

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

May 1, 2023

VIA ELECTRONIC MAIL ONLY

William B. Canfield, III, Esq.
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RE: MUR 8021
Ohio Ordnance Works, Inc.

Dear Mr. Canfield:

On June 30, 2022, the Federal Election Commission (the “Commission”) notified your client, Ohio Ordnance Works, Inc., (“Ohio Ordnance”) of a complaint alleging that it violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint and your client’s response, the Commission, on April 18, 2023, found reason to believe that Ohio Ordnance violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by making a prohibited federal contractor contribution. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that Ohio Ordnance violated the law.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the Enforcement Process," which is available on the Commission's website at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* 30107(a)(9).

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This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Dara Lindenbaum', with a long horizontal flourish extending to the right.

Dara Lindenbaum
Chair

Enclosures

Factual and Legal Analysis

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).

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

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

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

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

Ohio Ordnance states that the Complaint assumes it had three government contracts on the date it made the contribution to Club Action, but asserts that the Complaint “misunderstands government contracting.”¹⁰ Ohio Ordnance states that it had a “master Contract” issued by the Defense Logistics Agency on February 1, 2019, which is referenced in Exhibit A of the Complaint and identified by Award ID Number SPRDL119D0050.¹¹ The “master Contract” contained a standard indefinite delivery/indefinite quantity (“IDIQ”) 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 unspecified period in the future.¹² Specifically, Ohio Ordnance’s contract was for a five-year period, from February 1, 2019 to December 27, 2023, with a minimum number of 673 and a maximum number 9,375 goods that might be ordered by the government during the contract period.¹³

Ohio Ordnance indicates that the other two contracts identified in the Complaint were additions or supplements to the “master Contract.”¹⁴ With respect to the contract identified by Award ID Number SPRDL121F0037 and referenced in Exhibit A of the Complaint, Ohio 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.*

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

With respect to the contract which is identified as Award ID Number FA461322P0003 and referenced in Exhibit A of the Complaint, Ohio Ordnance states that this was a “purchase order” under the “master Contract.”¹⁹ Ohio Ordnance indicates that this purchase order, dated December 6, 2021, was a sole-source procurement in which the goods requested by the government were shipped on December 15, 2021, and the final payment by the government was 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.*

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

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

III. LEGAL ANALYSIS

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

A “contribution” is defined as “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁵ Under the Act, a federal contractor may not make contributions to political committees.²⁶ Specifically, the Act prohibits “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 or any

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.

department or agency thereof” from making a contribution “if payment for the performance of such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”²⁷

These prohibitions begin to run at the beginning of negotiations or when proposal requests are sent out, whichever occurs first, and end upon the completion of performance of the contract or the termination of negotiations, whichever occurs last.²⁸ And these prohibitions apply to a federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.”²⁹ In addition, it is unlawful for any person knowingly to solicit any such contribution from any such person for any such purpose during any such period.³⁰

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

Under federal acquisitions regulations, “[a] wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large 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.

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

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

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

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

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

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

Under these circumstances, Ohio Ordnance was a federal contractor on February 23, 2022, when it made a \$100,000 contribution to Club Action. Therefore, 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).