

Conciliation Agreement

Between the

U.S. Department of Labor Office of Federal Contract Compliance Programs

And

Apex Systems, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) initiated a complaint investigation of Apex Systems, Inc.'s (Apex) establishment located at 222 Central Park Ave., #1620, Virginia Beach, VA 23462, beginning on December 19, 2019. OFCCP found that Apex failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its respective implementing regulation at 41 C.F.R. Part 60-1.

OFCCP notified Apex of the specific violation and the corrective action required in a Notice of Results of Investigation (NORI) issued on May 4, 2021.

In the interest of resolving the violation without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Apex 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 Apex's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violation alleged in the NORI. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Apex 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 Apex'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. Apex 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 Apex of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA), their implementing regulations, or

other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Apex 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 and the agreement entered into between the Complainant, Apex, Equal Employment Opportunity Commission (EEOC), and OFCCP (Attachment A) constitute the entire Agreement and represents the complete and final understanding of the parties. These agreements 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 Assistant District Director for OFCCP (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 Apex submits its final progress report required in Section VII, below, unless OFCCP notifies Apex in writing before the expiration date that Apex 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 Apex has met all of its obligations under the Agreement.
10. If Apex violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34 will govern:
 - i. OFCCP will send Apex a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. Apex 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 Apex 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 Apex, 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. Apex may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27 and/or other appropriate relief for violating this Agreement.
11. Apex 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, and in the Timeline included as Attachment B, 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. Discrimination Violation

Violation: Apex discriminated against (b) (6), (b) (7)(C) (Complainant) because (b) (6), (b) (7)(C) inquired about (b) (6), (b) (7)(C) pay. Specifically, the Complainant filed an internal complaint with HR about a significant difference in pay between (b) (6), (b) (7)(C) and other similarly situated employees. Within days later Apex terminated the complainant due to an alleged complaint that was filed against the Complainant. OFCCP obtained substantiated evidence to support false pretenses and found that Apex terminated the Complainant because (b) (6), (b) (7)(C) inquired about (b) (6), (b) (7)(C) pay. This is in violation of 41 C.F.R. § 60-1.4(a)(3).

IV. Financial Remedy

Settlement Amount. Apex agrees to pay the Complainant the amount of \$15,000, to resolve the specific violation set forth above. The total settlement amount includes \$7,500.00 for lost wages, less applicable deductions, and \$7,500.00 for compensatory damages.¹

¹ This remedy will be satisfied per the specifications in the conciliation agreement entered into by the Complainant, Apex, the EEOC, and OFCCP (Attachment A).

V. Additional Individual Relief

Personnel File. Apex shall remove all references, if any, to any charge or allegation of discrimination against Apex and this complaint from the Complainant's personnel file. Apex will remove all references, if any, to any discipline or termination from the Complainant's personnel file. The reason for Complainant's separation from Apex will be listed as a voluntary separation. Apex may not disclose any information or refer to any charge of discrimination or this complaint in responding to requests for information about the Complainant. When fielding inquiries about the Complainant, Apex shall provide a neutral job reference consisting of employment dates and positions held and shall not discuss the reasons for the Complainant's job separation.

VI. Modifications to Employment Practices and Other Non-Monetary Relief

1. Workplace Environment

Apex will:

- a. Prominently display the Pay Transparency Nondiscrimination Provision electronically or by posting a copy of the provision in conspicuous places available for employees and applicants.
- b. Notify all employees that Apex will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed their compensation or the compensation of another employee or applicant, as required by 41 C.F.R. § 60-1.4(a)(3), and provide assurances that Apex will not retaliate against any employee for making a Pay Transparency claim.

2. Company Policy and Procedure

Apex will:

- a. Within 90 calendar days of the Effective Date of this Agreement, remove all references, if any, to any charge or allegation of discrimination against Apex and this complaint from (b) (6), (b) (7)(C) personnel file.
- b. As long as Apex remains a federal contractor subject to E.O. 11246, Apex will annually prepare and update an Affirmative Action Program (AAP) for its facility and retain all supporting documentation as required by E.O. 11246 and its implementing regulations.

3. Training

Apex will:

- a. Within 90 calendar days of the Effective Date of this Agreement, train all employees involved in employee compensation decisions and all individuals with supervisory or

management status of Apex's non-discriminatory obligations for individuals who inquire about, discuss, or disclose compensation. OFCCP, upon request from Apex, can provide training and/or compliance assistance on 41 C.F.R. § 60-1.4(a)(3) and Pay Transparency.

- b. Maintain and produce to OFCCP upon request sign-in sheets containing the printed name, signature, and job title of all employees who attend the training described above.

VII. OFCCP Monitoring Period

1. **Recordkeeping.** Apex agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. 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. Apex will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.** Apex agrees to furnish the OFCCP with the following report:
 - A. Apex will provide certification that the provisions set forth in Sections III and IV of the Conciliation entered into by the Complainant, Apex, EEOC, and OFCCP have been complied with. Apex will specifically address this section as stated.
 - B. **Personnel File.** Apex will provide a copy of the Complainant's personnel file reflecting the changes as specified in Part V of this Agreement.
 - C. **Reports on Modifications to Personnel Practices.** Apex will report on all modifications of personnel practices made to date pursuant to the Agreement and provide documentation of its compliance with the remedy provisions of this Agreement. If any of the relevant documents such as job postings or policies have not been modified since being provided during a prior reporting period, a statement to that effect is sufficient. The report must include:
 - 1) **Workplace Environment.** Apex will provide evidence of:
 - i. The Pay Transparency Nondiscrimination Provision displayed electronically or posted in conspicuous places for employees and applicants.
 - ii. The written notification to employees informing them of Apex's non-discrimination obligations for individuals who inquire about, discuss, or disclose compensation and their rights under 41 C.F.R. § 60-1.4(a)(3).
 - 2) **Training.** Documentation that Apex conducted Pay Transparency training, for employees, including those involved in compensation decisions, all employees who hold supervisory status on Apex's non-discrimination obligations for

employees who inquire about, discuss, or disclose compensation. This documentation will include:

- i. Date, time, and place of training;
- ii. Name and job title of each trainer;
- iii. A sign-in sheet listing the name and job title of each attendee; and
- iv. Copies of the training and presentation materials.

The report will be due on November 30, 2021.

Contractor will submit reports to Dianna Adams, Assistant District Director, 400 North 8th Street, Suite 466, Richmond, Virginia 23219, (b) (6), (b) (7)(C)@dol.gov. Apex 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 Apex provides in accordance with this agreement are customarily kept private or closely-held, and the Apex believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Apex will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

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 Apex's final progress report as set forth in Part II, Paragraph 9 above. If OFCCP fails to notify Apex in writing within sixty (60) days of the date of the final progress report that Apex 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 Apex within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Apex has met all of its obligations under the Agreement.

VIII. Signatures

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Apex Systems, 222 Central Park Ave. #1620, Virginia Beach, VA 23462.

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

VANU SHARMA
Staff Counsel
Apex Systems
Virginia Beach, VA 23462

DATE: 05/14/2021

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

DIANNA ADAMS
Assistant District Director
U.S. Department of Labor/OFCCP
Richmond Area Office

DATE: _____

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

(b)(7)(C), (b)(7)(E)

Equal Opportunity Specialist
U.S. Department of Labor/OFCCP
Richmond Area Office

DATE: _____