

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 Navy (Navy) (collectively the “United States”), and Bradken Inc. (Bradken) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Bradken is a Delaware corporation with its principal place of business in Kansas City, Missouri. It is a wholly-owned subsidiary of Bradken, Ltd., which is based in Newcastle, Australia. Bradken operates a foundry in Tacoma, Washington that specializes in the manufacture of cast and fabricated steel products. The foundry was owned by AmeriCast Technologies prior to August 2008, and by Atlas Castings and Technology prior to April 2007. Bradken and its predecessors at the Tacoma foundry have produced steel products for use on naval vessels as a direct or indirect vendor for shipbuilders that have entered into contracts with the United States Navy’s Naval Sea System Command (NAVSEA).

B. Between 2009 and 2017 Bradken’s Metallurgist, acting within the scope of her employment at the company, falsified test results for at least 50 heats of high-yield steel intended for installation on nuclear submarines. The United States also contends that Bradken’s internal controls failed to identify this misconduct prior to its discovery in May 2017.

C. The United States contends that it has certain civil claims against Bradken arising from Bradken’s delivery of naval vessel parts built with steel other than that

specified in prime contracts held by General Dynamics Electric Boat Corp. and Huntington Ingalls Industries, under which Bradken was a direct or indirect supplier. (These contracts are referred to herein as “the Contracts.”) Specifically, the United States contends that the Contracts required certain parts, such as those manufactured by Bradken, to be constructed with certain military grade steel for naval vessels. The United States further contends that during the period from August 1, 2009, through May 31, 2017, Bradken produced naval vessel parts which were ultimately delivered to NAVSEA under the Contracts that did not meet applicable requirements specified in the Contracts without disclosing the substitution and thereby caused the submission of false claims for payment to the United States. This conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Bradken, except to the extent admitted in Bradken’s deferred prosecution agreement, nor a concession by the United States that its claims are not well-founded.

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. Bradken shall pay to the United States a total of Ten Million, Eight Hundred Ninety-Six Thousand, Nine Hundred and Twenty-Four Dollars (\$10,896,924) (“Settlement Amount”), of which Five Million, Four Hundred Forty-Eight Thousand, Four Hundred and Sixty-Two Dollars (\$5,448,462) is restitution. The Settlement Amount shall be paid within fourteen days of the Effective Date of this Agreement, as the

term is defined in Paragraph 17 below. The Settlement Amount shall be paid to the United States by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Bradken's full payment of the Settlement Amount, the United States releases Bradken, together with its divisions, subsidiaries, parent companies, affiliates, and corporate successors and assigns 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 Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of unjust enrichment and fraud.

3. Notwithstanding the releases given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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, 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 previously defined Covered Conducts;

- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property or for other consequential damages arising from the previously defined Covered Conduct.

4. Bradken 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. Bradken fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Bradken 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 Bradken, 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) Bradken'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 attorney's fees);
- (4) the negotiation and performance of this Agreement and any plea agreement;
- (5) the payment Bradken 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: These Unallowable Costs will be separately determined and accounted for by Bradken and Bradken 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, Bradken shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Bradken or any of its subsidiaries or affiliates from the United States. Bradken agrees that the United States, at a minimum, shall be entitled to recoup from Bradken 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 Bradken's books and records and to disagree with any calculations submitted by Bradken or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Bradken, or the effect of any such Unallowable Costs on the amount of such payments.

7. Bradken agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Bradken 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. Bradken further agrees 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.

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

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

10. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

11. 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 Western District of Washington. 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 represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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 Bradken'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 of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA


DATED: _____ BY: _____

Art J. Coulter
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____

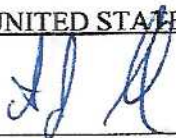
Kayla C. Stahman
Assistant United States Attorneys
Western District of Washington

BRADKEN, INC.


DATED: 4/30/2020 BY: 
Mark J. Blando
Eckland & Blando LLP
Counsel for Bradken, Inc.

THE UNITED STATES OF AMERICA

DATED: 1 May 20 BY: _____


Art J. Coulter
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 5.1.20 BY: _____


Kayla C. Stahman
Assistant United States Attorneys
Western District of Washington