

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
And  
Indian Health Center of SCV

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Indian Health Center of SCV (IHC) establishment located at 1333 Meridian Avenue, San Jose, CA 95125-5212 beginning on March 11, 2021. OFCCP found that IHC 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.

OFCCP notified IHC of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on October 13, 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 IHC 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 IHC's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if IHC violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review IHC'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. IHC 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 IHC of its obligation to fully comply with the requirements of Executive Order 11246, as amended (E.O. 11246 or the Executive Order), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. IHC 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 (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 IHC submits its final progress report required in Section IV, below, unless OFCCP notifies IHC in writing before the expiration date that IHC 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 IHC has met all of its obligations under the Agreement.
10. If IHC violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-300.63 will govern:
    - i. OFCCP will send IHC a written notice stating the alleged violation(s) and summarizing any supporting evidence.
    - ii. IHC 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 IHC 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 IHC, 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. IHC 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. IHC 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 1:** During the period July 1, 2020 through June 30, 2021, IHC failed to undertake appropriate external outreach and positive recruitment activities that were reasonably designed to effectively recruit protected veterans, in violation of 41 CFR 60-300.44(f)(1)(i). Specifically, IHC revealed during the onsite review and management interview that outreach and recruitment was not conducted to effectively outreach and recruit protected veterans. Compliance assistance was provided.

**Remedy 1:** IHC will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans, such as those described at 41 CFR 60-300.44(f)(2).

2. **Violation 2:** During the period July 1, 2020 through June 30, 2021, IHC failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified protected veterans, as required by 41 CFR 60-300.44(f)(3).

**REMEDY:** IHC will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). If IHC concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2).

3. **VIOLATION 3:** During the period July 1, 2020 through June 30, 2021, IHC failed to advise the employment service delivery system or CalJobs that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within

the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Specifically, IHC revealed during the onsite management interview that IHC did not post employment opportunities with CalJobs. Compliance assistance was provided.

**Remedy:** With its initial listing, and as subsequently needed to update the information, IHC will advise the employment service delivery system, CalJobs, that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the CalJobs, IHC shall provide updated information simultaneously with its next job listing.

4. **VIOLATION 4:** During the period July 1, 2020 through June 30, 2021, IHC failed to include the equal opportunity clause for VEVRAA in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-300.5(a)-(d). Specifically, after the onsite, a copy of a subcontract and purchase order was provided for OFCCP's review. OFCCP's finding, the equal opportunity clause was not included in IHC's subcontract or purchase order as required.

**REMEDY:** IHC will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-300.5(a)-(d). If IHC incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it must incorporate the clause in the manner prescribed by 41 CFR 60-300.5(d).

#### IV. OFCCP Monitoring Period

1. **Recordkeeping.** IHC 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. IHC will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**  
IHC agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:
  - a. Progress Report 1: Due on July 30, 2022 covering the period of July 1, 2021 through June 30, 2022 (one AAP year).

Documentation of:

1. IHC's record of appropriate and reasonable external outreach and recruitment activities for all employment opportunities as required by 41 CFR 60-300.44(f)(1)(i);
  2. IHC's assessment report of all its outreach and recruitment effectiveness as required by 41 CFR 60-300.44(f)(3);
  3. IHC's CalJobs listing of employment opportunities in accordance with 41 CFR 60-300.5(a)(4); advising CalJobs: (a) It is a Federal contractor, and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. IHC shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location.
  4. Subcontracts and/or purchase orders to include the equal opportunity clause in accordance with 41 CFR 60-300.5(a)-(d).
- b. Progress Report 2: Due on January 30, 2023 covering the period of July 1, 2022 through December 31, 2022 (six months).

Documentation of: #1 through #4 above.

IHC will submit reports to OFCCP District Director, Lynda Sakseangvirat at (b) (7)(C), (b) (6) @dol.gov. IHC 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 IHC provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and IHC believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, IHC will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify IHC of the FOIA request and provide IHC 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 IHC's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify IHC in writing within sixty (60) days of the date of the final progress report that IHC 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 IHC within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines IHC has met all of its obligations under the Agreement.

**V. SIGNATURES**

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Indian Health Center of SCV, 1333 Meridian Avenue, San Jose, CA 95125.

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

Ms. Sonya M. Tetnowski  
Chief Executive Officer  
Indian Health Center of SCV  
1333 Meridian Avenue  
San Jose, CA 95125

DATE: 11/3/2021

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

Ms. Lynda Sakseangvirat  
District Director  
Pacific Region

DATE: \_\_\_\_\_