Order SPRDL121F0037 was placed in December, 2020 and was fulfilled on or about October 20, 2021 and the final government payment for this Purchase Order was received by OOW on October 28, 2021. Thus, Purchase Order SPRDL121F0037 was not outstanding or uncompleted on the date of the contribution to the IEOPC, on February 23, 2022. As a consequence, OOW did not consider this Purchase Order to be a current or existing "government contract" on February 23, 2022.

Award (Purchase Order) FA461322P0003 of December, 2021 was an addition or supplement under master Contract SPRDL1-19-D-9950 and was NOT a free-standing government contract. This Award was a sole-source procurement and was received by OOW on December 6, 2021. The goods requested by the government were shipped by OOW on December 15, 2021 and the final payment by the government for this Purchase Order was received by OOW on February 14, 2022. Thus, on the date

of the contribution, this Purchase Order had been fulfilled as the minimum number of goods specified in the master Contract had been produced, shipped and paid for and this Purchase Order was not considered by OOW to be a current or existing "government contract" on February 23, 2022. Under this Purchase Order, no additional orders were either guaranteed or expected to be placed by the government.

The master Contract (SPRDL1-19-D-0050) did contain a standard IDIQ (Indefinite Delivery/Indefinite Quantity) provision which allowed the federal government to lock-in a set price on a contract for a future procurement that might or might not ever be exercised by the government at some undefined point in the future. OOW has not had any discussion or negotiation with the federal government relative to the IDIQ provision of the master Contract. Upon information and belief, OOW has no reasonable expectation that the IDIQ provision of that contract will ever be exercised by the government. Thus, OOW considers that it has fully fulfilled and completed its work on master Contract SPRDL1-19-D-0050 and as to this master Contract, OOW held a good faith belief and understanding that it did not hold any outstanding "government contracts" on February 23, 2022.

CONCLUSION: The misapplication of the government contractor provision to a previously fulfilled Contract with a standard IDIQ provision, as to which there are no negotiations with the government and there is no expectation of any future commitment by the government, is not an open question. The misapplication of the government contractor prohibition to previously fulfilled and completed Purchase Orders is also not an open question. For these reasons, we ask the Commission to determine that (a) OOW did not have any unfilled or outstanding government contracts on February 23, 2022 and thus (b) was not a "government contractor" on that date. We ask the Commission to take no further action against OOW and to dismiss this Complaint as to OOW.

Should you have any additional questions, please feel free to contact me at the above listed address.

Sincerely,



William B. Canfield
Counsel to Ohio Ordnance Works, Inc.