

Conciliation Agreement  
Between the  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
And  
NuVasive, Inc.  
7475 Lusk Blvd  
San Diego, CA 92121

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated the NuVasive, Inc. (hereinafter "NuVasive") corporate headquarters located at 7475 Lusk Blvd San Diego, CA 92121, beginning on November 19, 2020. OFCCP found that NuVasive was not in compliance with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), and its respective implementing regulations at 41 C.F.R. § 60-741.

OFCCP notified NuVasive of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on October 4, 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 NuVasive enter into this Conciliation Agreement ("Agreement"), and the parties agree to all the terms therein.

**II. General Terms and Conditions**

1. In exchange for NuVasive's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under Section 503 based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if NuVasive 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 NuVasive'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. NuVasive 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 NuVasive of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring non-discrimination or equal employment opportunity through affirmative action.

4. NuVasive 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 of the San Diego District Office.
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 NuVasive submits its final progress report required in Section IV below, unless OFCCP notifies NuVasive in writing before the expiration date that NuVasive 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 NuVasive has met all of its obligations under the Agreement.
10. If NuVasive violates this Agreement:
  - a. The procedures at 41 C.F.R. § 60-741.63 will govern:
    - i. OFCCP will send NuVasive a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. NuVasive 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 NuVasive 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 NuVasive, 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. NuVasive may be subject to the sanctions set forth in 41 C.F.R. § 60-741.66, and/or other appropriate relief for violating this Agreement.
- 11. NuVasive 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:** OFCCP found that, during the period from January 1 – December 31, 2020, NuVasive did not adhere to a schedule for the review of all physical and mental job qualification standards, as required by 41 C.F.R. § 60-741.44(c). 41 C.F.R. § 60-741.44(c)(1) requires that a contractor must provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity.

**REMEDY:** Beginning with its 2022 Section 503 Affirmative Action Program ("Section 503 AAP"), NuVasive shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity. NuVasive will also provide OFCCP with evidence demonstrating compliance with 41 C.F.R. § 60-741.44(c).

2. **VIOLATION:** During the period from January 1, 2020 through December 31, 2020, NuVasive did not sufficiently assess its external outreach and recruitment efforts, as required by 41 C.F.R. § 60-741.44(f)(3). 41 C.F.R. § 60-741.44(f)(3) requires that contractors annually review their outreach and recruitment efforts to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The assessment must include the criteria that the contractor used to evaluate the effectiveness of each effort and its conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to 41 C.F.R. § 60-741.44(k) for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations.

**REMEDY:** Beginning with its 2022 Section 503 AAP, NuVasive shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. NuVasive shall document each evaluation, including, at a minimum, the criteria it used to evaluate the effectiveness of each effort and their conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to 41 C.F.R. § 60-741.44(k) for the current year and the two most recent previous years. NuVasive's conclusion as to the effectiveness of its outreach and recruitment efforts must be reasonable as determined by OFCCP in light of these regulations. If NuVasive concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts in accordance with 41 C.F.R. § 60741.44(f)(1-2) in order to fulfill its obligations. NuVasive will provide OFCCP with evidence demonstrating compliance with 41 C.F.R. § 60-741.44(f).

#### **IV. OFCCP Monitoring Period**

1. **Recordkeeping.** NuVasive 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. NuVasive will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

NuVasive 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 (First)** shall be due on February 15, 2022, 46 calendar days after the start of NuVasive's next AAP year:
- i. Relevant portions of the current year Section 503 AAP for the corporate establishment dating January 1, 2022 through December 31, 2022 (2022), addressing requirements set forth in 41 C.F.R. § 60-741.44(c) and (f).
  - ii. Evidence that NuVasive has developed a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity.
  - iii. Any other documents evidencing reasonable steps taken to comply with 41 C.F.R. § 60-741.44(c).
  - iv. Evidence of each outreach and recruitment effort undertaken during the period January 1, 2021 through December 31, 2021 (2021) intended to attract qualified applicants with disabilities for employment opportunities at NuVasive's corporate establishment, including the date of each effort and person responsible. Examples of recruitment activities can be found in the regulations at 41 C.F.R. § 60-741.44(f)(2).
  - v. A written assessment of the effectiveness of each outreach and recruitment activity conducted during 2021, including at a minimum the criteria used to evaluate the effectiveness of each effort. The criteria must include the data collected pursuant to 41 C.F.R. § 60-741.44(k) for the current year and the two most recent previous years. The Assessment shall also include a determination as to the effectiveness of the totality of NuVasive's efforts. Where efforts are deemed less than fully effective, NuVasive will identify specific alternative or additional outreach and recruitment activities to implement. The report will include the full name and job title of the individual who completed the assessment and date of the assessment.
  - vi. Data collected pursuant to 41 C.F.R. § 60-741.44(k) for the periods:
    - a) January 1, 2021 – December 31, 2021
    - b) January 1, 2020 – December 31, 2020
    - c) January 1, 2019 – December 31, 2019
  - vii. Any other documents evidencing reasonable steps taken to comply with 41 C.F.R. § 60-741.44(f).
- b. **Progress Report 2 (Final)** shall be due on February 15, 2023, 46 calendar days after the start of NuVasive's next AAP year:



- i. Relevant portions of the current year Section 503 AAP for the corporate establishment dating January 1, 2023 through December 31, 2023 (2023), addressing requirements set forth in 41 C.F.R. § 60-741.44(c) and (f).
- ii. Any evidence of reasonable steps taken to comply with 41 C.F.R. § 60-741.44(c).
- iii. Evidence of each outreach and recruitment effort undertaken during the period January 1, 2022 through December 31, 2022 (2022) intended to attract qualified applicants with disabilities for employment opportunities at NuVasive's corporate establishment, including the date of each effort and person responsible. Examples of recruitment activities can be found in the regulations at 41 C.F.R. § 60-741.44(f)(2).
- iv. A written assessment of the effectiveness of each outreach and recruitment activity conducted during 2022, including at a minimum the criteria used to evaluate the effectiveness of each effort. The criteria must include the data collected pursuant to 41 C.F.R. § 60-741.44(k) for the current year and the two most recent previous years. The Assessment shall also include a determination as to the effectiveness of the totality of NuVasive's efforts. Where efforts are deemed less than fully effective, NuVasive will identify specific alternative or additional outreach and recruitment activities to implement. The report will include the full name and job title of the individual who completed the assessment and date of the assessment.
- v. Data collected pursuant to 41 C.F.R. § 60-741.44(k) for the periods:
  - a) January 1, 2022 – December 31, 2022
  - b) January 1, 2021 – December 31, 2021
  - c) January 1, 2020 – December 31, 2020
- vi. Any other documents evidencing reasonable steps taken to comply with 41 C.F.R. § 60-741.44(f).

NuVasive will submit reports to: Sean Ratliff, District Director, US Department of Labor, OFCCP San Diego District Office; 550 West C Street, Suite 900, San Diego, CA 92101 or by electronic mail at (b) (7)(C), (b) (6)@dol.gov. NuVasive 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 NuVasive provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and NuVasive believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, NuVasive will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify NuVasive of the FOIA request and provide NuVasive 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 NuVasive's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify NuVasive in writing within sixty (60) days of the date of the final progress report that NuVasive 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 NuVasive within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines NuVasive has met all of its obligations under the Agreement.

## V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and NuVasive, Inc., 7475 Lusk Blvd San Diego, CA 92121.

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

Karen Osgood  
VP, Compensation, Benefits, and  
HRIS/Interim Leader, Global HR  
NuVasive, Inc.  
San Diego, CA

DATE: 11/1/2021

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

Sean Ratliff  
District Director  
OFCCP San Diego District  
Pacific Region

DATE: 11/3/2021