

## **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 United States Army, defendants Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc., Kellogg Brown & Root, LLC, and Overseas Administration Services, Ltd., and Relator David Conyers, as the Representative of the Estate of Bud Conyers (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### **RECITALS**

A. In 2003, Defendant Kellogg Brown & Root, Services, Inc., headquartered in Houston, Texas, assumed responsibility for performing the Logistics Civil Augmentation Program (LOGCAP) III contract, which the Army awarded to a predecessor, Brown & Root Services, Inc., on December 14, 2001. Until December 31, 2005, Kellogg Brown & Root Services, Inc. was owned by defendant Kellogg Brown & Root, Inc. Defendant Kellogg Brown & Root, LLC was the successor to Kellogg Brown & Root, Inc. Defendant Overseas Administration Services, Ltd. was a company through which certain employees who performed work under the LOGCAP III contract were retained. Collectively, these defendants are referred to herein as “KBR.”

B. The LOGCAP III contract required KBR to provide logistics support for United States military operations in contingency environments overseas, including in Iraq. LOGCAP III was an indefinite delivery, indefinite quantity (IDIQ) contract. All work under LOGCAP III was performed pursuant to separately awarded task orders, the vast majority of which were issued to KBR as cost-plus-award-fee task orders, including Task Orders 27, 36 and 43 (the “Task Orders”). Each Task Order contained specific requirements for whatever goods or services the

Army directed KBR to provide. KBR would then voucher the United States for costs that it incurred in performing the required work, including its costs in paying local subcontractors.

C. On December 20, 2006, Bud Conyers filed a complaint in the United States District Court for the Southern District of Texas captioned *United States ex rel. Conyers v. Kellogg Brown & Root, Inc.*, Civ. No. 4:06-cv-04024, pursuant to the *qui tam* provision of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The United States partially intervened in the Civil Action on May 10, 2013, and filed the United States’ Complaint on January 6, 2014.

D. The United States contends that it has certain civil claims against KBR arising from work that KBR performed under the LOGCAP III contract during the period from November 2002 through January 2005, and for vouchers for payment that KBR submitted to the United States in connection with that work. In particular, the United States alleges the conduct described below, in subparagraphs D(1) through (6), which is identified in this Agreement as the “Covered Conduct.”

1. In or around November 2002, a KBR employee (“Employee 1”) solicited bids for a KBR subcontract to fulfill a Task Order 27 requirement for cleaning services at Camp Arifjan, an Army installation in Kuwait. Employee 1 rigged the bidding process for this subcontract, so as to justify awarding the subcontract (known as “Subcontract 11”) to a Kuwaiti subcontractor named La Nouvelle Trading & Contracting Co. (“La Nouvelle”). As a reward for this favorable treatment, Employee 1 accepted several kickbacks from the managing partner of La Nouvelle. These kickbacks were included within the prices that KBR paid to La Nouvelle and for which it charged the United States under the LOGCAP III contract.

2. In or around February 2003, a second KBR employee (“Employee 2”) solicited bids for a KBR subcontract to fulfill a Task Order 36 requirement for fuel tankers to store and dispense fuel at an Aerial Port of Debarkation (“APOD”) in Kuwait. Employee 2 awarded the subcontract (known as “Subcontract 39”) to La Nouvelle at an inflated price. To reward this favorable treatment, the managing partner of La Nouvelle paid Employee 2 a kickback, which was included within the price that KBR paid La Nouvelle and for which it charged the United States under the LOGCAP III contract.

3. In or around June 2003, a third KBR employee (“Employee 3”) solicited bids for a KBR subcontract to fulfill a Task Order 43 requirement to provide trucks and refrigerated trailers (known as “reefers”) to deliver perishable items into Iraq. Prior to soliciting bids for this subcontract, Employee 3 had entered into a kickback agreement with the managing partner of First Kuwaiti Trading Co. a/k/a First Kuwaiti Trading & Contracting Co. (“First Kuwaiti”), under which Employee 3 was to receive a kickback for any subcontract that he awarded to First Kuwaiti for the lease of trucks; the amount of this kickback was 50 Kuwaiti Dinar per truck for every month the truck was leased. Under the influence of this kickback arrangement, Employee 3 ultimately awarded the subcontract (known as “Subcontract 167”) to First Kuwaiti, which was a high bidder, for the lease of 50 trucks and 50 reefers for a six-month period, when other bidders could have satisfied the Army’s requirements for less money. The award price was inflated by the amount of Employee 3’s kickback arrangement with the managing partner of First Kuwaiti. KBR paid the inflated price and charged the United States for its costs under the LOGCAP III contract.

4. After the six-month term of Subcontract 167 expired in December 2003, First Kuwaiti continued to submit monthly invoices to KBR for the lease of the trucks and refrigerated trailers. KBR conducted an inventory and determined that most of these vehicles had been returned to First Kuwaiti in January 2004 and that it only owed First Kuwaiti approximately \$177,000. Nevertheless, in or around January 2005, KBR paid First Kuwaiti more than \$2.6 million for the continued lease of equipment that its employees knew First Kuwaiti had not provided, resulting in an additional overpayment to First Kuwaiti. KBR's employees also created records purporting to show that the payments were for the continued lease of the trucks and trailers that had been returned.

5. In or around July 2003, Employee 3 awarded a second subcontract (known as "Subcontract 190") to First Kuwaiti for the lease of 150 trucks to haul fuel trailers in support of Task Order 43. Employee 3 awarded to First Kuwaiti, which was a high bidder, pursuant to his kickback arrangement with the managing partner of First Kuwaiti, when other bidders could have satisfied the Army's contract requirements for less money. As was the case with Subcontract 167, the award price of Subcontract 190 also included the price of Employee 3's kickback arrangement with the managing partner of First Kuwaiti. KBR paid the inflated price and charged the United States for its costs under the LOGCAP III contract. Subcontract 190 was subsequently extended based on the inflated price at which it was awarded, which KBR also charged the United States for these costs.

6. Following the award of Subcontract 190, some of the trucks that were leased under the subcontract were returned to First Kuwaiti. Nevertheless, First Kuwaiti

continued to submit invoices for these trucks, which KBR paid and for which it charged the United States.

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

F. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to the Relator's reasonable expenses, attorneys' fees and costs. The Relator also has asserted personal claims against the Defendants (ECF 54).

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. As consideration for this Agreement, KBR shall pay the United States \$13,677,621 ("Settlement Amount"), of which \$4,253,174 is restitution. The Settlement Amount shall be satisfied by crediting to it \$1,677,621 in contract credits that KBR provided previously to the United States in connection with Employee 3's conduct, and by an additional payment by KBR to the United States of the remaining \$12,000,000, which amount KBR shall pay by electronic funds transfer no later than 10 days after the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Department of Justice.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases KBR, 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 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; the Anti-Kickback Act, 41 U.S.C. §§ 8701-8707; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 4 below, and upon the United States' receipt of the Settlement Amount, the Relator, including any of the Relator's heirs, successors, attorneys, agents, and assigns, releases KBR, 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 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.

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 this Agreement, any administrative liability or enforcement right, or any administrative remedy, including 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 personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. The Relator and the Relator's 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). In connection with this Agreement and this Civil Action, the Relator and the Relator's heirs, successors, attorneys, agents, and assigns agree that neither this Agreement nor any dismissal of the Civil Action shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar the Relator from sharing in the proceeds of this Agreement. Moreover, the United States and the Relator, and his heirs, successors, attorneys, agents, and assigns, agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that the Relator should receive of any proceeds of the settlement of his claim(s), and that no agreements concerning the Relator share have been reached to date.

6. The Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases KBR, 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, and their officers, agents, and employees, from any liability to the Relator arising from the filing of the Civil Action, however, the Relator does not release KBR from any claim under 31 U.S.C. § 3730(d) for expenses or

attorneys' fees and costs or from the First and Second Personal Claims he pleaded in his First Amended Complaint (ECF 54).

7. KBR 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.

8. KBR fully and finally releases the United States, including its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that KBR 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. KBR fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that KBR 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 KBR, 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, 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 criminal investigation(s) of the matters covered by this Agreement;
- (3) KBR's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and 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 KBR makes to the United States pursuant to this Agreement, the credits referenced in Paragraph 1 and any payments that KBR 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 KBR, and KBR 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, KBR shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by KBR or any of its subsidiaries or affiliates from the United States. KBR agrees that the United States, at a minimum, shall be entitled to recoup from KBR 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 KBR's books and records and to disagree with any calculations submitted by KBR or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by KBR, 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 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). The stipulation of dismissal shall state that the Civil Action is being dismissed subject to the terms of this Agreement, and that the Court retains jurisdiction over the parties to the extent necessary to enforce the terms and conditions of the Agreement. The stipulation shall further state that the action is being dismissed with prejudice to the United States only as to the Covered Conduct released in this Agreement, and without prejudice to the United States as to any other claims in the Civil Action, and with prejudice to Relator for any claim that Relator has asserted on behalf of the United States, and without prejudice to any appeal Relator may file related to the Court's March 30, 2015 dismissal (ECF 85) of the First and Second Personal Claims he asserted in his First Amended Complaint (ECF 54).

13. Except as set forth in Paragraph 6, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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 Southern 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. This Agreement constitutes the complete agreement between the Parties as to its terms. 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 KBR's successors, transferees, heirs, and assigns.

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

21. All parties consent to the 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). Facsimiles of signatures and copies of signatures in pdf shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

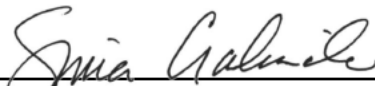
DATED: 6-13-2022


BY:



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DAVID W. TYLER  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

KBR, INC. ON BEHALF OF KELLOGG BROWN & ROOT, INC.,  
KELLOGG BROWN & ROOT SERVICES, INC., KELLOGG BROWN &  
ROOT, LLC, AND OVERSEAS ADMINISTRATION SERVICES, LTD.

DATED: June 9, 2022 BY:   
SONIA GALINDO  
Executive Vice President and General Counsel,  
KBR, Inc.

DATED: June 10, 2022 BY:   
CRAIG D. MARGOLIS  
Counsel for KBR, Inc., Kellogg Brown & Root,  
Inc., Kellogg Brown & Root Services, Inc., Kellogg  
Brown & Root, LLC and Overseas Administration  
Services, Ltd.

RELATOR ESTATE OF BUD CONYERS, BY AND THROUGH ITS PERSONAL REPRESENTATIVE DAVID CONYERS

DATED: 06/12/2022 BY: David Conyers  
DAVID CONYERS, as personal representative of  
the Estate of Bud Conyers

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ALAN M. GRAYSON  
Counsel for David Conyers, as personal  
representative of the Estate of Bud Conyers

RELATOR ESTATE OF BUD CONYERS, BY AND THROUGH ITS PERSONAL  
REPRESENTATIVE DAVID CONYERS

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

DAVID CONYERS, as personal representative of  
the Estate of Bud Conyers

DATED: 6/13/22

BY: \_\_\_\_\_

Alan M. Grayson  
ALAN M. GRAYSON  
Counsel for David Conyers, as personal  
representative of the Estate of Bud Conyers