

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

And

The Scripps Research Institute
10550 North Torrey Pines Road
La Jolla, CA 92037

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated The Scripps Research Institute (hereinafter "SRI") corporate headquarters located at 10550 North Torrey Pines Road, La Jolla, CA 92037 beginning on November 18, 2020. OFCCP found that SRI failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503) and their respective implementing regulations at 41 CFR § 60-741.

OFCCP notified SRI of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on September 2, 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 SRI 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 SRI's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under Section 503 based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if SRI 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 SRI'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. SRI 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 SRI 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. SRI 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 or designee.
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 SRI submits its final progress report required in Section IV, below, unless OFCCP notifies SRI in writing before the expiration date that SRI 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 SRI has met all of its obligations under the Agreement.
10. If SRI violates this Agreement:
 - a. The procedures at 41 C.F.R. § 60-741.63 will govern:
 - i. OFCCP will send SRI a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. SRI 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 SRI 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 SRI, 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. SRI 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. SRI 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

VIOLATION – Improper Assessment of External Outreach and Recruitment Efforts:

41 CFR § 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 it used to evaluate the effectiveness of *each* effort and the contractor’s conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to [41 CFR § 60-741.44(k)] for the current year and the two most recent previous years.” (emphasis added)

Here, SRI conducted an overall assessment of its outreach and determined that its efforts were effective. SRI did not identify the criteria used to make this determination, except to say that it reviewed “the quantity and quality of candidates referred from its referral sources.” No mention is made of reviewing 44(k) data for the current and prior two years.

A review of the three years of 44(k) data indicates a slight decrease in the percentage of applicants who identified as individuals with disabilities, with only 3.1% of applicants identifying as individuals with disabilities in the 2019 year. OFCCP finds that SRI's conclusion that its outreach efforts are "effective" is not reasonable. In addition, SRI did not provide an assessment of each of its outreach efforts as required by regulation.

REMEDY: The contractor 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. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to 41 CFR § 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. If the contractor concludes 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 CFR §60-741.44(f)(1-2) in order to fulfill its obligations. SRI will provide OFCCP with evidence demonstrating compliance.

IV. OFCCP Monitoring Period

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

2. **Contractor Reports.**

SRI 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 **Thursday, November 1, 2021**:

- i. A detailed description of how SRI will be tracking and analyzing Section 503 outreach and recruitment efforts for the upcoming AAP year (November 1, 2021 through October 31, 2022), including the methodology for tracking each outreach effort, the criteria that will be used to assess each effort, the person responsible for conducting the assessments, and any additional information that demonstrates SRI's commitment to compliance with 41 C.F.R. § 60-741.44(f)(3).

- b. **Progress Report 2 (Final)** shall be due on **Friday, December 15, 2022**, about 45 calendar days after the start of SRI's next AAP year:
- i. Evidence of each outreach and recruitment effort undertaken during the period November 1, 2021 through October 31, 2022 (FY2022) intended to attract qualified applicants with disabilities for employment opportunities at SRI's corporate establishment, including 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).
 - ii. A written assessment of the effectiveness of each outreach and recruitment activity conducted during FY2022, 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 make a determination as to the effectiveness of the totality of SRI's efforts. Where efforts are deemed less than fully effective, SRI 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.
 - iii. Data collected pursuant to 41 C.F.R. § 60-741.44(k) for the periods:
 - a) November 1, 2021 – October 31, 2022
 - b) November 1, 2020 – October 31, 2021
 - c) November 1, 2019 – October 31, 2020
 - iv. Any other documents evidencing reasonable steps taken to comply with 41 C.F.R. § 60-741.44(f).

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

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and The Scripps Research Institute, 10550 North Torrey Pines Road, La Jolla, CA 92037.

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

Peter Schultz
Chief Executive Officer
The Scripps Research Institute
La Jolla, CA

DATE: 9/27/2021

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

Sean Ratliff
District Director
OFCCP San Diego District Office
Pacific Region

DATE: 9/27/2021

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

(b) (7)(E), (b) (6)

Compliance Officer
OFCCP San Diego District Office
Pacific Region

DATE: September 27, 2021