

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 8021**

6 DATE COMPLAINT FILED: June 29, 2022

7 DATE OF NOTIFICATIONS: June 30, 2022

8 LAST RESPONSE RECEIVED: September 28, 2022

9 DATE ACTIVATED: November 3, 2022

10 SOL EXPIRATION: February 23, 2027

11 ELECTION CYCLE: 2022

12
13 **COMPLAINANT:** Campaign Legal Center

14
15 **RESPONDENTS:** Ohio Ordnance Works, Inc.
16 Club for Growth Action and Adam Rozansky in his
17 official capacity as treasurer

18
19 **RELEVANT STATUTES**
20 **AND REGULATIONS:** 52 U.S.C. § 30119(a)(1)
21 11 C.F.R. § 115.2

22
23 **REPORTS CHECKED:** Disclosure Reports

24
25 **FEDERAL AGENCIES CHECKED:** None

26
27 **I. INTRODUCTION**

28
29 The Complaint alleges that Ohio Ordnance Works, Inc. (“Ohio Ordnance”) made a
30 \$100,000 contribution to Club for Growth Action (“Club Action”) on February 23, 2022, while
31 Ohio Ordnance was a federal contractor in violation of 52 U.S.C. § 30119(a)(1). Although Ohio
32 Ordnance acknowledges that it was party to a “master Contract” with the Defense Logistics
33 Agency that covered the time period in question, it denies that it was a federal contractor at the
34 time that it made a contribution to Club Action because there were no active purchase orders in
35 place during the relevant time period.¹ Club Action denies that it knowingly solicited a
36 contribution from a federal contractor.

¹ Ohio Ordnance Resp. at 2 (July 29, 2022).

1 The available information indicates Ohio Ordnance was a federal contractor at the time of
2 its contribution to Club Action because it held an indefinite delivery/indefinite quantity contract,
3 a federal contract that facilitates the delivery of supply orders and service orders during a set
4 timeframe. Accordingly, we recommend that the Commission find reason to believe that Ohio
5 Ordnance violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a). We also recommend that
6 the Commission take no action at this time regarding Club Action. Further, we recommend that
7 the Commission authorize pre-probable cause conciliation with Ohio Ordnance.

8 **II. FACTUAL BACKGROUND**

9 Ohio Ordnance is a gun manufacturer based in Chardon, Ohio, that sells guns to retail
10 and commercial customers as well as to state and local law enforcement and the federal
11 government.² As alleged by the Complaint, Ohio Ordnance states on its website that some of its
12 “notable customers” include the United States Army, United States Marine Corps, the United
13 States Department of the Navy and the United States Department of the Air Force.³ Club Action
14 is an independent-expenditure-only political committee (“IEOPC”) that registered with the
15 Commission in 2010.⁴

16 The Complaint alleges that according to USAspending.gov, a website which is the
17 official source of government spending data, Ohio Ordnance was a federal contractor on
18 February 23, 2022, when it made a \$100,000 contribution to Club Action.⁵ Specifically, the

² See *Company*, Ohio Ordnance, <https://oow-govmil.com/company> (last visited Mar. 1, 2023).

³ See Compl. at 2 (June 29, 2022) (citing Ohio Ordnance’s website at <https://oowinc.com/onlineshop> (last visited March 1, 2023)). The pages of the Complaint are not numbered. For purposes of this Report, we have numbered the pages of the Complaint.

⁴ Club Action Statement of Organization (Aug. 11, 2010).

⁵ Compl. at 3 (citing Ohio Ordnance Works, Inc. Recipient Profile, USASPENDING.GOV, <https://www.usaspending.gov/recipient/ee858dfa-fbbf-9d16-44b2-467a3eec32e4-P/all> (last visited Mar. 1, 2023)).

1 Complaint alleges that Ohio Ordnance had contracts consisting of a purchase order with the
2 Department of the Air Force, a delivery order with the Defense Logistics Agency, and an
3 indefinite delivery/indefinite quantity contract with the Defense Logistics Agency at the time that
4 it made the contribution to Club Action.⁶ Thus, the Complaint alleges that Ohio Ordnance is in
5 violation of the prohibition on federal contractors making contributions to political committees at
6 52 U.S.C. § 30119.

7 Ohio Ordnance states in its response that it was “directly solicited” by Club Action to
8 make a contribution.⁷ It asserts that it has held contracts with the Department of Defense over
9 previous years, but on the date of its contribution, it was not a government contractor and was
10 unaware of the restriction on government contractor contributions.⁸ Ohio Ordnance says that it
11 asked Club Action whether corporate contributions to Club Action were permissible under
12 federal law and Club Action “replied in the affirmative.”⁹

13 Ohio Ordnance states that the Complaint assumes it had three government contracts on
14 the date it made the contribution to Club Action, but asserts that the Complaint “misunderstands
15 government contracting.”¹⁰ Ohio Ordnance states that it had a “master Contract” issued by the
16 Defense Logistics Agency on February 1, 2019, which is referenced in Exhibit A of the
17 Complaint and identified by Award ID Number SPRDL119D0050.¹¹ The “master Contract”
18 contained a standard indefinite delivery/indefinite quantity (“IDIQ”) provision which allowed the

⁶ Complaint at 3 and Ex. A.

⁷ Ohio Ordnance Resp. at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ See Award Profile Contract Summary, USASPENDING.GOV,
https://www.usaspending.gov/award/CONT_IDV_SPRDL1190050_9700 (last visited Mar. 1, 2023).

1 federal government to lock in a set price on a contract for a future procurement that might or
2 might not ever be exercised by the government at some unspecified period in the future.¹²
3 Specifically, Ohio Ordnance's contract was for a five-year period, from February 1, 2019 to
4 December 27, 2023, with a minimum number of 673 and a maximum number 9,375 goods that
5 might be ordered by the government during the contract period.¹³

6 Ohio Ordnance indicates that the other two contracts identified in the Complaint were
7 additions or supplements to the "master Contract."¹⁴ With respect to the contract identified by
8 Award ID Number SPRDL121F0037 and referenced in Exhibit A of the Complaint, Ohio
9 Ordnance states that this was a "delivery order," which was issued by the Defense Logistics
10 Agency.¹⁵ According to [usaspending.gov](https://www.usaspending.gov), this delivery order was the second order under the
11 indefinite quantity contract and was for 1,200 receiver cartridges totaling \$4,168,980 with a
12 starting date of December 21, 2020 and an ending date of February 28, 2022.¹⁶ Because this
13 delivery order was placed in December 2020 and fulfilled on or about October 20, 2021 and the
14 final payment by the government was received on October 28, 2021,¹⁷ Ohio Ordnance indicates

¹² *Id.* at 3.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_SPRDL121F0037_9700_SPRDL119D0050_9700 (last visited Mar. 1, 2023). The first delivery order under the indefinite delivery/indefinite quantity contract was from February 13, 2019 to June 12, 2020 for 673 receiver cartridges totaling \$2,423,103. Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_SPRDL119F0166_9700_SPRDL119D0050_9700 (last visited Mar. 1, 2023).

¹⁷ Ohio Ordnance Resp. at 2.

1 that this delivery order was not outstanding or uncompleted on the date of its contribution to
2 Club Action.¹⁸

3 With respect to the contract which is identified as Award ID Number FA461322P0003
4 and referenced in Exhibit A of the Complaint, Ohio Ordnance states that this was a “purchase
5 order” under the “master Contract.”¹⁹ Ohio Ordnance indicates that this purchase order, dated
6 December 6, 2021, was a sole-source procurement in which the goods requested by the
7 government were shipped on December 15, 2021, and the final payment by the government was
8 received on February 14, 2022.²⁰ It asserts that it did not consider this purchase order to be a
9 current government contract on the date of the contribution to Club Action, February 23, 2022,
10 and no additional orders were either guaranteed or expected to be placed by the government.²¹

11 Ohio Ordnance asserts that it has not had any discussion or negotiation with the federal
12 government relative to the IDIQ provision of the “master Contract.”²² It states it “has no
13 reasonable expectation that the IDIQ provision of that contract will ever be exercised by the
14 government,” that it “considers that it has fully fulfilled and completed its work on master
15 Contract,” and that it held a good faith belief that it did hold any outstanding government
16 contracts on February 23, 2022, the date of its contribution to Club Action.²³ Thus, it requests
17 that the Commission take no further action against Ohio Ordnance and dismiss the Complaint as
18 to Ohio Ordnance.²⁴

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.* at 3.

22 *Id.*

23 *Id.*

24 *Id.*

1 Club Action states in its Response that the Complaint neither names Club Action as a
2 respondent nor alleges that it did anything impermissible.²⁵ Club Action claims that it was
3 unaware of Ohio Ordnance's potential status as a federal contractor until after the Complaint.²⁶
4 Moreover, it asserts that it regularly warns prospective contributors that it cannot accept
5 contributions from federal contractors and provided a contribution form, which was apparently
6 completed by Ohio Ordnance and contains a statement that government contractor contributions
7 are prohibited.²⁷ Club Action states that since it did not knowingly solicit a contribution from a
8 federal contractor, the Commission should dismiss it from this matter.²⁸ Additionally, it states
9 that if the Commission determines that Ohio Ordnance is a federal contractor, it will refund the
10 contribution.²⁹

11 III. LEGAL ANALYSIS

12 A. The Commission Should Find Reason to Believe that Ohio Ordnance 13 Violated the Federal Contractor Contribution Prohibition

14
15 A "contribution" is defined as "any gift . . . of money or anything of value made by any
16 person for the purpose of influencing any election for Federal office."³⁰ Under the Act, a federal
17 contractor may not make contributions to political committees.³¹ Specifically, the Act prohibits
18 "any person . . . [w]ho enters into *any contract* with the United States . . . for the rendition of
19 personal services or furnishing any material, supplies, or equipment to the United States or any

²⁵ Club Action Resp. at 1 (Sept. 28, 2022).

²⁶ *Id.*

²⁷ *Id.*, Ex. A.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 52 U.S.C. § 30101(8)(A)(i).

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

1 department or agency thereof” from making a contribution “if payment for the performance of
2 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”³²
3 These prohibitions begin to run at the beginning of negotiations or when proposal requests are
4 sent out, whichever occurs first, and end upon the completion of performance of the contract or
5 the termination of negotiations, whichever occurs last.³³ And these prohibitions apply to a
6 federal contractor who makes contributions to any political party, political committee, federal
7 candidate, or “any person for any political purpose or use.”³⁴ In addition, it is unlawful for any
8 person knowingly to solicit any such contribution from any such person for any such purpose
9 during any such period.³⁵

10 The plain language of section 30119 covers “any contract with the United States or any
11 department or agency thereof.”³⁶ Consistent with the statute, the Commission’s Explanation and
12 Justification for the federal contractor contribution prohibition regulation at 11 C.F.R. § 115
13 states that the prohibition “covers all contracts entered into with the federal government.”³⁷

14 Under federal acquisitions regulations, “[a] wide selection of contract types is available to
15 the Government and contractors in order to provide needed flexibility in acquiring the large
16 variety and volume of supplies and services required by agencies.”³⁸ An indefinite delivery

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

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

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

³⁵ 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

³⁶ 52 U.S.C. § 30119(a)(1).

³⁷ Explanation and Justification for Part 115, H.R. Doc. No. 95-44 at 120 (1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf>; *see also* Factual and Legal Analysis at 7-8, MUR 7886 (Astellas Pharma U.S. Inc.) (citing the Explanation and Justification).

³⁸ 48 C.F.R. § 16.101.

1 contract is a specific type of a federal government contract³⁹ that facilitates the delivery of
2 supply and service orders during a set timeframe.⁴⁰ There are three types of indefinite delivery
3 contracts including an indefinite quantity contract.⁴¹ An indefinite quantity contract is defined as
4 a contract for an indefinite quantity, within stated limits, of supplies or services during a fixed
5 period.⁴² Under an indefinite quantity contract, the contract shall require the government to
6 order and the entity to furnish at least a stated minimum, and if ordered, the entity is to furnish
7 any additional quantities not to exceed a stated maximum.⁴³ Ohio Ordnance's "master Contract"
8 with the Defense Logistics Agency, Award ID Number SPRDL19D0050, is a contract covered
9 by that provision.⁴⁴

10 In a previous matter, MUR 7886 (Astellas Pharma U.S., Inc.), the Commission found
11 reason to believe that Astellas Pharma violated 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2(a)
12 where the company had a type of indefinite delivery/indefinite quantity contract, a Federal
13 Supply Schedule ("FSS"), in which sales are not guaranteed and once the FSS is awarded, the
14 vendor is added to the list of approved suppliers from which multiple agencies may choose to
15 make purchases.⁴⁵ Accordingly, under the plain language of the statute, which applies to "any

³⁹ See 48 C.F.R. Part 16 (setting forth types of federal contracts, including "indefinite-delivery contracts").

⁴⁰ See *Indefinite Delivery Contract*, Federal Procurement Data Systems, https://www.fpds.gov/help/Indefinite_Delivery_Contract.htm (last visited Mar. 1, 2023).

⁴¹ *Id.*; 48 C.F.R. § 16.501-2(a).

⁴² 48 C.F.R. § 16.504.

⁴³ See *Delivery Contract*, Federal Procurement Data Systems, https://www.fpds.gov//_Delivery_Contract.htm (last visited Mar. 1, 2023); see also Complaint at 4.

⁴⁴ See Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_IDV_SPRDL1190050_9700 (last visited Mar 1, 2023).

⁴⁵ See Certification (Cert.) ¶ 1 (Jan. 12, 2022), MUR 7886 (Astellas Pharma U.S., Inc.). See also MUR 7843 (Marathon Petroleum Company LP) (Commission found reason to believe that Marathon violated the prohibition on federal contractor contributions and conciliated with Marathon where Marathon held an indefinite delivery contract with a federal agency). Marathon Resp. at 3, note 5 (Jan. 12, 2021) (citing to respondent's performance reflected in

1 contract with the United States,” and Commission precedent, Ohio Ordnance’s “master
2 Contract,” which is an indefinite delivery/indefinite quantity contract, is a contract for purposes
3 of section 30119.

4 Ohio Ordnance contends that it did not consider itself to be a federal contractor at the time
5 of the contribution because it had fulfilled purchase or delivery orders under the contracts
6 including supplying the minimum number of goods specified in the “master Contract,” and there
7 was no purchase order outstanding. However, the indefinite delivery/indefinite quantity contract
8 remained – and remains – an existing federal contract. This contract had a defined time period of
9 five years, in which the federal government could make future orders. Nevertheless, Ohio
10 Ordnance states that it did not consider this delivery to be a current or existing “government
11 contract” on February 23, 2022, the date of the contribution.

12 Ohio Ordnance’s argument is unavailing. As set forth above, Ohio Ordnance’s “master
13 Contract” is a “contract” for purposes of section 30119(a)(1) and was in effect from February
14 2019 through December 2023, covering the time when Ohio Ordnance made its contribution to
15 Club for Growth Action.⁴⁶ Although the company had fulfilled two previous orders placed by
16 the Defense Logistics Agency, the agency could request additional delivery orders until
17 December 27, 2023, which Ohio Ordnance would be obligated to perform. Specifically, the
18 federal government could request additional orders totaling up to 7,502 receiver cartridges, based
19 on the stated maximum of 9,375 receiver cartridges less the first delivery order of 673 receiver

the “Indefinite Delivery Vehicle Summary” at USASpending.gov; Cert. ¶ 4.a (Oct. 22, 2021), MUR 7843 (Marathon); Cert. ¶ 1 (Feb. 14, 2022), MUR 7843 (Marathon).

⁴⁶ See Ohio Ordnance Resp. at 2.

1 cartridges and the second delivery order of 1,200 receiver cartridges, during the time period
2 covered by the contract.

3 Under these circumstances, Ohio Ordnance was a federal contractor on February 23, 2022,
4 when it made a \$100,000 contribution to Club Action. We therefore recommend that the
5 Commission find reason to believe that Ohio Ordnance violated 52 U.S.C. § 30119(a)(1) and
6 11 C.F.R. § 115.2(a).

7 **B. The Commission Should Take No Action at this Time as to Club Action**

8 Ohio Ordnance states that it was “directly solicited” by Club Action to make a
9 contribution, but the available information does not indicate the circumstances of the asserted
10 solicitation.⁴⁷ Club Action asserts that it did not know of Ohio Ordnance’s potential status as a
11 federal contractor until after the Complaint was filed.⁴⁸ Although Club Action provided a
12 contribution form, which listed Ohio Ordnance’s contribution and stated that contributions from
13 government contractors are prohibited, Club Action does not state whether it had specific
14 communications with Ohio Ordnance regarding the prohibition; Ohio Ordnance asserts that it
15 was not aware of the prohibition.⁴⁹ During the resolution of this matter through pre-probable
16 cause conciliation with Ohio Ordnance, additional information may be revealed about the
17 circumstances of Ohio Ordnance’s contribution to Club Action including any solicitation efforts
18 by Club Action. In similar circumstances in federal contractor matters, the Commission has
19 taken no action against the recipient committee.⁵⁰ Accordingly, we recommend that the

⁴⁷ Ohio Ordnance Resp. at 1.

⁴⁸ Club Action Resp. at 1.

⁴⁹ *Id.*, Attachment A.

⁵⁰ *See* Cert. ¶ 2.b., MUR 7887 (Hamilton Company) (Jan. 14, 2022) (taking no action at this time with respect to recipient committee); Amended Cert. ¶ 3, MUR 7886 (Astellas Pharma U.S., Inc.) (Jan. 12, 2022) (same); Cert.

1 Commission take no action at this time as to Club Action regarding knowingly soliciting a
2 contribution from Ohio Ordnance.

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16 **V. RECOMMENDATIONS**

17 1. Find reason to believe that Ohio Ordnance Works, Inc. violated 52 U.S.C.
18 § 30119(a)(1) and 11 C.F.R. § 115.2(a) by making a prohibited federal contractor
19 contribution;

¶ 2, MUR 7568 (Alpha Marine Services Holdings, LLC) (Aug. 20, 2019) (same); *see also* First Gen. Counsel's Rpt. at 11, MUR 7887 (Hamilton Company) (recommending that the Commission take no action at this time with respect to recipient committee); First Gen. Counsel's Rpt. at 15, MUR 7886 (Astellas Pharma U.S., Inc.) (same); First Gen. Counsel's Report at 5, MUR 7568 (Alpha Marine Service Holdings, LLC) (same).

- 1 2. Enter into conciliation with Ohio Ordnance Works, Inc. prior to a finding of
- 2 probable cause to believe;
- 3
- 4 3. Take no action at this time as to Club for Growth Action and Adam Rozansky in his
- 5 official capacity as treasurer;
- 6
- 7 4. Approve the attached Factual and Legal Analysis;
- 8
- 9 5. Approve the attached proposed Conciliation Agreement; and
- 10
- 11 6. Approve the appropriate letter.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

20 March 2, 2023
21 Date

Jin Lee
Jin Lee
Deputy Associate General Counsel for Enforcement

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28
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Mark Allen
Mark Allen
Assistant General Counsel

30 *Delbert K. Rigsby*
31 Delbert K. Rigsby
32 Attorney

33
34

Attachments

- 35 1. Factual and Legal Analysis for Ohio Ordnance Works, Inc.
- 36

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Ohio Ordnance Works, Inc.

MUR 8021

I. INTRODUCTION

The Complaint alleges that Ohio Ordnance Works, Inc. (“Ohio Ordnance”) made a \$100,000 contribution to Club for Growth Action (“Club Action”) on February 23, 2022, while Ohio Ordnance was a federal contractor in violation of 52 U.S.C. § 30119(a)(1). Although Ohio Ordnance acknowledges that it was party to a “master Contract” with the Defense Logistics Agency that covered the time period in question, it denies that it was a federal contractor at the time that it made a contribution to Club Action because there were no active purchase orders in place during the relevant time period.¹

The available information indicates Ohio Ordnance was a federal contractor at the time of its contribution to Club Action because it held an indefinite delivery/indefinite quantity contract, a federal contract that facilitates the delivery of supply orders and service orders during a set timeframe. Accordingly, the Commission finds reason to believe that Ohio Ordnance violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

II. FACTUAL BACKGROUND

Ohio Ordnance is a gun manufacturer based in Chardon, Ohio, that sells guns to retail and commercial customers as well as to state and local law enforcement and the federal government.² As alleged by the Complaint, Ohio Ordnance states on its website that some of its “notable customers” include the United States Army, United States Marine Corps, the United

¹ Ohio Ordnance Resp. at 2 (July 29, 2022).

² *See Company*, Ohio Ordnance, <https://oow-govmil.com/company> (last visited Mar. 1, 2023).

1 States Department of the Navy and the United States Department of the Air Force.³ Club Action
2 is an independent-expenditure-only political committee (“IEOPC”) that registered with the
3 Commission in 2010.⁴

4 The Complaint alleges that according to USAspending.gov, a website which is the
5 official source of government spending data, Ohio Ordnance was a federal contractor on
6 February 23, 2022, when it made a \$100,000 contribution to Club Action.⁵ Specifically, the
7 Complaint alleges that Ohio Ordnance had contracts consisting of a purchase order with the
8 Department of the Air Force, a delivery order with the Defense Logistics Agency, and an
9 indefinite delivery/indefinite quantity contract with the Defense Logistics Agency at the time that
10 it made the contribution to Club Action.⁶ Thus, the Complaint alleges that Ohio Ordnance is in
11 violation of the prohibition on federal contractors making contributions to political committees at
12 52 U.S.C. § 30119.

13 Ohio Ordnance states in its response that it was “directly solicited” by Club Action to
14 make a contribution.⁷ It asserts that it has held contracts with the Department of Defense over
15 previous years, but on the date of its contribution, it was not a government contractor and was
16 unaware of the restriction on government contractor contributions.⁸ Ohio Ordnance says that it

³ See Compl. at 2 (June 29, 2022) (citing Ohio Ordnance’s website at <https://oowinc.com/onlineshop> (last visited March 1, 2023)). The pages of the Complaint are not numbered. For purposes of this Factual and Legal Analysis, the Commission has numbered the pages of the Complaint.

⁴ Club Action Statement of Organization (Aug. 11, 2010).

⁵ Compl. at 3 (citing Ohio Ordnance Works, Inc. Recipient Profile, USASPENDING.GOV, <https://www.usaspending.gov/recipient/ee858dfa-fbbf-9d16-44b2-467a3eec32e4-P/all> (last visited Mar. 1, 2023)).

⁶ Complaint at 3 and Ex. A.

⁷ Ohio Ordnance Resp. at 1.

⁸ *Id.*

1 asked Club Action whether corporate contributions to Club Action were permissible under
2 federal law and Club Action “replied in the affirmative.”⁹

3 Ohio Ordnance states that the Complaint assumes it had three government contracts on
4 the date it made the contribution to Club Action, but asserts that the Complaint “misunderstands
5 government contracting.”¹⁰ Ohio Ordnance states that it had a “master Contract” issued by the
6 Defense Logistics Agency on February 1, 2019, which is referenced in Exhibit A of the
7 Complaint and identified by Award ID Number SPRDL119D0050.¹¹ The “master Contract”
8 contained a standard indefinite delivery/indefinite quantity (“IDIQ”) provision which allowed the
9 federal government to lock in a set price on a contract for a future procurement that might or
10 might not ever be exercised by the government at some unspecified period in the future.¹²
11 Specifically, Ohio Ordnance’s contract was for a five-year period, from February 1, 2019 to
12 December 27, 2023, with a minimum number of 673 and a maximum number 9,375 goods that
13 might be ordered by the government during the contract period.¹³

14 Ohio Ordnance indicates that the other two contracts identified in the Complaint were
15 additions or supplements to the “master Contract.”¹⁴ With respect to the contract identified by
16 Award ID Number SPRDL121F0037 and referenced in Exhibit A of the Complaint, Ohio
17 Ordnance states that this was a “delivery order,” which was issued by the Defense Logistics

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ See Award Profile Contract Summary, USASPENDING.GOV,
https://www.usaspending.gov/award/CONT_IDV_SPRDL1190050_9700 (last visited Mar. 1, 2023).

¹² *Id.* at 3.

¹³ *Id.* at 2.

¹⁴ *Id.*

1 Agency.¹⁵ According to [usaspending.gov](https://www.usaspending.gov), this delivery order was the second order under the
2 indefinite quantity contract and was for 1,200 receiver cartridges totaling \$4,168,980 with a
3 starting date of December 21, 2020 and an ending date of February 28, 2022.¹⁶ Because this
4 delivery order was placed in December 2020 and fulfilled on or about October 20, 2021 and the
5 final payment by the government was received on October 28, 2021,¹⁷ Ohio Ordnance indicates
6 that this delivery order was not outstanding or uncompleted on the date of its contribution to
7 Club Action.¹⁸

8 With respect to the contract which is identified as Award ID Number FA461322P0003
9 and referenced in Exhibit A of the Complaint, Ohio Ordnance states that this was a “purchase
10 order” under the “master Contract.”¹⁹ Ohio Ordnance indicates that this purchase order, dated
11 December 6, 2021, was a sole-source procurement in which the goods requested by the
12 government were shipped on December 15, 2021, and the final payment by the government was
13 received on February 14, 2022.²⁰ It asserts that it did not consider this purchase order to be a

¹⁵ *Id.*

¹⁶ See Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_SPRDL121F0037_9700_SPRDL119D0050_9700 (last visited Mar. 1, 2023). The first delivery order under the indefinite delivery/indefinite quantity contract was from February 13, 2019 to June 12, 2020 for 673 receiver cartridges totaling \$2,423,103. Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_SPRDL119F0166_9700_SPRDL119D0050_9700 (last visited Mar. 1, 2023).

¹⁷ Ohio Ordnance Resp. at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

1 current government contract on the date of the contribution to Club Action, February 23, 2022,
 2 and no additional orders were either guaranteed or expected to be placed by the government.²¹

3 Ohio Ordnance asserts that it has not had any discussion or negotiation with the federal
 4 government relative to the IDIQ provision of the “master Contract.”²² It states it “has no
 5 reasonable expectation that the IDIQ provision of that contract will ever be exercised by the
 6 government,” that it “considers that it has fully fulfilled and completed its work on master
 7 Contract,” and that it held a good faith belief that it did hold any outstanding government
 8 contracts on February 23, 2022, the date of its contribution to Club Action.²³ Thus, it requests
 9 that the Commission take no further action against Ohio Ordnance and dismiss the Complaint as
 10 to Ohio Ordnance.²⁴

11 III. LEGAL ANALYSIS

12 A. The Commission Finds Reason to Believe that Ohio Ordnance Violated the 13 Federal Contractor Contribution Prohibition

14 A “contribution” is defined as “any gift . . . of money or anything of value made by any
 15 person for the purpose of influencing any election for Federal office.”²⁵ Under the Act, a federal
 16 contractor may not make contributions to political committees.²⁶ Specifically, the Act prohibits
 17 “any person . . . [w]ho enters into *any contract* with the United States . . . for the rendition of
 18 personal services or furnishing any material, supplies, or equipment to the United States or any
 19

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ 52 U.S.C. § 30101(8)(A)(i).

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

1 department or agency thereof” from making a contribution “if payment for the performance of
2 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”²⁷
3 These prohibitions begin to run at the beginning of negotiations or when proposal requests are
4 sent out, whichever occurs first, and end upon the completion of performance of the contract or
5 the termination of negotiations, whichever occurs last.²⁸ And these prohibitions apply to a
6 federal contractor who makes contributions to any political party, political committee, federal
7 candidate, or “any person for any political purpose or use.”²⁹ In addition, it is unlawful for any
8 person knowingly to solicit any such contribution from any such person for any such purpose
9 during any such period.³⁰

10 The plain language of section 30119 covers “any contract with the United States or any
11 department or agency thereof.”³¹ Consistent with the statute, the Commission’s Explanation and
12 Justification for the federal contractor contribution prohibition regulation at 11 C.F.R. § 115
13 states that the prohibition “covers all contracts entered into with the federal government.”³²

14 Under federal acquisitions regulations, “[a] wide selection of contract types is available to
15 the Government and contractors in order to provide needed flexibility in acquiring the large
16 variety and volume of supplies and services required by agencies.”³³ An indefinite delivery

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

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

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

³⁰ 52 U.S.C. § 30119a)(2); 11 C.F.R. § 115.2(c).

³¹ 52 U.S.C. § 30119(a)(1).

³² Explanation and Justification for Part 115, H.R. Doc. No. 95-44 at 120 (1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf>; *see also* Factual and Legal Analysis at 7-8, MUR 7886 (Astellas Pharma U.S. Inc.) (citing the Explanation and Justification).

³³ 48 C.F.R. § 16.101.

1 contract is a specific type of a federal government contract³⁴ that facilitates the delivery of
2 supply and service orders during a set timeframe.³⁵ There are three types of indefinite delivery
3 contracts including an indefinite quantity contract.³⁶ An indefinite quantity contract is defined as
4 a contract for an indefinite quantity, within stated limits, of supplies or services during a fixed
5 period.³⁷ Under an indefinite quantity contract, the contract shall require the government to
6 order and the entity to furnish at least a stated minimum, and if ordered, the entity is to furnish
7 any additional quantities not to exceed a stated maximum.³⁸ Ohio Ordnance’s “master Contract”
8 with the Defense Logistics Agency, Award ID Number SPRDL19D0050, is a contract covered
9 by that provision.³⁹

10 In a previous matter, MUR 7886 (Astellas Pharma U.S., Inc.), the Commission found
11 reason to believe that Astellas Pharma violated 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2(a)
12 where the company had a type of indefinite delivery/indefinite quantity contract, a Federal
13 Supply Schedule (“FSS”), in which sales are not guaranteed and once the FSS is awarded, the
14 vendor is added to the list of approved suppliers from which multiple agencies may choose to
15 make purchases.⁴⁰ Accordingly, under the plain language of the statute, which applies to “any

³⁴ See 48 C.F.R. Part 16 (setting forth types of federal contracts, including “indefinite-delivery contracts”).

³⁵ See *Indefinite Delivery Contract*, Federal Procurement Data Systems, https://www.fpds.gov/help/Indefinite_Delivery_Contract.htm (last visited Mar. 1, 2023).

³⁶ *Id.*; 48 C.F.R. § 16.501-2(a).

³⁷ 48 C.F.R. § 16.504.

³⁸ See *Delivery Contract*, Federal Procurement Data Systems, https://www.fpds.gov//Delivery_Contract.htm (last visited Mar. 1, 2023); see also Complaint at 4.

³⁹ See Award Profile Contract Summary, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_IDV_SPRDL1190050_9700 (last visited Mar. 1, 2023).

⁴⁰ See Certification (Cert.) ¶ 1 (Jan. 12, 2022), MUR 7886 (Astellas Pharma U.S., Inc.); see also MUR 7843 (Marathon Petroleum Company LP) (Commission found reason to believe that Marathon violated the prohibition on federal contractor contributions and conciliated with Marathon where Marathon held an indefinite delivery contract

1 contract with the United States,” and Commission precedent, Ohio Ordnance’s “master
2 Contract,” which is an indefinite delivery/indefinite quantity contract, is a contract for purposes
3 of section 30119.

4 Ohio Ordnance contends that it did not consider itself to be a federal contractor at the time
5 of the contribution because it had fulfilled purchase or delivery orders under the contracts
6 including supplying the minimum number of goods specified in the “master Contract,” and there
7 was no purchase order outstanding. However, the indefinite delivery/indefinite quantity contract
8 remained – and remains – an existing federal contract. This contract had a defined time period of
9 five years, in which the federal government could make future orders. Nevertheless, Ohio
10 Ordnance states that it did not consider this delivery to be a current or existing “government
11 contract” on February 23, 2022, the date of the contribution.

12 Ohio Ordnance’s argument is unavailing. As set forth above, Ohio Ordnance’s “master
13 Contract” is a “contract” for purposes of section 30119(a)(1) and was in effect from February
14 2019 through December 2023, covering the time when Ohio Ordnance made its contribution to
15 Club for Growth Action.⁴¹ Although the company had fulfilled two previous orders placed by
16 the Defense Logistics Agency, the agency could request additional delivery orders until
17 December 27, 2023, which Ohio Ordnance would be obligated to perform. Specifically, the
18 federal government could request additional orders totaling up to 7,502 receiver cartridges, based
19 on the stated maximum of 9,375 receiver cartridges less the first delivery order of 673 receiver

with a federal agency). Marathon Resp. at 3, note 5 (Jan. 12, 2021) (citing to respondent’s performance reflected in the “Indefinite Delivery Vehicle Summary” at USASpending.gov; Cert. ¶ 4.a (Oct. 22, 2021), MUR 7843 (Marathon); Cert. ¶ 1 (Feb. 14, 2022), MUR 7843 (Marathon).

⁴¹ See Ohio Ordnance Resp. at 2.

1 cartridges and the second delivery order of 1,200 receiver cartridges, during the time period
2 covered by the contract.

3 Under these circumstances, Ohio Ordnance was a federal contractor on February 23, 2022,
4 when it made a \$100,000 contribution to Club Action. Therefore, the Commission finds reason
5 to believe that Ohio Ordnance violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).