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April 25, 2023

Re: Overly Door Company – Compliance with Buy American Act Requirements and Recent Executive Orders

To Whom it May Concern:

Overly Door Company ("Overly Door"), is headquartered in Greensburg, Pennsylvania and manufactures doors under the Overly Door label. All materials and components of Overly Door's products are manufactured in the United States and are then shipped to a plant in Reynosa, Mexico for assembly. All parts used in the construction of our doors are manufactured by suppliers in the United States or produced at our manufacturing location in Greensburg. Our assembly facility in Reynosa, Mexico was constructed and managed under terms set forth by the North American Free Trade Agreement ("NAFTA"), now recast as the United States-Mexico-Canada Agreement ("USMCA").

The following is an analysis with respect to Overly Door's compliance with the Buy American Act, 41 U.S.C. §§ 10a *et seq.* (the "Buy American Act"), the implementation of that statute in the Federal Acquisition Regulations ("FAR"), and recent executive orders by the Trump and Biden administrations, including Executive Order Number 13788 ("Buy American Hire American"), Executive Order Number 13858 - Strengthening Buy American Preferences for Infrastructure Projects ("SBA"), and Executive Order Number 14005 – Ensuring the Future is Made in All of America by All of America's Workers.

**The Buy American Act** contains certain restrictions regarding use of federal funds in the procurement of iron, steel and manufactured goods in projects for the construction, alteration, maintenance, or repair of a public building or other public work in the United States. However, FAR § 52.225-23 is drafted not to require contractors to use only domestically manufactured goods, but rather to require contractors to use "only domestic or Recovery Act designated country construction material" in performing the contract. *See* FAR § 52.225-23(b)(2) (emphasis added). Additionally, FAR § 52.225-23(b)(1) explicitly provides that "[t]he restrictions of section 1605 of [the American Recovery and Reinvestment Act] and [the Buy American Act] do not apply to Recovery Act designated country construction materials." FAR § 52.225-23(a) specifically defines those countries deemed to be "Recovery Act designated countries" and this list includes Mexico.

**Buy American Hire American** is an Executive Order that was signed in April of 2017 which is an attempt to “maximize, consistent with law” that federal purchasers buy “goods, products, and materials produced in the United States.” Buy American Hire American § 2. SBA, signed in January 2019, is a follow up Executive Order which attempts to further expand Buy American Hire American to not only federal purchasers but to “recipients of federal financial assistance awards pursuant to a covered program” as well. *See* SBA § 3. A covered program is defined as any program which receives federal financial assistance for “an infrastructure project.” SBA § 2(e). However, SBA § 2(e)(i) states that this shall not include “programs for which providing domestic preference is inconsistent with law.”

**Conclusion:** The plain language of both Executive Orders state that they should be applied consistent with existing law, including international treaties. SBA § 6(a)(iii) (“Nothing in this order shall be construed to impair or otherwise affect: existing rights or obligations of international treaties”). Buy American Hire American has the same exact language in the same section - *See* Buy American Hire American § 6(a)(iii)). And the plain language of SBA – as many practitioners have pointed out<sup>1</sup> – only “encourage[s] recipients of new federal financial assistance awards . . . to use, to the greatest extent possible” certain manufactured products, including steel, made in the United States. SBA § 3 (emphases added).

The plain language of those orders still state that they do not disrupt current law or trade agreements which would include the Buy American Act, FAR and the newly recast USMCA. As stated in the first section of this letter, the United States and Mexico are the only countries implicated in Overly Door’s production. As Mexico is a Recovery Act designated country, Overly Door is compliant with FAR, the Buy American Act, and the USMCA. Any suggestion that the products supplied by Overly Door do not comply with these requirements misconstrues both the language of FAR section 52.225-23 and the intent behind Congress’s adoption of the USMCA that any restrictions be read so as not to violate international agreements.

**Additional Update:** On March 7, 2022, the FAR Regulatory Council, at the direction of the Biden administration, promulgated a final rule aimed at further increasing federal government preferences for goods and construction materials that are domestically manufactured. The Final Rule requires ever slightly increasing domestic content over the next several years.

Specifically, FAR part 25 provides certain pricing preferences for “domestic end products” consistent with the Buy American Act. Currently, the FAR uses a two-part test to determine whether a manufactured end-product or construction material is a domestic end-product. First, the end-product must be manufactured domestically. Second, a certain percentage of all component parts that make up the end-product or construction material must also be produced or manufactured domestically. The final rule increases the percentage of components required to be produced within the United States necessary to meet the second part of this definition. Specifically, the final rule amends the definition of “domestic end product” to increase the percentage of domestically made components, first from 55 percent to 60 percent, then to 65 percent in calendar year 2024, and the to 75 percent in calendar year 2029. The old 55 percent threshold remained in effect until Oct. 25, 2022, as the final rule indicates it was intended to provide a “grace period” for industry to adjust to the higher threshold.

**Conclusion:** Overly Door is compliant with these percentages through and including the final increase to 75 percent beginning in calendar year 2029. Even under the newly amended FAR section 52.225-9 (if applicable), Overly Door currently complies with the definition of domestic construction materials consisting of wholly or predominantly iron and steel, as 100% of Overly Door's steel is manufactured in the United States. It is also worth noting that since all Overly doors supplied under government contracts are manufactured post-award, on a project specific basis - said products do not fall under the definition of COTS – a commercially available, off the shelf product.

We hope that you will find the foregoing analysis helpful. Please do not hesitate to contact us if further information is necessary.

Respectfully,

Jon Reese

Overly Door Company

President of Sales