

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 Defense's F-35 Lightning II Joint Program Office (collectively the "United States"), Lockheed Martin Corporation (LMC), and Patrick Girard ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Lockheed Martin Corporation (LMC) is a defense contractor that provides the Department of Defense (DoD), and other customers, with military aircraft known as the F-35 Lightning II (F-35) fighter jet.

B. On February 28, 2017, Patrick Girard filed a *qui tam* action in the United States District Court for the Eastern District of Texas captioned *United States ex rel. Girard v. Lockheed Martin Corporation*, No. 4:17CV147 (E.D. Tex.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

C. The United States contends that it has certain civil claims against LMC arising from inflated pricing proposals submitted by LMC to the F-35 Lightning II Joint Program Office (JPO) to obtain the following DoD contracts for the supply of F-35 parts and components, Low Rate Initial Production (LRIP) 6 (N00019-11-C-0083), LRIP 7 (N00019-12-C-0004), LRIP 8 (N00019-13-C-0008), LRIP 8 NAS (N00019-15-C-0031), and LRIP 9 NAS (N00019-15-C-0114) (collectively the "LRIP Contracts"). More specifically, the United States contends that during the negotiations leading to the award of the LRIP Contracts, LMC certified falsely that it had submitted accurate, complete,

and current cost or pricing data. The United States contends that LMC had knowledge of cost or pricing data in its possession that it did not disclose to the JPO; in particular, LMC had knowledge of suppliers' cost or pricing data that it did not disclose to the JPO. The United States contends that had LMC provided the undisclosed cost or pricing data, JPO would have awarded the LRIP Contracts in lower amounts. The United States further contends that as a result of LMC's failure to submit accurate, complete, and current cost or pricing data, LMC overcharged JPO on the LRIP Contracts. This conduct is referred to below as the Covered Conduct.

D. LMC made previous payments totaling \$11.3 million to DoD for the same undisclosed cost and pricing data on LRIPs 6-8 for which the United States contends it has claims against LMC as described in Paragraph C of this Agreement.

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

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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. LMC shall pay to the United States \$29.74 million (Settlement Amount), of which \$11.5 million is restitution, and interest on the Settlement Amount at a rate of 4% per annum from July 23, 2024, by electronic funds transfer pursuant to written

instructions to be provided by the Office of the United States Attorney for the Eastern District of Texas. LMC shall pay no later than seven (7) business days after the Effective Date of this Agreement or receipt of written payment instructions, whichever occurs last.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases LMC together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil 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. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases LMC 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, reserving Relator's right to separately proceed on or settle any potential claims under 31 U.S.C. § 3730 (d) and (h).

4. Notwithstanding the releases 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 the Agreement, any administrative liability or enforcement right, *e.g.*, Truthful Cost or Pricing Data (Truth in Negotiations Act), 10 U.S.C. § 3701 *et seq.*; or any administrative remedy, *e.g.*, Contract Disputes Act, 41 U.S.C. § 7101 *et seq.*, or the suspension and debarment rights of any federal agency;
- 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;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

5. 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). The United States and Relator and his heirs, successors, attorneys, agents, and assigns agree

that they each retain all their rights pursuant to the False Claims Act on the issue of the relator share percentage, if any, that Relator should receive of any proceeds of the settlement of his claims.

6. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases LMC, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, reserving all rights of Relator and Relator's counsel to separately proceed on or settle any potential claims Relator and Relator's counsel may have against LMC under 31 U.S.C. §§ 3730 (d) and (h), including but not limited to any claims Relator and Relator's counsel may have against LMC relating to statutory attorney's fees and expenses.

7. LMC waives and shall not assert any defenses LMC 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.

8. LMC fully and finally releases 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 LMC 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 or the United States' investigation or prosecution thereof.

9. LMC fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that LMC has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and 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 LMC, 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) LMC'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 LMC makes to the United States pursuant to this Agreement and any payments that LMC 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 LMC, and LMC 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, LMC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by LMC or any of its subsidiaries or affiliates from the United States. LMC agrees that the United States, at a minimum, shall be entitled to recoup from LMC 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 LMC's books and records and to disagree with any calculations submitted by LMC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by LMC, or the effect of any such Unallowable Costs on the amount of such payments.

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

12. Upon receipt of the payment described in Paragraph 1, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). At a minimum, the Joint Stipulation of Dismissal shall be with prejudice to Relator as to all *qui tam* claims against LMC in the Civil Action, with prejudice to the United States as to the Covered Conduct, and without prejudice to the United States as to any other claims in the Civil Action. Provided, however, that the Relator's claim for a relator's share under 31 U.S.C. §

3730(d) shall not be dismissed, unless it is settled, adjudicated, or otherwise resolved, and any required consent by the United States is obtained, and the Court is so informed.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except for Relator's reservation of the right to separately proceed on or settle any potential claims under 31 U.S.C. § 3730 (d) and (h).

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

15. 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 Eastern District of Texas. 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.

16. With the exception of an agreement between Relator and the United States regarding relator share under 31 U.S.C. § 3730(d), this Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

19. This Agreement is binding on LMC's successors, transferees, heirs, and assigns.

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

21. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Electronic or facsimile signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 01/17/25 BY: *Arnold M. Auerhan*
Arnold M. Auerhan
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
James Gillingham
Assistant United States Attorney for the
Eastern District of Texas

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THE UNITED STATES OF AMERICA


DATED: _____ BY: _____


Arnold M. Auerhan
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____


Digitally signed by JAMES GILLINGHAM
Date: 2025.01.17 13:55:01 -06'00'
James Gillingham
Assistant United States Attorney for the
Eastern District of Texas

LOCKHEED MARTIN CORP. - DEFENDANT

DATED: 1/17/25 BY: 
Lockheed Martin Corp.

DATED: 1/17/25 BY: 
Michael J. Bronson
Patrick M. Hagan
Chelsea J. Chalk
DINSMORE & SHOHL LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202
Counsel for Lockheed Martin Corp.

PATRICK GIRARD - RELATOR

DATED: _____ BY: _____
Patrick Girard

DATED: _____ BY: _____
Samuel L. Boyd
Catherine C. Jobe
BOYD & ASSOCIATES, PC
6440 North Central Expressway, Suite 600
Dallas, TX 75206-4101
Counsel for Patrick Girard

DATED: _____ BY: _____
Jeffrey R. Bragalone
Daniel F. Olejko
Bragalone, Olejko, Saad, P.C.
901 Main St., Suite 3800
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Counsel for Patrick Girard

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DINSMORE & SHOHL LLP
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Cincinnati, OH 45202
Counsel for Lockheed Martin Corp.

PATRICK GIRARD - RELATOR

DATED: 1/17/2025 BY: _____


Patrick Girard

BOYD & ASSOCIATES

DATED: 1/17/2025 BY: Sam Boyd

Samuel L. Boyd
Catherine C. Jobe
BOYD & ASSOCIATES, PC
6440 North Central Expressway, Suite 600
Dallas, TX 75206-4101

BRAGALONE OLEJKO SAAD PC

DATED: _____ BY: _____

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Daniel Olejko
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Dallas, TX 75202-3773

LOCKHEED MARTIN CORP. - DEFENDANT

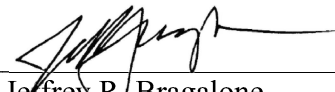
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Cincinnati, OH 45202
Counsel for Lockheed Martin Corp.

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Patrick Girard

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Samuel L. Boyd
Catherine C. Jobe
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