

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

LABOR ON DEMAND INC.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Labor on Demand Inc.'s ("LOD") establishment located at 851 Culebra Road, San Antonio, TX 78201 and found that LOD was not in compliance with Executive Order 11246, as amended ("EO 11246"); 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. OFCCP notified LOD of the specific violations found and the corrective actions required in a Notice of Violations ("NOV") issued on March 10, 2022. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and LOD ("the parties") enter into this Conciliation Agreement ("Conciliation Agreement" or "Agreement") and agree to all the terms therein.

II. General Terms and Conditions

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

4. LOD and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under EO 11246, Section 503, and/or VEVRAA.
5. LOD 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 District Director of the San Antonio 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 LOD submits its final progress report required in Section IV, below, unless OFCCP notifies LOD in writing before the expiration date that LOD 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 LOD has met all of its obligations under the Agreement.
11. If LOD violates this Agreement:
 - a. The procedures at 41 CFR 60-1.34 will govern:
 - i. OFCCP will send LOD a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. LOD 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 LOD 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 LOD, 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. LOD 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. LOD denies any violation of EO 11246, 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:** LOD failed to develop an Affirmative Action Program (AAP) within 120 days from the commencement of a contract; further, LOD did not annually update the AAP in accordance with the requirements of 41 CFR 60-2.1(c).

REMEDY: LOD will develop an AAP and update the AAP annually, in accordance with the requirements of 41 CFR 60-2.1(c).

2. **VIOLATION:** LOD failed to submit an acceptable EO 11246 AAP, for the period January 1, 2021 through December 31, 2021, in accordance with the requirements of 41 CFR 60-2.10 through 60-2.17.

REMEDY: LOD will develop and implement an acceptable EO 11246 AAP in accordance with the requirements of 41 CFR 60-2.10 through 60-2.17.

3. **VIOLATION:** LOD failed to preserve personnel or employment records in accordance with the requirements of 41 CFR 60-1.12, 41 CFR 60-3.4, and 41 CFR 60-3.15.

REMEDY: LOD will ensure records are collected and maintained in accordance with the requirements of 41 CFR 60-1.12, 41 CFR 60-3.4, and 41 CFR 60-3.15.

4. **VIOLATION:** During the period January 1, 2020 through at least February 2021, LOD failed to conduct adverse impact analyses of the overall selection process and for each group constituting at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce, in accordance with the requirements of 41 CFR 60-3.4 and 41 CFR 60-3.15 A.

REMEDY: LOD will conduct an adverse impact analysis in accordance with the requirements of 41 CFR 60-3.4 and 41 CFR 60-3.15A. LOD 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 least 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, LOD 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, LOD 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.

5. **VIOLATION:** LOD failed to LOD failed to comply with the requirements of 41 CFR 60-300, Subpart C.

REMEDY: LOD must develop and maintain an AAP in accordance with the requirements of 41 CFR 60-300.40. LOD will invite individuals to self-identify as covered, protected veterans in accordance with the requirements of 41 CFR 60-300.42, develop and implement an acceptable VEVRAA AAP in accordance with the requirements of 41 CFR 60-300.44, and measure its progress towards achieving equal employment opportunity for protected veterans utilizing the hiring benchmark as required by 41 CFR 60-300.45.

6. **VIOLATION:** LOD failed to comply with the requirements of 41 CFR 60-741, Subpart C.

REMEDY: LOD must develop and maintain an AAP in accordance with the requirements of 41 CFR 60-741.40. LOD will invite individuals to self-identify as individuals with disabilities in accordance with the requirements of 41 CFR 60-741.42, develop and implement an acceptable Section 503 AAP in accordance with the requirements of 41 CFR 60-741.44, and conduct a utilization analysis to evaluate the representation of individuals with disabilities in each of LOD's job group, conduct an annual evaluation and identify potential problem areas to determine whether and where impediments to equal employment opportunity exist as required by 41 CFR 60-741.45.

IV. Reports and Monitoring

1. **Progress Reports:** Pursuant to the Technical Violations in Part III of this Agreement, LOD will submit two progress reports covering a six month period from LOD's 2022 and 2023 AAP years, respectively. The first progress report will be due January 31, 2023, and will cover the period July 1, 2022 through December 31, 2022. The second progress report will be due July 31, 2023 and will cover the period January 1, 2023 through June 30, 2023. LOD will submit the reports and documents described below to:

Dinorah S. Boykin
District Director
Office of Federal Contract Compliance Programs (OFCCP)
San Antonio District Office
615 E. Houston Street, Room 340
San Antonio, Texas 78205
(b) (6), (b) (7)(C)@dol.gov

2. **Progress Report 1:** LOD will submit the following in its first progress report:
 - A. The following EO 11246 AAP components:
 - i. Organizational profile;
 - ii. Job group analysis;
 - iii. Placement of incumbents in job groups;
 - iv. Determining availability;
 - v. Comparing incumbency to availability; and
 - vi. Placement goals.
 - B. For each job group and job title during the reporting period, the total number of all individuals that express interest in employment, all applicants, all hires and all rehires and the breakdown by race, gender and ethnic group, including all temporary, part time, full time, seasonal and contract employees.
 - C. For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of "promotion" as used by your company and the basis on which they were compiled (e.g. promotions to the job group, from and/or within the job group, etc.). If it varies for different segments of your workforce, please define the term as used for each segment. If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.

- D. For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, include the department and job group from which the person(s) terminated.
- E. A statement from LOD that confirms and describes how LOD conducted an adverse impact analysis in accordance with the requirements of 41 CFR 60-3.4 and 41 CFR 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 LOD's evaluation of the individual components of the selection process and the actions taken by LOD upon determining that any component of the selection process has an adverse impact.
- F. A statement from LOD that confirms and describes how LOD has implemented a record retention policy and system to preserve personnel and employment records including the tracking of applicants, hires, decisions at each step in the hiring process, and that documents are retained in accordance with the requirements of 41 CFR 60-1.12, 41 CFR 60-3.4 and 41 CFR 60-3.15.
- G. Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, and temporary employees) as of the date of the organizational display or workforce analysis. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-1 Category and job group in a single file. For all employees, compensation includes base salary and or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee. If the requested data is maintained in an electronic format, please provide it electronically.
- H. The following VEVRAA requirements under 41 CFR 60-300, Subpart C:
- i. Documentation that LOD invites applicants and employees to self-identify as a covered protected veteran;
 - ii. Assessment of external outreach and recruitment efforts;
 - iii. Audit and reporting system;
 - iv. Data collection analysis; and
 - v. Hiring benchmark evaluation that measures LOD' progress toward achieving equal employment opportunity for protected veterans.
- I. The following Section 503 requirements under 41 CFR 60-741, Subpart C:

- i. Documentation that LOD invited applicants and employees to self-identify as an individual with a disability using the language and manner prescribed by the Director and published on the OFCCP website;
 - ii. Assessment of external outreach and recruitment efforts;
 - iii. Audit and reporting system;
 - iv. Data collection analysis;
 - v. Utilization analysis; and
 - vi. Annual evaluation to evaluate LOD' utilization of individuals with disabilities in each job group.
3. **Progress Report 2:** LOD will submit items B, C, D, and E, referenced in item 2 listed above in its second progress report.
4. **Recordkeeping:** LOD agrees to retain all records relevant to the violations cited in Section III above. LOD will retain the records until this Agreement expires or for the period required by the regulations, whichever is later.
5. **Close of Monitoring Period and Termination of Agreement:** This Agreement shall remain in effect until the monitoring period is complete. The monitoring period will close once OFCCP accepts LOD's progress reports as set forth in Part IV. If OFCCP fails to notify LOD in writing within sixty (60) calendar days of the date of the progress reports that LOD 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 LOD within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines LOD has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Labor on Demand Inc., located at 851 Culebra Road, San Antonio, TX 78201.

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

Lucinda Leal
President
Labor on Demand Inc.
851 Culebra Road
San Antonio, TX 78201

DATE: March 13, 2022

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

Dinorah S. Boykin
District Director
San Antonio District Office

DATE: _____