

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of the Army (collectively the “United States”); Southeastern Equipment Company, Inc., SECO Parts and Equipment Company, B. Roy Smith, and Byron M. Morris (collectively the “Defendants”); and Charles Ashley Royal, Jr. (the “Relator”) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Southeastern Equipment Company, Inc., and SECO Parts and Equipment Company (together, “SECO”) is a supplier of equipment, parts, and products to the United States Government. SECO’s principal place of business is Augusta, Georgia, within the Southern District of Georgia. B. Roy Smith is the Chief Executive Officer of SECO. Byron M. Morris is the Chief Financial Officer of SECO.

B. On February 7, 2019, Relator filed a *qui tam* action in the United States District Court for the Southern District of Georgia captioned *United States ex rel. Charles Ashley Royal, Jr. v. Southeastern Equipment Company, Inc.; SECO Parts and Equipment Company; B. Roy Smith; and Byron M. Morris*, 1:19-cv-19, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Among other things, Relator alleges that Defendants supplied the United States Government equipment, parts,

and products that differed from the equipment, parts, or products solicited by the United States, or that were otherwise provided in violation of the Buy American Act or the Trade Agreements Act. One of the government programs identified by Relator was the U.S. Army's Simplified Nonstandard Acquisition Program ("SNAP") that is managed by the U.S. Army Tank-automotive & Armaments Command ("TACOM"). The United States intervened for the purpose of settling the Civil Action on or about June 18, 2021.

C. The United States contends that it has three civil claims against Defendants:

- Claim 1: Based on SECO's knowing and intentional violation of the Buy American Act with respect SNAP Delivery Order 1195 by knowingly providing the Government with Chinese parts and concealing the country of origin of these parts from the Government ("Covered Conduct Part 1");
- Claim 2: Based on SECO's providing the Government with an unapproved substitute part with respect to SNAP Delivery Order 0872 ("Covered Conduct Part 2"); and
- Claim 3: Based on SECO's practice of providing the Government unapproved substitute parts through the SNAP program without notifying TACOM of the substitution in accordance with the applicable Blanket Purchase Agreement between January 1, 2015 and July 1, 2019 ("Covered Conduct Part 3").

D. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement. Relator's claim to reasonable expenses, attorneys' fees and costs is being handled separately from this Settlement Agreement and is not a part of this Settlement Agreement.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay to the United States Nine Hundred Thousand Dollars (\$900,000.00) ("Settlement Amount"), of which \$600,000 is restitution, by electronic funds transfer pursuant to written instructions to be provided by Southern District of Georgia. Defendants shall pay the Settlement Amount in twelve equal payments of \$75,000 each, with the first payment due within thirty (30) days of the Effective Date of this Agreement, and continuing every 30 days thereafter.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$180,000 to Relator by electronic funds transfer ("Relator's Share").

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases Defendants from:

- Any civil or administrative monetary claim the United States has for the Covered Conduct Parts 1 and 2 under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, breach of contract, unjust enrichment, and fraud;
- Any civil or administrative monetary claim the United States has for the Covered Conduct Part 3 under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theory of fraud; and
- Any civil or administrative monetary claim the United States has for any knowing and intentional violation by SECO of the Buy America Act or Trade Agreements Act with respect to SNAP delivery orders made between January 1, 2011 and January 1, 2020.

4. Subject to the exceptions in Paragraph 5 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733. Relator

does not release his right to reasonable expenses plus reasonable attorneys' fees and costs as provided in 31 U.S.C. §3730(d).

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency and Supply Discrepancy Report (SDR) processes or rights;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability to any third party;
- f. Any common law claims related to Covered Conduct Part 3 except for common law fraud; and
- g. Any liability based upon obligations created by this Agreement.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31

U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the complete Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action. With the exception, however, that Relator reserves the right to make a claim against Defendants under 31 U.S.C. § 3730(d) for expenses and/or attorneys' fees and costs.

8. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated)

that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendants, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of its subsidiaries or affiliates from the United States. Defendants agrees that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendants' books and records and to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

11. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

12. This Agreement is intended to be for the benefit of the Parties only.

13. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

14. Except for Relator's right to reasonable attorneys' fees and expenses as provided in 31 U.S.C. §3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Georgia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

17. This Agreement constitutes the complete agreement between the Parties with the exception of an agreement on reasonable attorneys' fees and expenses as provided in 31 U.S.C. §3730(d). This Agreement may not be amended except by written consent of the Parties.

18. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

20. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

21. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

22. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

24. Relator and Defendants further agree that if Relator and Defendants are unable to resolve Relator's claim to reasonable attorney's fees, costs, and expenses under 31 U.S.C. §3730(d), the Relator may file a motion with the district court within 60 days of the Effective Date of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 6/17/2021 BY: Shannon Statkus (PSS - by express permission)
SHANNON H. STATKUS
Chief, Civil Division
Southern District of Georgia

DATED: 6/17/2021 BY: Patrick J. Schwedler
PATRICK J. SCHWEDLER
Assistant United States Attorney
Southern District of Georgia

DATED: 6-17-2021 BY: Jonathan A. Porter
JONATHAN A. PORTER
Assistant United States Attorney
Southern District of Georgia

DEFENDANTS

DATED: 6/15/2021 BY: B. Roy Smith
B. ROY SMITH, individually and on behalf of Southeastern Equipment Company, Inc., and SECO Parts and Equipment Company

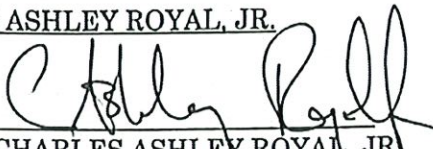
DATED: 6/15/2021 BY: Byron Morris
BYRON M. MORRIS, individually and on behalf of Southeastern Equipment Company, Inc., and SECO Parts and Equipment Company

DATED: 6/16/2021 BY: Ken Crowder
KENNETH D. CROWDER, as counsel for Southeastern Equipment Company, Inc., SECO Parts and Equipment Company, B. Roy Smith, and Byron M. Morris

CHARLES ASHLEY ROYAL, JR.


DATED: 6/17/2021

BY:


CHARLES ASHLEY ROYAL, JR.

DATED: 4/19/21

BY:


CHARLES W. BYRD, *as counsel for*
Charles Ashley Royal, Jr.