

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
Excelsior Defense, Incorporated

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Excelsior Defense Inc. (Excelsior), located at 2600 5th Ave N St. Petersburg, FL 33713, beginning on October 08, 2020. OFCCP found that Excelsior failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order).

OFCCP notified Excelsior of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on July 18, 2022.

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 Excelsior 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 Excelsior'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 and SCN. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Contractor 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 Excelsior'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. Excelsior 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 Excelsior 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. Excelsior 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 Orlando 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 Excelsior submits its final progress report required in Section IV, below, unless OFCCP notifies Excelsior in writing before the expiration date that Excelsior 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 Excelsior has met all of its obligations under the Agreement.
10. If Excelsior violates this Agreement:
 - a. The procedures at: 41 C.F.R. 60-1.34, 41 C.F.R. 60-300.63, and/or 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send Excelsior a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The Excelsior 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 Excelsior 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 Excelsior, 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. Excelsior may be subject to the sanctions set forth in: Section 209 of the Executive Order, 41 C.F.R. 60-1.27 and/or other appropriate relief for violating this Agreement.
11. Excelsior 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 period October 01, 2019, through September 30, 2020, Excelsior Defense Inc. failed to evaluate, by gender, race or ethnic group, the individual components of its selection process for adverse impact for each job that had adverse impact in the total selection process, in violation of 41 CFR 60-3.4B.

CORRECTIVE ACTION: Excelsior Defense Inc. will collect, maintain, and have available for inspection records or other information that discloses the impact its tests and other selection procedures has on employment opportunities of persons by identifiable race, sex, or ethnic group. When the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact.

2. **VIOLATION:** During the period October 01, 2019, through September 30, 2020, Excelsior Defense Inc. failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exists, as required by 41 CFR 60-2.17(b). Specifically, Excelsior Defense, Inc. did not

accurately perform analyses to determine if adverse impact in its personnel activities exist.

CORRECTIVE ACTION: Excelsior Defense, Inc. will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by 41 CFR 60-2.17(b). Specifically, Excelsior Defense, Inc. will perform an in-depth analysis to determine, when applicable, the cause of any adverse impact in its future personnel activities and make adjustments when necessary in accordance with 41 CFR 60.3.4(c).

3. **VIOLATION:** During the period October 01, 2019 through September 30, 2020, Excelsior Defense Inc. failed to maintain and have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

CORRECTIVE ACTION: Excelsior Defense, Inc. will maintain and have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

4. **VIOLATION:** During the period October 01, 2019 through September 30, 2020, Excelsior Defense, Inc. failed to develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Excelsior Defense, Inc. failed to address known problem areas in its total employment process by failing to account for known HRIS deficiencies such as applicant data retrieval by job group.

CORRECTIVE ACTION: Excelsior Defense Inc. will develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Excelsior Defense, Inc. will analyze and account for known deficiencies such as failure of the HRIS to retrieve for the required period and maintain accurate applicant data retrieval by job group to produce an accurate applicant flow log.

IV. OFCCP Monitoring Period

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

Contractor Reports.

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

Progress Report 1 will be due on November 30, 2023, and will cover the period from October 1, 2022, through September 30, 2023, consistent with EXCELSIOR's Affirmative Action Plan year.

Progress Report 2 will be due on November 30, 2024, and will cover the period from October 1, 2023, through September 30, 2024, consistent with EXCELSIOR's Affirmative Action Plan year.

Progress Reports 1 and 2 will include the following:

- a. Electronic documentation in MS Excel format, listing all expressions of interest in employment through the Internet to positions at the establishment under review during the applicable progress reporting period. This list will include the following information:
 - i. Name;
 - ii. Race;
 - iii. Gender;
 - iv. Date of application;
 - v. Job title applied to;
 - vi. Job group applied to;
 - vii. Date of interview (if applicable);
 - viii. Job title interviewed for (if applicable);
 - ix. Date of job offer (if applicable);
 - x. Job title of job offer for (if applicable);

- xi. Date of hire (if applicable);
 - xii. Job title hired into (if applicable);
 - xiii. Disposition (hired, or the specific reason not selected);
 - xiv. Whether or not the applicant was an existing employee;
 - xv. Whether or not the company considers the individual to be an applicant according to OFCCP's Internet Applicant rule;
 - xvi. The specific reason the company does not consider the individual to be an applicant, (if applicable);
- b. Narrative description of the steps taken by the company to ensure and monitor the accuracy of the company's hires and applicant tracking system.
 - c. Copy of the company's Executive Order 11246 Affirmative Action Program's (AAP) identification of problem areas and internal audit and reporting system narrative for the current AAP as of the progress report due date.

Excelsior will submit reports to District Director Miguel A. Rivera Jr., at (b) (6), (b) (7)(C)@dol.gov. Excelsior 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 Excelsior provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and Excelsior believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Excelsior will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify Excelsior of the FOIA request and provide Excelsior an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

- 2. **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 Excelsior's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Excelsior in writing within sixty (60) days of the date of the final progress report that Excelsior 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 Excelsior within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Excelsior has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Excelsior Defense, Inc. St. Petersburg, FL, 2600 5th Ave N St. Petersburg, FL 33713.

<div data-bbox="186 672 771 829">(b) (6), (b) (7)(C)</div> <div data-bbox="186 829 633 1060">Christopher Halverson Owner Excelsior Defense, Inc. St. Petersburg, FL DATE: _____</div>	<div data-bbox="812 661 1347 829">(b) (6), (b) (7)(C)</div> <div data-bbox="812 829 1258 1018">Miguel A. Rivera Jr. District Director Southeast Region DATE: <u>08/23/2022</u></div>
<div data-bbox="178 1186 706 1270">(b) (6), (b) (7)(C)</div> <div data-bbox="186 1270 633 1459">Jacqueline Ortiz-Baerga Assistant District Director Southeast Region DATE: <u>08/19/2022</u></div>	<div data-bbox="779 1155 1250 1302">(b) (6), (b) (7)(C)</div> <div data-bbox="812 1302 1258 1459">Compliance Officer Southeast Region DATE: <u>08/19/2022</u></div>