

## CONCILIATION AGREEMENT

BETWEEN

U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

AND

ENGINEERING SUPPORT PERSONNEL, INC.

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated the Engineering Support Personnel, Inc. ("ESP") facility located at Marine Corps Air Ground Combat Center (MCAGCC), Building 1707 Bourke Street, Twentynine Palms, California and found that ESP was not in compliance with the Executive Order 11246, as amended ("E.O. 11246") and its implementing regulations at 41 C.F.R. Section(s) 60-1 and 60-2. OFCCP notified ESP of the specific violations found and the corrective actions required in a Notice of Results of Investigation issued on June 10, 2015. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and ESP enter this contract ("Agreement") and agree to all the terms stated below.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for ESP's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if ESP violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. ESP agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. ESP will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. ESP understands that nothing in this Agreement relieves ESP of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of

1973, as amended (Section 503), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), their implementing regulations, and other applicable equal employment laws.

4. ESP promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Pacific Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within forty-five (45) calendar days of the date the Regional Director signs the Agreement.
9. This Agreement will expire sixty (60) calendar days after ESP submits the final progress report required in Part IV below, unless OFCCP notifies ESP in writing prior to the expiration date that ESP has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines ESP has met all of its obligations under the Agreement.
10. If ESP violates this Agreement,
  - A. The procedures set forth at 41 C.F.R. 60-1.34 will govern:
    - 1) If OFCCP believes that ESP violated any term of the Agreement while it was in effect, OFCCP will send ESP a written notice stating the alleged violations and summarizing any supporting evidence.
    - 2) ESP will have fifteen (15) calendar days from receipt of such notice to demonstrate in writing that it has not violated the Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - 3) If ESP is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated

immediately without issuing a show cause notice or proceeding through any other requirement.

4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

B. ESP may be subject to the sanctions set forth in Section 209 of E.O. 11246, and/or other appropriate relief for violation of this Agreement.

11. This Agreement does not constitute an admission by ESP of any violation of E.O. 11246, nor has there been an adjudicated finding that ESP violated any laws.

12. Nothing herein is intended to relieve ESP from the obligation to comply with the requirements of E.O. 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), their implementing regulations, or any other equal employment statute or executive order or its implementing regulations. In addition, this Agreement in no way limits the applicability of the revised regulations implementing Section 503 of the Rehabilitation Act of 1973, 41 CFR 60-741 and the revised regulations implementing Vietnam Era Veterans' Readjustment Assistance Act of 1974, 41 CFR 60-300.

### **PART III. SPECIFIC ALLEGED VIOLATION AND REMEDY**

A. **STATEMENT OF ALLEGED VIOLATION.** OFCCP conducted a review of documentary evidence, management and employee interviews, as well as the statistical data, and found that there was sufficient evidence to conclude that ESP violated its obligations under the nondiscrimination requirements of the equal opportunity clause of E.O. 11246, as amended, 41 CFR 60-1.4(a)(1).

B. **OFCCP'S SPECIFIC FINDINGS.** Specifically, OFCCP found during the investigation that two female complainants ("Complainants") were discriminated against in hiring on November 29, 2013 due to their sex when ESP did not select them for any positions for which they were as qualified, or more qualified, than their male applicant counterparts.

#### **Complainant #1**

OFCCP concluded that Complainant #1 was not hired by ESP for positions she was qualified for such as Computer Operator II and Laborer Grounds Maintenance because of her sex. Although ESP contends she was not hired into these positions because she did not specifically apply for them and they did not want to consider a former manager for a lower paying position, the investigation revealed that 44% of the 54 male applicants were placed into positions they had not applied for and that Complainant was more qualified than 6 of the male applicants who were hired as

Laborer Grounds Maintenance and more qualified than 1 male applicant hired as a Computer Operator II. The investigation also revealed that a similarly situated male applicant who was an Assistant Site Manager at the previous company was hired as an ETech I (lower position) at ESP.

Complainant #2

OFCCP concluded that Complainant #2 was not hired into a Data Entry Operator I position because of her sex. ESP asserted that Complainant #2 did not complete an application and did not appear for an interview. Accordingly, ESP did not consider Complainant #2 for any of the positions it filled. In addition, ESP stated Complainant #2 worked as a Secretary for the previous contractor and ESP did not intend to hire a secretary. However, OFCCP's investigation revealed witnesses who observed Complainant #2 submitting her application and waiting for hours for an interview. Complainant #2 was listed as an applicant on the applicant flow and hire log included in the current Affirmative Action Plan (AAP) submitted to OFCCP by ESP.

After reviewing copies of Complainant #2's personnel records from her previous employer, OFCCP confirmed that Complainant #2's prior job title was not a secretary, but rather her official job title was Data Entry Operator I. Based on a cohort analysis conducted by OFCCP, it was concluded that Complainant #2 was more qualified than 5 out of 11 male applicants who were hired as Data Entry Operator I. In fact, Complainant #2 had performed this position on the previous contract at the same facility for approximately 3 years and had about 7 years of experience in related fields.

- C. **REMEDY.** In order to facilitate resolution of the above referenced alleged violation, ESP agrees to provide the following relief to Complainants:

Monetary Remedies:

1. Location and Notification to Complainants: Within fifteen (15) calendar days after the effective date of this Agreement, ESP agrees to notify each Complainant (see Attachment A, Conciliation Agreement Female Class Members) of her rights under this Agreement by sending the following via first class mail, Return Receipt Requested (USPS Form 3811) or other traceable format: the Notification Letter (Attachment B), the Release of Claims (Attachment C), Address and Social Security Verification (Attachment D) and IRS Form W-4. ESP will also include an envelope that has been pre-stamped and addressed for the return of the completed Release of Claims, Address and Social Security Verification and IRS Form W-4 postmarked no later than thirty (30) calendar days after receipt of the Notice.

ESP will notify OFCCP in writing of any Complainant who has not responded. OFCCP will have five (5) calendar days from receipt of notice from ESP to locate

additional contact information for any Complainant who did not respond or verify original contact information. Should any new contact information be found for either complainant, it will be provided to ESP which will then repeat procedures as above.

2. **Financial Settlement:** ESP will provide make-whole relief consisting of a one-time "lump sum" payment to each Complainant within fifteen (15) days of receiving properly completed forms. The make-whole relief shall be comprised of back pay, benefits, and interest for Complainant #1 in the total amount of \$56,652.11 (back pay of \$44,414.91, benefits of \$10,722.37, and interest of \$1,514.83). In addition, the make-whole relief shall be comprised of back pay, benefits, and interest for Complainant #2 in the total amount of \$17,462.46 (back pay of \$12,773.86, benefits of \$4,118.82, and interest of \$569.78) for a total make-whole relief ("Financial Settlement") amount of \$74,114.57 less legal deductions required by law (such as federal, state and/or local taxes and FICA) only on the portions representing back pay and benefits.

If either check remains uncashed after ninety (90) calendar days, ESP will contact OFCCP for assistance in contacting the Complainant to confirm receipt of the check. If a Complainant has not received a check, ESP will reissue it.

3. **IRS:** ESP will pay to the Internal Revenue Service ("IRS") the employer's share of social security withholdings, and shall mail to each Complainant an IRS W-2 Form representing that portion of the payment representing back pay and benefits and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be mailed to the Complainants either with the settlement checks or at the end of the year.
4. **Offers of Employment:** OFCCP has consulted with the Complainants who have agreed that for the purpose of this conciliation agreement, they will not seek employment with ESP as a condition for resolving this matter.

**Non-Monetary Remedies:**

1. **Eliminate Alleged Discriminatory Selection Procedures:** ESP will ensure that all applicants are afforded equal employment opportunities. ESP agrees to immediately cease using the selection procedures, practices and/or policies which allegedly negatively affected the hiring of female applicants. ESP will not use any selection procedure that has an adverse impact not consistent with business necessity as defined in 41 CFR 60-3.4D. Where it is determined that a selection procedure has an adverse impact not consistent with business necessity as defined in 41 CFR 60-3.40, on the hiring of applicants of a particular sex, ESP will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the UGESP codified at 41 CFR 60-3.

2. **Recordkeeping and Retention:** ESP will ensure applicants are tracked by sex and decisions are documented at each step in the hiring process. ESP will ensure documents relating to recruiting and applicant selection are retained in accordance with 41 CFR 60-1.12(a) and 60-3.
  
3. **Training:** Within ninety (90) calendar days of the Effective Date of this Agreement, ESP agrees to provide training to all managers and hiring officials involved in any way in the recruiting, selecting or tracking of Twentynine Palms facility applicants. ESP will also train all individuals hired or transferred into such positions within thirty (30) calendar days of their new assignment. The training will include, at a minimum, instructions on proper recruitment, tracking and selection procedures, the neutral application of the specified qualifications and criteria that will be used at each step in the hiring process, and the procedures to be used to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and 60-3. Training should also include information regarding equal employment opportunity rights and responsibilities, including legal prohibitions against discrimination on the basis of sex, sexual orientation, gender identity, race, national origin, color, religion, disability and veteran status.

#### **PART IV: REPORTING**

In order for the OFCCP to monitor compliance with this Agreement, ESP agrees to submit two (2) progress reports to: U.S. Department of Labor, OFCCP, 770 The City Drive, Suite 5700, Orange, CA 92868-4955.

#### **REPORT DUE DATE**

#### **REPORTING PERIOD**

Report 1: 1/15/16 or Sooner

10/1/15 through 12/31/15

Report 2: 6/30/16

10/1/15 through 5/31/16

For the periods specified above, the Progress Reports shall contain the following:

#### **PROGRESS REPORT #1:**

1. Documentary evidence of Complainants' receipt of the Financial Settlement (checks) as required by the Remedy, Part III.C of this Agreement. This documentation may be in the form of a copy of a cashed check or of a certified receipt by the U.S. Postal Service.

#### **PROGRESS REPORT #2:**

1. Evidence that training pursuant to this Agreement was provided to ESP's management and that such training addressed compliance with Executive Order 11246, as amended, and its implementing regulations. The evidence should include the date and location of training, the names and positions of the managers who attended training, the names and



**Part V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and ESP.

DATE: 9/22/15

**6 & 7 (c)**

John Russell  
President  
Engineering Support Personnel, (ESP), Inc.  
Marine Corps Air Ground Combat Center  
(MCAGCC)  
Bldg. 1707 Bourke St.  
Twentynine Palms, CA 92278

DATE: 9/28/15

**7 (e)**

Compliance Officer  
Office of Federal Contract  
Compliance Programs  
Orange Area Office, CA

DATE: 9/28/15

**6 & 7 (c)**

Hector M. Sanchez  
Area Director  
Office of Federal Contract  
Compliance Programs  
Orange Area Office, CA

DATE: 9/28/15

**6 & 7 (c)**

*Janette Wipper*  
Janette Wipper  
Regional Director  
Office of Federal Contract  
Compliance Programs  
Pacific Region