

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
NELBUD

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the NELBUD 51 Koweba Lane, Indianapolis, Indiana 46201, beginning on November 9, 2020. OFCCP found that Contractor failed to comply with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 CFR 60-300.44.

OFCCP notified Contractor of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on 25 March 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and Contractor enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for Contractor's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Contractor violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Contractor's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Contractor will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Contractor of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Contractor agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided

information or assistance, or who participates in any manner in any proceeding in this matter.

5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director David A. Smith (Effective Date).
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Contractor submits its final progress report required in Section IV, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Contractor has met all of its obligations under the Agreement.
10. If Contractor violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-300.63 will govern:
 - i. OFCCP will send Contractor a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The Contractor shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If Contractor 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.
 - iv. In the event of a breach of this Agreement by the Contractor, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.
 - b. Contractor may be subject to the sanctions set forth in 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.

11. Contractor does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to “days” in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Technical Violations and Remedies

1. **VIOLATION:** During the period February 1, 2019 through January 31, 2020, NELBUD failed to prepare and maintain an affirmative action program (AAP) for protected veterans at each establishment, in violation of 41 CFR 60–300.40(b). Accordingly, NELBUD failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60–300.40–45.

REMEDY: NELBUD must prepare and maintain an affirmative action program (AAP) for protected veterans at each establishment. The AAP shall set forth NELBUD’s policies and procedures in accordance with 41 CFR 300.40–45. This AAP may be integrated into or kept separate from other AAPs. NELBUD shall review and update annually its AAP pursuant to 41 CFR 60–300.40(c), and must comply with all obligations set forth in Subpart C of the regulations, 41 CFR 60–300.40–45.

2. **VIOLATION:** During the period February 1, 2019 through January 31, 2020, NELBUD failed to document and maintain the required data pertaining to applicants and hires, in violation of 41 CFR 60-300.44(k);.

REMEDY: NELBUD must document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-300.44(k): The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected

veterans; The total number of job openings and total number of jobs filled; The total number of applicants for all jobs; The number of protected veteran applicants hired; and The total number of applicants hired.

3. **VIOLATION:** During the period February 1, 2019 through January 31, 2020, NELBUD failed to document the hiring benchmark it established; failed to document its methodology; failed to maintain hiring benchmark records for three years, as required in 41 CFR 60-300.45(c)].

REMEDY: NELBUD must establish a hiring benchmark for each of its establishments, on an annual basis, using one of the two methods prescribed in 41 CFR 60-300.45(b). NELBUD must document its hiring benchmark, and, if NELBUD sets its benchmark using the five-factor approach described in 41 CFR 60-300.45(b)(2), it will also document each factor that it considered in establishing its benchmark and the relative significance it accorded to each one. NELBUD must retain these records for three years, as required by 41 CFR 60-300.45(c).

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Contractor agrees to retain all records relevant to the violation(s) cited in Section III above and the reports submitted in compliance with Paragraph 2, below. NELBUD must retain all applications, self-identification forms, established hiring benchmark and its methodology for a period of three years from the date of creation. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Contractor will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

Contractor agrees to furnish OFCCP with two (2) reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:

- a. Progress Report 1: Due on 28 February 2022 covering the period from the effective date of the Conciliation Agreement through 31 January 2022.

Documentation of:

1. The VEVRAA AAP in accordance with 41 CFR 300.40–45;
2. The computations or comparisons pertaining to applicants and hires;

3. The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans; total number of job openings and total number of jobs filled;
 4. The total number of applicants for all jobs; The number of protected veteran applicants hired; and The total number of applicants hired.
 5. Documentation supporting the establishment of its hiring benchmark
- b. Progress Report 2: Due on 28 February 2023 covering the period of 1 February 2022 through 31 January 2023.

Documentation of:

1. The VEVRAA AAP in accordance with 41 CFR 300.40–45;
2. The computations or comparisons pertaining to applicants and hires;
3. The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans; total number of job openings and total number of jobs filled;
4. The total number of applicants for all jobs; The number of protected veteran applicants hired; and The total number of applicants hired.
5. Documentation supporting the establishment of its hiring benchmark

Contractor will submit reports to (b) (6), (b) (7)(E) at 46 E Ohio Street Suite 419 Indianapolis, Indiana 46204 or email to [REDACTED]@dol.gov. Contractor and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Contractor provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor will provide such reports to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will promptly notify Contractor of the FOIA request and provide Contractor an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Contractor’s final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have

accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

1. SIGNATURES

The person signing this Agreement on behalf of Contractor personally warrants that he or she is fully authorized to do so, that Contractor has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Contractor.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and NELBUD 51 Koweba Lane Indianapolis, Indiana 46201.

(b) (6), (b) (7)(C)

Michael Crafton
Senior Business & Operations Executive
NELBUD
Indianapolis, Indiana

DATE: 4/28/2021

(b) (6), (b) (7)(C)

David A. Smith
District Director
Midwest Region

DATE: 04/30/2021

(b) (6), (b) (7)(C)

(b) (7)(E), (b) (6)
Compliance Officer
Midwest Region

DATE: 04/30/2021