

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

NORTHERN MONTANA HOSPITAL

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated the Northern Montana Hospital (NMH) establishment located at 30 13th Street, Havre, MT 59501, in May 2019. OFCCP shared its findings with NMH through a Notice of Violations (“NOV”) issued on June 3, 2021 that alleges that NMH failed to comply with Executive Order 11246, as amended (“E.O. 11246” or “the Executive Order”); Section 503 of the Rehabilitation Act of 1973 (“Section 503”), as amended; and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”), as amended; and their implementing regulations at 41 Code of Federal Regulations (“CFR”) Chapter 60.

In the interest of resolving these findings without engaging in further investigation and in exchange for sufficient and valuable consideration described in this document, OFCCP and NMH (“the parties”) enter into this Conciliation Agreement (“Conciliation Agreement” or “Agreement”) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

II. General Terms and Conditions

1. In exchange for NMH’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 violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if NMH 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 NMH’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. NMH 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 it requests, including those specified in this Agreement.

3. Nothing in this Agreement relieves NMH 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. NMH and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. NMH 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.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, 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 correction.
8. This Agreement becomes effective on the day it is signed by the Acting District Director of the Denver District Office in the Southwest and Rocky Mountain Region (“Effective Date”).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after NMH submits its final progress report required in Section VIII, below, unless OFCCP notifies NMH in writing before the expiration date that NMH 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 NMH has met all of its obligations under the Agreement.
11. If NMH violates this Agreement:
 - a. The procedures at 41 CFR. 60-1.34 will govern:
 - i. OFCCP will send NMH a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. NMH 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 NMH 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 NMH, 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 agreed to in the Agreement.
 - b. NMH may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR. 60-1.27, and/or other appropriate relief for violating this Agreement.
12. NMH denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
 13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
 14. 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.
 15. Each party shall bear its own fees and expenses with respect to this matter.
 16. 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.
 17. 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**: NMH failed to submit an acceptable E.O. 11246 AAP for the period January 1, 2019 through December 31, 2019 in accordance with the requirements of 41 CFR 60-2.12 through 60-2.17.

REMEDY: NMH will develop and implement an EO 11246 AAP in accordance with the requirements of 41 CFR 60-2.12 through 60-2.17. This includes, but is not limited to the following:

- a. NMH will include the required “Job Group Analysis” component in its EO AAP that meets the requirements of 41 CFR 60-2.12.

- b. NMH will properly developing an Availability Analysis to accurately compare incumbency to availability, determine placement goals, and develop action-oriented programs in accordance with 41 CFR 60-2.14.
 - c. NMH will properly develop the identification of problem areas AAP element in accordance with 41 CFR 60-2.17(b).
2. **VIOLATION**: During the period January 1, 2018 to the present, NMH failed to conduct adverse impact analyses, despite having the records available, of the overall selection process and for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce, in accordance with the requirements 41 CFR 60-3.4 and 60-3.15 A.

REMEDY: NMH will conduct an adverse impact analysis in accordance with the requirements of 41 CFR 60-3.4 and 60-3.15A. NMH will conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on race, sex, or ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting at more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, NMH will evaluate each individual component of the selection process for adverse impact.

If adverse impact is found to exist in any of the individual components of the selection process, NMH will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

3. **VIOLATION**: MH failed to submit an acceptable VEVRAA AAP for the period January 1, 2019 through December 31, 2019 in accordance with the requirements of 41 CFR 60-300.44 and 60-300.45.

REMEDY: NMH will develop and implement a VEVRAA AAP in accordance with the requirements of 41 CFR 60-300.44 through 60-300.45. This includes, but is not limited to the following:

- a. NMH will develop and implement a review its personnel processes and all physical and mental job qualification standards, as required by 41 CFR 60-300.44(b) and 60-300.44(c).
- b. NMH will undertake appropriate outreach and positive recruitment activities designed to effectively recruit protected veterans as required by 41 CFR 60-300.44(f).
- c. NMH will design and implement an audit and reporting system, as required by 41 CFR 60-300.44(h).

- d. NMH will conduct and document the required “Data collection analysis” on an annual basis in accordance with the requirements of 41 CFR 60-300.44(k) and maintain them for a period of three (3) years.
 - e. NMH will establish and document a hiring benchmark for protected veterans in accordance with the requirements of 41 CFR 60-300.45.
4. **VIOLATION**: NMH failed to submit an acceptable Section 503 AAP for the period January 1, 2019 through December 31, 2019 in accordance with the requirements of 41 CFR 60-741.42, 60-741.44, and 60-741.45.

REMEDY: NMH will develop and implement a Section 503 AAP in accordance with the requirements of 41 CFR 60-741.42, 60-741.44, and 60-741.45. This includes, but is not limited to the following:

- a. NMH will invite applicants to self-identify as an individual with a disability using the language and manner prescribed by the Director and published on the OFCCP Web site as required by 41 CFR 60-741.42(a)(2) and (b)(2). NMH will invite each of its employees to voluntarily inform NMH whether the employee believes that he or she is an individual with a disability as defined in 41 CFR 60-741.2(g)(1)(i) or (ii). This invitation shall be extended within 30 days of the Effective Date and at five year intervals, thereafter, using the language and manner prescribed by the Director and published on the OFCCP Web site. At least once during the intervening years between these invitations, NMH will remind its employees that they may voluntarily update their disability status.
- b. NMH will develop and implement a review its personnel processes and all physical and mental job qualification standards, as required by 41 CFR 60-741.44(b) and 60-741.44(c).
- c. NMH will undertake appropriate outreach and positive recruitment activities designed to effectively recruit protected veterans as required by 41 CFR 60-741.44(f).
- d. NMH will design and implement an audit and reporting system, as required by 41 CFR 60-741.44(h).
- e. NMH will conduct and document the required “Data collection analysis” on an annual basis in accordance with the requirements of 41 CFR 60-741.44(k) and maintain them for a period of three (3) years.
- f. NMH will evaluate its utilization of individuals with disabilities in accordance with the requirements of 41 CFR 60-741.45. When the percentage of individuals with is less than the utilization goal established in 41 CFR 60-741.45(a) NMH will take steps to determine whether and where impediments to equal employment opportunity exist, as required by 41 CFR 60-741.45 (e). NMH will develop and execute action-oriented programs designed to correct any identified problems areas, as required by 41 CFR 60-741.45 (f).

IV. Reports and Monitoring

1. **Progress Report.** Pursuant to the Technical Violations in Part III of this Agreement, NMH will submit one progress report covering the twelve-month period of this Agreement. The progress report shall be due thirteen months from the Effective Date and will cover the twelve-month period beginning with the Effective Date.

Lauren Blunck
Denver Assistant District Director
1244 Speer Blvd., Suite 540
Denver CO, 80204

NMH will submit the following in the progress report:

- i. NMH's Job Group analysis that meets the requirements of 41 CFR 60-2.12.
- ii. NMH's Availability Analysis that meets the requirements of 41 CFR 60-2.14.
- iii. NMH's Identification of Problem Areas that meets the requirements of 41 CFR 60-2.17(b).
- iv. Information on NMH's affirmative action goals established for the AAP year in which the report is due.
- v. A statement from NMH confirming that it conducted an adverse impact analysis in accordance with the requirements of 41 CFR 60-3.4 and 60-3.15A. For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, a statement regarding the results of NMH's evaluation of the individual components of the selection process and the actions taken by NMH upon determining that any component of the selection process has an adverse impact.
- vi. NMH's personnel processes and all physical and mental job qualification standards, that meets the requirements 41 CFR 60-300.44(b) and 60-300.44(c).
- vii. NMH's outreach and positive recruitment activities designed to effectively recruit protected veterans that meets the requirements 41 CFR 60-300.44(f).
- viii. NMH's audit and reporting system, that meets the requirements 41 CFR 60-300.44(h).
- ix. Documentation of the computations or comparisons described in CFR 60-300.44(k) for the immediately preceding AAP year.
- x. Documentation of the hiring benchmark adopted, the methodology used to establish it if using the five factors described in 41 CFR 60-300.45(b)(2).

- xi. Documentation that NMH invites applicants to applicants to self-identify as an individual with a disability using the language and manner prescribed by the Director and published on the OFCCP Web site as required by 41 CFR 60-741.42(a)(2) and (b)(2) and documentation that NMH invited each of its employees to voluntarily inform it whether the employee believes that he or she is an individual with a disability in accordance with the requirements of 41 CFR 60-741.42(c).
 - xii. NMH's personnel processes and all physical and mental job qualification standards that meets the requirements 41 CFR 60-741.44(b) and 60-741.44(c).
 - xiii. NMH's outreach and positive recruitment activities designed to effectively recruit protected veterans that meets the requirements 41 CFR 60-741.44(f).
 - xiv. NMH's audit and reporting system that meets the requirements 41 CFR 60-741.44(h).
 - xv. Documentation of the computations or comparisons described in 41 CFR 60-741.44(k) for the immediately preceding AAP year.
 - xvi. The utilization analysis evaluating the representation of individuals with disabilities in each job group, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45.
2. **Recordkeeping.** NMH agrees to retain all records relevant to the violations cited in Sections III above. NMH will retain the records until this Agreement expires or for the period required by the regulations, whichever is later.

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

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Program Northern Montana Hospital, 30 13th Street, Havre, MT 59501.

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

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

David C. Henry
President and CEO
Northern Montana Hospital
Havre, MT 59501

Rachel Woods
Acting District Director
Denver District Office

DATE: 7/1/21

DATE: 7/6/2021