

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

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated BioHorizons, located at 2300 Riverchase Center, Birmingham, Alabama, beginning on September 16, 2021. OFCCP found that BioHorizons failed to comply with Executive Order 11246, as amended; 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.

OFCCP notified BioHorizons of the specific violation and the corrective action required in a Notice of Violation (NOV) issued on January 11, 2022.

In the interest of resolving the violation without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and BioHorizons 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 BioHorizons' fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under VEVRAA based on the violation alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if BioHorizons 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 BioHorizons' compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. BioHorizons 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 BioHorizons 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. BioHorizons 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, Christopher Williams.
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 BioHorizons submits its final progress report required in Section IV, below, unless OFCCP notifies BioHorizons in writing before the expiration date that BioHorizons 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 BioHorizons has met all of its obligations under the Agreement.
10. If BioHorizons violates this Agreement:
 - a. The procedures at 41 C.F.R. § 60-300.63 will govern:
 - i. OFCCP will send BioHorizons a written notice stating the alleged violation and summarizing any supporting evidence.
 - ii. The BioHorizons 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 BioHorizons 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 the BioHorizons, 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. BioHorizons may be subject to the sanctions set forth in 41 C.F.R. § 60-300.63, and/or other appropriate relief for violating this Agreement.

11. BioHorizons 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 violation 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.

Technical Violation and Remedy

1. **Violation 1:** During the period April 1, 2020 to December 31, 2020, OFCCP alleges that BioHorizons failed to list all employment openings with the appropriate Employment Service Delivery System (ESDS) where the opening occurs in any manner or format that the ESDS permits in violation of 41 C.F.R. § 60-300.5(a)2-6. **Remedy 1:** On January 19, 2021, BioHorizons began to list all employment openings as they occur with an appropriate Employment Service Delivery System (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to BioHorizons, as required by 41 C.F.R. § 60-300.5(a) 2-6, revised as of March 24, 2014 (78 Fed. Reg. 58614) (September 24, 2013, also online at <http://www.ecfr.gov>).

OFCCP Monitoring Period

1. **Recordkeeping.** BioHorizons agrees to retain all records relevant to the violation cited in Section III above and the report 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 report. BioHorizons will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

BioHorizons agrees to furnish OFCCP with the following report during the Monitoring Period. The report will contain the documentation specified according to the dates scheduled:

The progress report shall be due on August 31, 2022, and shall cover the period of February, 1, 2022 through July 31, 2022. The information due will be as follows:

- Documentation that BioHorizons listed all employment openings as they occur with an appropriate Employment Service Delivery System (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occurred.

BioHorizons will submit report to Compliance Officer **Ex (6), Ex (7)(E)** at (901) 544-**Ex (6), Ex (7)** or **Ex (6), Ex (7)(C)**@dol.gov. BioHorizons and OFCCP have a common interest in the information being provided in the report pursuant to this Agreement. To the extent the report BioHorizons provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the BioHorizons believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, BioHorizons will provide such the report to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will promptly notify BioHorizons of the FOIA request and provide BioHorizons 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 BioHorizons’ progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify BioHorizons in writing within sixty (60) days of the date of the progress report that BioHorizons has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies BioHorizons within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines BioHorizons has met all of its obligations under the Agreement.

SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and BioHorizons at 2300 Riverchase Center, Birmingham, Alabama.

Ex (6), Ex (7)(C)

Steven Boggan
President and Chief Executive Officer
BioHorizons
Birmingham, Alabama

DATE: 02/01/2022

Ex (6), Ex (7)(C)

Christopher Williams
District Director - Birmingham
Southeast Region

DATE: 02/04/2022

Ex (6), Ex (7)(C)

Ex (6), Ex (7)(E)
Compliance Officer
Southeast Region

DATE: 02/04/2022