



ADMINISTRATIVE AGREEMENT

This Administrative Agreement (Agreement) is made between Byrd Maintenance Services, Inc. (BMSI), and Larry D. Bowling (Mr. Bowling), under Subpart 9.4 of the Federal Acquisition Regulation (FAR), and the United States Department of the Army (Army) acting through its Suspension & Debarment Official (SDO) on behalf of the U.S. Government, as the lead agency for determining the present responsibility of BMSI and Larry D. Bowling (Mr. Bowling) under Subpart 9.4 of the FAR.

A. PREAMBLE

1. BMSI is an industrial fabrication, millwright and piping company incorporated in the State of Alabama in 1988. It has facilities in Decatur, Alabama, and Burnsville, Mississippi. On December 13, 2022, the Procurement Fraud Division (PFD) notified James R. Stephens, the former owner and President of BMSI, that he and BMSI were proposed for debarment from future contracting with any agency throughout the Executive Branch of the United States Government. The Notice of Proposed Debarment was based on the plea of guilty to violating 18 U.S.C. § 201(c)(1)(A) James R. Stephens entered on May 20, 2022, in the U.S. District Court for the Northern District of Alabama.

2. On June 30, 2022, Mr. Bowling purchased BMSI from James R. Stephens for \$3,700,000.00. On 13 January 2023, Counsel for BMSI and Mr. Bowling, as President of BMSI, (hereinafter, Contractors), requested an extension of time to respond to the Notice to February 13, 2023. The activity cited in the Notice stems from a relationship the former owner of BMSI, James R. Stephens, held with a government project lead for the Department of the Army on Redstone Arsenal. The government project lead identified subcontracting opportunities suitable for BMSI and convinced the prime contractor to award the subcontracts to BMSI. Once the prime awarded the subcontracts to BMSI, Mr. Stephens used the company's finance and assets to pay the project lead for the subcontracting opportunities he had secured on behalf of BMSI. Counsel for BMSI and Mr. Bowling responded timely to the Notice of Proposed Debarment and provided argument in mitigation of the circumstances that led to the proposed debarment of BMSI.

3. The Army has determined that the terms and conditions of this Agreement provide adequate assurance that the interests of the Government will be sufficiently protected to preclude the necessity of debarment of the Contractor or its officers. The proposed debarment of the Contractor will be lifted upon the effective date of this Agreement. In order to assure, its present responsibility, the Contractor agrees to execute and take the remedial actions specified in this Agreement, including Section C, Contractor Responsibility Program, subject to the terms and conditions described in Section D, General Conditions, and Section E, Administration of this Agreement.

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B. DEFINITIONS

1. "Contractor" refers to Byrd Maintenance Services Inc. and Larry D. Bowling (Mr. Bowling) including its directors, officers, and employees, while acting in their capacities as such.

2. "Days" refers to "calendar days."

3. "Effective date" (of this Agreement) refers to the date on which the Army's Suspension and Debarment Official signs this Agreement on behalf of the Army.

4. "Employee" refers to officers, managers, and supervisors. All full and part-time workers and consultants will be considered employees for training purposes.

5. "Ethics Program Director" refers to a representative of the Contractor who will be the first point of contact for all questions regarding the terms and conditions of this Agreement.

6. "FAR" refers to the Federal Acquisition Regulation.

7. "Government" refers to any department, agency, division, independent establishment, or wholly owned corporation of the United States Government.

8. "Independent cause" for suspension or debarment refers to a reason or basis for such action not directly related to information set forth in the Preamble or any document referred to in the Preamble.

C. Severing Affiliation between James R. Stephens and BMSI Contractor affirms that James R. Stephens will not exercise any influence or control over BMSI, either directly or indirectly, regarding the business or management of the Company's federal government contracting business.

1. Mr. Stephens is prohibited from being present at the offices of BMSI and from communicating directly or indirectly with all employees of BMSI regarding the business or management of the Company's federal government contracting business, except where such visits and/or communications are unrelated to BMSI's federal government contracting business.

2. BMSI will not accept direction from or allow James R. Stephens to

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exercise any control or influence over the business or management of the Company's federal government contracting business.

D. Contractor Responsibility Program

1. General. Contractor shall institute and maintain a Contractor Responsibility Program for the duration of the Agreement. The program shall be designed to ensure that the Contractor maintains the high standards of business integrity and honesty required of a government contractor and/or subcontractor. At a minimum, the Program shall include the following features, as described in the paragraphs below:

- a. Notification to employees of this Agreement;
- b. Adoption of a Code of Business Ethics and Conduct;
- c. Establishment of and conduct training program in business ethics and integrity and Government contracting for all Contractor employees;
- d. Publication of a Government Contracting Policies and Procedures Manual which will establish the Contractor's method for competing and administering government contracts and list the positions within the company that are responsible for bidding on and the administration of government contracts. Within 60 days of the effective date of this Agreement, Contractor shall submit a draft Manual to the Army for written approval. If the Army objects to the Manual, Contractor shall promptly revise it to meet the Army's objections and resubmit it for approval. At a minimum, the Government Contracting Policies and Procedures Manual will be reviewed annually and updated, if needed.
- e. Appointment of an Ethics Program Director; and
- f. Establishment of an electronic mail hotline for employees to report suspected instances of improper conduct.

2. Notification of Agreement. Within 30 days of the effective date of this Agreement, Contractor's President shall prepare and display, in a place accessible to all employees a letter regarding Contractor's administrative agreement with the Army. Before displaying that letter, the Contractor will send a proposed letter to the Army for approval. The letter shall state:

- a. The basis for this Agreement;

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b. Contractor's commitment to observe all applicable laws and regulations, and to maintain the highest standards in conducting business;

c. Contractor's commitment to review of proposals for compliance with all statutory and regulatory requirements;

d. A brief description of the features of the Contractor's Responsibility Program;

e. The availability of the Ethics Program Director for consultation on any questions concerning Contractor's business practices or employee responsibilities, including required reporting improprieties; and

f. That all improprieties regarding Government operations shall be reported to the Ethics Program Director who will conduct an investigation followed by appropriate corrective action, and that employees may make such reports without revealing their identity.

3. Code of Business Ethics and Conduct.

a. The Contractor shall institute and maintain, and revise as necessary, a Code of Business Ethics and Conduct (Code). The Code shall be designed to ensure that the Contractor maintains the business integrity and honesty required of a Government contractor and/or subcontractor.

b. Within 30 days of the effective date of this Agreement, the Contractor shall send a draft Code to the Army for written approval. If the Army objects, the Contractor shall promptly revise the Code to meet the Army's objections and then send the revised Code for approval.

c. Elements of the Code of Business Ethics and Conduct. The Code shall include, at a minimum:

(1) A statement of Contractor's commitment to comply with all applicable laws and regulations, in particular 18 U.S.C. §§ 201 and 208, concerning their contracting or subcontracting;

(2) A statement of Contractor's commitment to cooperate fully with any Government agencies responsible for investigation or corrective action;

(3) Specific standards of conduct for Contractor employees in connection with Government contracts or subcontracts;

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(4) Notice that Contractor will immediately discipline (to include termination if appropriate) employees or officers whose conduct violates applicable laws, regulations, or the basic tenets of business integrity and honesty set forth in the Code; and

(5) A requirement that Contractor employees report to the Ethics Program Director any impropriety or violation of this Agreement, whether committed by Contractor, a vendor, a subcontractor, or a government employee; and

(6) Any provisions that pertain to an individual contractor's misconduct that this Agreement is designed to prevent, e.g., Payment of Gratuities, Bribes and Conflicts of Interests.

4. Training Program.

a. Army Approval of Training Plans. Within 60 days of the effective date of this Agreement, the Contractor shall provide the Army a training plan with a detailed description of course materials it intends to use in ethics and Government contracting training classes. If the Army rejects a plan, the Contractor will promptly propose another plan.

b. Ethics Training. Within 60 days of the approval of the training plan by the Army, pursuant to paragraph 4a above, the Contractor shall provide all of its employees with a copy of its Code and conduct initial training in business ethics and conduct. All employees shall sign and date a roster, certifying that they attended training and received and read a copy of the Code. Each Contractor shall ensure that newly hired employees receive training, receive a copy of the Code, and sign and date a roster certifying they attended training and received a copy of the Code.

c. Frequency and Certification of Training. The Contractor shall conduct and update all required training and employee certifications annually and shall maintain all employee certification rosters for required training and make them available to the Army upon request.

d. Notice of Training. If the Contractor will have virtual training sessions, provide the Army a schedule of all required training sessions at least 15 days in advance, so the Army may attend the training if desired.

5. Ethics Program Director. The Ethics Program Director shall serve as the Contractor's first point of contact for all questions regarding the terms and conditions of this Agreement; Contractor implementation of this Agreement and investigate complaints concerning Contractor's compliance with this Agreement. Within 30 days of

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the effective date of this Agreement, Contractor shall provide the name, current position and resume of the Ethics Program Director for approval. The Army shall be promptly notified prior to any change in the Ethics Program Director.

6. Hotline.

a. General. Within 30 days of the effective date of this Agreement, the Contractor shall maintain a "hotline" by which employees may report suspected incidents of improper conduct, to include fraud, waste, and abuse, or violation of the terms of any contract or this Agreement. Contractor shall make the hotline known to each of Contractor's managers, officers, and employees. Additionally, Contractor shall display in a prominent place accessible to all employees information about the hotline and how to submit a report via telephone. These notifications shall describe the hotline's purpose and explain that reports may be made anonymously.

b. Hotline Log. The Ethics Program Director shall maintain logs of all hotline calls to include; date and time of call or report; identity of caller, if disclosed; summary of allegation or inquiry; and the Ethics Program Director shall ensure that each call is adequately investigated and resolved. Hotline investigative reports shall be provided to the Army. Contractor shall not assert an attorney-client or attorney work-product privilege with respect to the hotline log, investigative reports, or their contents.

7. Reports to the Army. Every six months the Ethics Program Director, shall submit a report to the Army that is post-marked no later than seven-days after the first day following the first six months from the effective date of the signing of AA, as appropriate, of each year that this Agreement is in effect, until this Agreement has expired. The report shall include:

a. A description of the training conducted that is required by this Agreement and the number of persons who attended, including a statement of the percentage of total employees trained year to date as of the date of the report.

b. The total number of hotline calls and other contacts made or referred to the Ethics Program Director. This report shall include:

(1) The means by which any alleged misconduct was reported (e.g., call, email, or drop-in visit);

(2) The category of any alleged misconduct (e.g., product substitution, mischarging, or defective pricing) and a brief descriptive summary thereof;

(3) Whether the alleged misconduct was substantiated, in whole or in part;

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(4) Whether disciplinary action was imposed and if so, a description of that action; and;

(5) Whether corrective measures other than disciplinary actions were taken and if so, a description of those actions. Matters pending resolution at the time of a reporting period shall be included in each later report until final resolution of all matters is reported.

E. General Conditions

1. Unallowable Costs. All costs defined in FAR 31.205-47 incurred for or on behalf of the Contractor in response to or in preparation for Government criminal, civil, or administrative actions arising out of alleged violations described in the Preamble, and all costs incurred by the Contractor in negotiating, implementing and abiding by the terms of this Agreement, shall be deemed unallowable costs, direct or indirect, for Government contract purposes. These unallowable amounts shall be separately accounted for by the Contractor for Government contract purposes by identification of costs incurred: a) through accounting records to the extent possible; b) through memorandum records, including diaries and formal logs, regardless of whether such records are part of official corporate documentation, where accounting records are not available; and c) through good faith itemized estimates where no other accounting basis is available.

2. Allowable Costs. The costs of self-governance, compliance, or other ethics programs, activities and offices in existence prior to when the matters described in the Preamble of this Agreement arose and which are continued by the terms of this Agreement shall be allowable costs to the extent otherwise permitted by law and regulation

3. Modification of Agreement. Any requirements imposed on the Contractor by this Agreement may be discontinued by the Army at its sole discretion. Other modifications to this Agreement may be made only in writing and upon mutual consent of the parties to this Agreement.

4. Business Relationships with Suspended or Debarred Entities. Contractor shall not knowingly form a contract with, purchase from, or enter into any business relationship with any individual or business entity that is listed by the General Services Administration (GSA) on the System for Award Management ("SAM") as debarred, suspended, or proposed for debarment. In order to implement this provision, Contractor shall make reasonable inquiry into the status of any such potential business partner, to include, at a minimum, review of SAM which lists the names of parties excluded from federal procurement and non-procurement programs.

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5. Public Document. This Agreement is a public document that may be distributed by the Army throughout the Federal Government for official purposes and to other interested parties upon appropriate request under the Freedom of Information Act.

6. Releases. Contractor releases the United States, its instrumentalities, agents, and employees in their official and personal capacities, of any and all liability or claims, monetary or equitable, arising out of the investigation and negotiation of this Agreement.

7. Scope of This Agreement - Suspension and Debarment for Independent Cause. This Agreement in no way restricts the authority, responsibility, or legal duty of the Army, or any other federal agency to consider and institute suspension or debarment proceedings against Contractor based upon information constituting independent cause for suspension or debarment concerning events unrelated to the facts and circumstances set out herein, including, but not restricted to, any substantive allegations of wrongdoing under any past, present, or future hotline complaint or security program investigations. The Army or any other federal agency may, in its sole discretion, initiate such proceedings in accordance with the FAR Subpart 9.4.

8. Survival of This Agreement. If, during the term of this Agreement, Contractor establishes new companies or subsidiaries, merges with another company, or transfers the entire company or major assets to new owners, it shall notify the Army 90 days in advance of such action and provide a copy of the corporate documents. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns, unless the new owners request and show good cause why it should not be applicable to their operations. Bankruptcy proceedings shall not prevent or stay the enforcement of this Agreement or any debarment proceedings the Army deems to be appropriate should the parties fail to comply with the terms of this Agreement, or engage in such other conduct that is a cause for suspension or debarment.

9. Truth and Accuracy of Submissions. Contractor represents that all written materials and other information supplied to the Army by its authorized representatives, during the course of discussion with the Army preceding this Agreement are true and accurate in all material respects, to the best of the Contractor's information and belief.

10. Violations of This Agreement. Any violation of this Agreement that is not corrected within ten days from the date of receipt of notice from the Army may constitute an independent cause for debarment. If correction is not possible within ten days, Contractor shall present an acceptable plan for correction within that ten-day period. The Army may, at its sole discretion, initiate suspension or debarment proceedings in accordance with FAR Subpart 9.4. Alternatively, in the event of any noncompliance, the

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Army may in its sole discretion extend this Agreement for a period equal to the period of noncompliance. Contractor does not, by this Agreement or otherwise, waive its right to oppose such action under FAR Subpart 9.4, or any other substantive, procedural, or due process rights it may have under the Constitution or other applicable laws or regulations of the United States.

F. Administration of Agreement

1. Addresses for Correspondence. All submissions required by this Agreement shall be delivered to the following addresses, or such other addresses as the parties may designate in writing.

If to the Army:

Procurement Fraud Division
Office of the Judge Advocate General
Attn: Angelines McCaffrey, Esq.
9275 Gunston Road
Fort Belvoir, VA 22060
angelines.mccaffrey2.civ@mail.mil

If to Contractor:

Mr. Larry Bowling, President
Byrd Maintenance Services Inc.
Post Office Box 1009
Decatur, AL 35601

2. Certification of Compliance. Within 90 days of the effective date of this Agreement, Contractor will provide the Army a certification that all terms and conditions of this Agreement have been implemented or will be satisfied within the times specified in this Agreement.

3. Access to Books and Records.

a. During the term of this Agreement, the PFD, or any agency or office of the Department of Defense designated by PFD for a particular inquiry, shall have the right to examine, audit, and reproduce Contractor's books, records, documents, and supporting materials related to any report, allegation or complaint of suspected wrongdoing, whether criminal, civil, administrative, or contractual and whether reported through the hotline program, or by any other means, and any resulting inquiries or investigations related thereto relating to a Government contract.

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b. Additionally, PFD or its designee shall have the opportunity to review the books, records, documents, materials, reports, and investigations directly related to compliance with this Agreement.

c. PFD or its designee shall also have the opportunity to interview any Contractor employee to evaluate (1) compliance with the terms of this Agreement; (2) future compliance with federal procurement policies and regulations; and (3) maintenance of the high level of business integrity and honesty required of a Government contractor or subcontractor.

d. The interviews and materials described above shall be made available to PFD or its designee at company offices at reasonable times. Contractor's obligation under this Agreement with respect to employee interviews is limited to making its employees available for an interview at their place of employment during normal business hours. The individual employee shall have the right to determine whether to give an interview. To the extent allowed to do so by law, regulation, and policy, the Army shall protect Contractor's confidential and proprietary business information from public disclosure.

e. The materials described above available at Contractor's offices at reasonable times for inspection, audit, or reproduction its office. PFD or its designee shall not copy or remove Contractor's technical or other proprietary data without Contractor's permission.

4. Corporate Officer List. Within 30 days of the effective date of this Agreement, Contractor shall provide the Army with a list of directors, officers and a copy of the organizational chart which will be updated, as changes occur.

5. Expiration. This Agreement shall expire at midnight not later than three years after its date of signing by the SDO. The SDO, in his/her sole discretion, may consider terminating this Agreement after two (2) years from the date of this Agreement, following a written request from the Contractor and the SDO finding that the Contractor has fully complied with the terms of this Agreement and established its present responsibility. This Agreement shall expire at midnight on June 6, 2026.

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Byrd Maintenance Services, Inc

**Army Suspension and Debarment
Official**

Larry D. Bowling, President

Karen H. Carlisle



Date: 6-14-23

Date: 16 June 2023