

## **CONCILIATION AGREEMENT**

Between

THE U. S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

RECORD STEEL AND CONSTRUCTION, INC.  
333 W. ROSSI STREET, SUITE 200  
BOISE, ID 83706-3806

### **I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated Record Steel and Construction Inc.'s (RSCI) compliance with its equal employment opportunity and affirmative action obligations on all of its federal, federally assisted, and non-federal construction projects located in Clark County, NV within the Las Vegas, NV Standard Metropolitan Statistical Area (SMSA) beginning on March 8, 2022. OFCCP found that RSCI failed to comply with 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), 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 Section(s) 60-1, 60-2, 60-3, 60-4, 60-741 and 60-300.

OFCCP notified RSCI of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on July 26, 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 RSCI enter into this Conciliation Agreement, and the parties agree to all the terms therein.

### **II. General Terms and Conditions**

1. In exchange for RSCI's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if RSCI 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 RSCI'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. RSCI 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 RSCI 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. RSCI 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 RSCI submits the final progress report required in Section IV, below, unless OFCCP notifies RSCI in writing before the expiration date that RSCI 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 RSCI has met all of its obligations under the Agreement.
10. If RSCI violates this Agreement:
  - a. The procedures at 41 CFR 60-1.34, 41 CFR 60-741.63, and 41 CFR 60-300.63 will govern:
    - i. OFCCP will send RSCI a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. RSCI 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 RSCI is unable to demonstrate that it has not violated the Agreement, or if OFCCP's 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 RSCI, 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. RSCI may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-1.27, 41 CFR 60-741.66, or 41 CFR 60-300.66, and/or other appropriate relief for violating this Agreement.

11. RSCI 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:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to conduct an evaluation of the effectiveness of its outreach and recruitment efforts that were intended to identify and recruit qualified individuals with disabilities and protected veterans, and document the results of such evaluation, as described in 41 CFR 60-741.44(f)(3) and 41 CFR 60-300.44(f)(3).

**REMEDY:** RSCI agrees to conduct and document the results of its evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified individuals with disabilities and protected veterans as described in 41 CFR 60-741.44(f)(3) and 41 CFR 60-300.44(f)(3).

2. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to document all the computations or comparisons (Data Collection Analysis) pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years as described in 41 CFR 60-741.44 & 300.44(k)(1) through (5).

**REMEDY:** RSCI agrees to document the computations or comparisons (Data Collection Analysis) as described in 41 CFR 60-741.44 & 300.44(k)(1) through (5) pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years.

3. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to invite applicants and employees to voluntarily self-identify themselves as individuals with a disability and protected veterans, as required by 41 CFR 60-741.42 and 41 CFR 60-300.42. Specifically, RSCI did not use the OMB Control Number 1250-0005 Form CC-305 (Voluntary Self-Identification of Disability Form) published on the OFCCP website to offer applicants and employees the opportunity to voluntarily self-identify themselves as individuals with a disability.

**REMEDY:** RSCI agrees to use the OMB Control Number 1250-0005 Form CC-305 (Voluntary Self-Identification of Disability Form) published on the OFCCP website and invite applicants to voluntarily self-identify themselves as individuals with a disability and protected veterans in the pre-offer and post-offer stages of the employment process, as required by 41 CFR 60-741.42 and 41 CFR 60-300.42. RSCI must also invite current employees to voluntarily self-identify their disability status and at five year intervals, with a reminder of the ability to self-identify in the intervening years, as specified in 41 CFR 60-741.42(c).

4. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to establish and maintain a current list of minority and female recruitment sources, and provide written notification to each of the recruitment sources when RSCI had employment opportunities available, as required by 41 CFR 60-4.3(a)7.b.

**REMEDY:** RSCI agrees to establish and maintain a current list of minority and female recruitment sources and provide written notification to each of the recruitment sources when RSCI has employment opportunities available. RSCI must also agree to maintain records of each organization's response.

5. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving RSCI's recruitment area and employment needs, as required by 41 CFR 60-4.3(a)7.i.

**REMEDY:** RSCI agrees to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving RSCI's recruitment area and employment needs.

6. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to employment needs, especially those programs funded or approved by the Department of Labor, as required by 41 CFR 60-4.3(a)7.e.

**REMEDY:** RSCI agrees to develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to RSCI's employment needs, especially those programs funded or approved by the U.S. Department of Labor.

7. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI did not encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the work force as required by 41 CFR 60-4.3(a)7.j.

**REMEDY:** RSCI agrees to encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the work force.

8. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to include the equal opportunity clause published at 41 CFR 60-1.4(a), 41 CFR 60-741.5(a), and 41 CFR 60-300.5(a) in its nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts.

**REMEDY:** RSCI agrees to include the equal opportunity clause published at 41 CFR 60-1.4(a), 41 CFR 60-741.5(a), and 41 CFR 60-300.5(a), in all of its nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts.

9. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to provide written notice within 10 working days to OFCCP of the award of any construction subcontract in excess of \$10,000 that was made under a covered federal or federally assisted construction contract, as required by 41 CFR 60-4.2(d)3.

**REMEDY:** RSCI agrees to provide written notice within 10 working days to OFCCP of the award of any construction subcontract in excess of \$10,000 that is made under a covered federal or federally assisted construction contract.

10. **VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to conduct a utilization analysis evaluating the representation of individuals with disabilities in each construction trade, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as required in 41 CFR 60-741.45.

**REMEDY:** RSCI agrees to conduct a utilization analysis evaluating the representation of individuals with disabilities in each construction trade, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole.

- 11. VIOLATION:** During the review period of January 1, 2021 through December 31, 2021, RSCI failed to list all employment openings in Clark County, NV with the appropriate state employment service delivery system (ESDS). Specifically, RSCI failed to list job openings with the Nevada Department of Employment, Training and Rehabilitation, as required by 41 CFR 60-300.5(a)2 through 6.

**REMEDY:** RSCI agrees to immediately list all employment opportunities in Clark County, NV with the Nevada Department of Employment, Training and Rehabilitation, except for executive and senior management positions and those positions lasting three days or less.

#### IV. OFCCP Monitoring Period

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

2. **Contractor Reports.**

In order for OFCCP to monitor RSCI's progress toward fulfilling the provisions of this Agreement, it will submit two (2) progress reports. RSCI will submit all progress reports electronically to Compliance Officer (b) (7)(C), (b) (6) at (b) (7)(C), (b) (6)@dol.gov.

RSCI agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified below according to the dates scheduled:

Progress Report	Due Date	Reporting Period Covered
#1	January 31, 2023	August 1, 2022 through December 31, 2022
#2	January 31, 2024	January 1, 2023 through December 31, 2023

- a. Documentation of RSCI's evaluation of each outreach effort intended to identify and recruit individuals with disabilities and protected veterans during the reporting period, including the specific criteria used to evaluate the effectiveness of each effort and RSCI's conclusion as to whether each effort was effective; also, a list of alternative efforts RSCI implemented where outreach and recruitment efforts are deemed not effective.
- b. Documentation of the following computations or comparisons (Data Collection Analysis) pertaining to applicants and hires during the reporting period:

- (1) The number of applicants who self-identified as individuals with disabilities and protected veterans pursuant to 41 CFR 60-741.42 and 41 CFR 300.42, or who are otherwise known to be individuals with disabilities and protected veterans;
  - (2) The total number of job openings and total number of jobs filled;
  - (3) The total number of applicants for all jobs;
  - (4) The number of applicants with disabilities and protected veterans hired; and
  - (5) The total number of applicants hired.
- c. Evidence RSCI used the OMB Control Number 1250-0005 Form CC-305 (Voluntary Self-Identification of Disability Form) published on the OFCCP website to invite applicants to voluntarily self-identify themselves as individuals with a disability in the pre-offer and post-offer stages of the employment process, during the reporting period.
- d. Evidence RSCI invited applicants to voluntarily self-identify themselves as protected veterans in the pre-offer and post-offer stages of the employment process, during the reporting period.
- e. Evidence RSCI invited current employees to voluntarily self-identify their disability status, during the reporting period. Also provide a timeline as to when current employees will be given the opportunity to voluntarily self-identify their disability status every five years after the initial invitation, with a written reminder of the ability to self-identify in the intervening years.
- f. Copies of self-identification forms that were submitted by all applicants and Internet Applicants as defined in 41 CFR 60-1.3 during the reporting period.
- g. Evidence RSCI established and maintained a current list of minority and female recruitment sources and provided written notification to each of the recruitment sources when employment opportunities were available during the reporting period. Also, evidence that RSCI maintained records of each organization's response.
- h. Evidence RSCI directed its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving RSCI's recruitment area and employment needs, during the reporting period.
- i. Evidence RSCI developed on-the-job training opportunities and/or participated in training programs for the local area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to RSCI's employment needs, especially those programs funded or approved by the U.S. Department of Labor, during the reporting period.
- j. Evidence RSCI encouraged present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and

vacation employment to minority and female youth both on the site and in other areas of the workforce, during the reporting period.

- k. Evidence RSCI included the equal opportunity clause published at 41 CFR 60-1.4(a), 41 CFR 60-741.5(a), and 41 CFR 60-300.5(a) in all of its nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts, during the reporting period.
- l. Documentation (i.e., dates of faxes, dates of mailings, email correspondence, etc.) of RSCI's notification to OFCCP of subcontracts in excess of \$10,000 within 10 days of award, during the reporting period.
- m. Evidence RSCI conducted a utilization analysis evaluating the representation of individuals with disabilities in each construction trade, or if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, during the reporting period.
- n. Documentation (i.e., job listings, job announcements, job orders, etc.) demonstrating that RSCI listed all employment opportunities in Clark County, NV with the Nevada Department of Employment, Training and Rehabilitation, except for executive and senior management positions and those positions lasting three days or less.

RSCI 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 RSCI provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and RSCI believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, RSCI will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify RSCI of the FOA request and provide RSCI 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 RSCI's final progress report (#2), as set forth in Part II, Paragraph 9 above. If OFCCP fails to notify RSCI in writing within sixty (60) days of the date of the final progress report that RSCI 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 RSCI within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines RSCI has met all of its obligations under the Agreement.

## V. SIGNATURES

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

This Agreement is hereby executed by and between the U.S. Department of Labor, Office of Federal Contract Compliance Programs and Record Steel and Construction, Inc., 333 W. Rossi Street, Suite 200, Boise, Idaho 83706-3806.

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

MIKE JOHNSON  
Chief Executive Officer  
Record Steel and Construction, Inc.

DATE: 8/10/22

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

MARVIN R. JORDAN  
Director  
OFCCP Phoenix District and Las Vegas Field Offices  
Pacific Region

DATE:

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

LENNON K. BADGETTE  
Compliance Officer  
OFCCP Las Vegas Field Office  
Pacific Region

DATE: 8/10/22