

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 Defense Logistics Agency (“DLA”) (collectively the “United States”) and Preci Manufacturing Inc. (“Preci”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Preci is a manufacturing company located in Winooski, Vermont that manufactures, among other products, fasteners used in United States military equipment. At all times relevant to this agreement, Preci supplied the United States military with fasteners through its contracts with DLA.

B. The United States contends that it has certain civil claims against Preci, including, but not limited to, claims under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, for presenting to the United States false claims for payment in connection with certain non-conforming goods provided to DLA. Specifically, the United States contends that its civil claims against Preci arise from the following conduct (the “Covered Conduct”):

- i. Between January 1, 2016 and December 31, 2019, Preci manufactured fasteners intended for military aircraft and other equipment, some of which were purchased by the United States through the DLA Working Capital Fund;
- ii. A portion of these contracts provided for inspection and acceptance at the destination location, rather than government

inspection prior to delivery; nevertheless, the contracts included strict requirements, including mandatory testing meant to assess the strength and durability of the parts, which Preci agreed to follow in executing the contracts;

iii. During the relevant time period, Preci failed to perform for some contracts the required testing on certain of the parts it sold to DLA, including but not limited to stress durability testing, fatigue testing, double shear testing, and tensile testing;

iv. Preci then submitted claims for payment as if all contract specifications had been met, when in fact, it had knowingly provided to the United States military goods that had not undergone required testing.

C. Preci does not dispute the facts regarding the Covered Conduct insofar as they are described above in paragraph B (subparagraphs i-iv) but Preci does not admit or believe that the Covered Conduct constitutes violations of the False Claims Act.

D. 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. Preci shall pay to the United States One Hundred and Fifty-Thousand dollars (\$150,000.00) (the "Settlement Amount"), of which \$110,000 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the office of

the United States Attorney for the District of Vermont no later than 30 days after the Effective Date of this Agreement.¹

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus any interest due under Paragraph 1, the United States releases Preci, together with its current or former corporate owners and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 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 this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

¹ In the event that payment is not received within 30 days of the Effective Date of this agreement, interest on the Settlement Amount shall accrue at a rate of 10% per annum from the Effective Date until such time as payment is received in full. Such interest is in addition to, and not in lieu of, any other remedy that may be sought by the United States for Preci's failure to perform under this agreement.

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals.

4. Preci waives and shall not assert any defenses it 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.

5. Preci, its current or former owners, and the successors and assigns of any of them, 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 Preci has 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 and the United States' investigation and prosecution thereof.

6. 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 Preci, 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 investigation(s) of the matters covered by this Agreement;
- (3) Preci's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil 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 Preci makes to the United States pursuant to this Agreement,

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 Preci, and it 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 30 days of the Effective Date of this Agreement, Preci shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Preci or any of its subsidiaries or affiliates from the United States. Preci agrees that the United States, at a minimum, shall be entitled to recoup 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 Preci's books and records and to disagree with

any calculations submitted by Preci or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Preci, or the effect of any such Unallowable Costs on the amount of such payments.

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

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of Vermont.

11. 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.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

13. The undersigned counsel representing Preci represents and warrants that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. The individuals signing on behalf of the United States represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

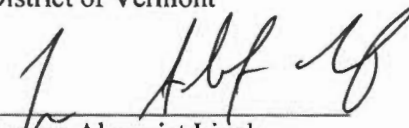
14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

15. This Agreement is binding on Preci's successors, transferees, heirs, and assigns.
16. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
17. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles or PDF versions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA


NIKOLAS P. KEREST
United States Attorney
District of Vermont

DATED: 7/27/23

BY: 
Lauren Almquist Lively
Assistant United States Attorney

PRECI MANUFACTURING INC.

DATED: 7/26/2023

BY: 
Zachary M. Dayno
Gravel & Shea PC

DATED: 7/25/23

BY: 
Jeff Grunwald
Preci Manufacturing Inc.