

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
Bob Bergkamp Construction Co., Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the compliance of Bob Bergkamp Construction Co., Inc. (Bergkamp), in the Wichita, KS Non-Standard Metropolitan Statistical Area (Non-SMSA), from March 8, 2021 to March 7, 2022. OFCCP found that Bergkamp failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and the implementing regulations at Title 41 of the Code of Federal Regulations (C.F.R.) Part 60.4.

OFCCP notified Bergkamp of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on November 23, 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 Bergkamp 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 Bergkamp'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 violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Bergkamp 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 Bergkamp'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. Bergkamp 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 Bergkamp 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. Bergkamp 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 Bergkamp submits its final progress report required in Section IV, below, unless OFCCP notifies Bergkamp in writing before the expiration date that Bergkamp 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 Bergkamp has met all of its obligations under the Agreement.
10. If Contractor violates this Agreement:
 - a. The procedures at 41 C.F.R. § 60-1.34 will govern:
 - i. OFCCP will send Bergkamp a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The Bergkamp 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 Bergkamp 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 Bergkamp, 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. Bergkamp 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. Bergkamp 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 March 8, 2021 through March 7, 2022, Bob Bergkamp failed to maintain and/or have available records showing the gender, race, and ethnicity of each applicant or Internet Applicant as required by 41 CFR 60-1.12(c).

CORRECTIVE ACTION: Bergkamp agrees to identify the gender, race and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3 in personnel or employment records they maintain as required by 41 CFR 60-1.12(c).

2. **VIOLATION:** During the period March 8, 2021 through March 7, 2022, Bob Bergkamp failed to establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when Bergkamp had employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a)7.b.

REMEDY: Bergkamp agrees to establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female

recruitment sources and to community organizations when Bergkamp has employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a)7.b.

To assist Bergkamp for this part, OFCCP has identified the following outreach sources. Please note this list is not all inclusive and Bergkamp must attempt to develop additional sources:

Crissy Ingram, CAE, Executive Director, ext. 101 crissy@nawic.org

The National Association of Women in Construction – Greater Wichita, KS – # 120
nawiewichita@gmail.com – PO Box 48793, Wichita, KS 67201

The National Association of Women in Construction – NE Kansas – # 142
neksnawic@gmail.com Phone: 817-877-2221 | 800-552-3506

3. **VIOLATION:** During the period March 8, 2021 through March 7, 2022, Bergkamp failed to maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union or recruitment source or community organization and of what action was taken concerning each individual, as required by 41 CFR 60-4.3(a)7.c.

REMEDY: Bergkamp agrees to maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union or recruitment source or community organization and of what action was taken concerning each individual, as required by 41 CFR 60-4.3(a)7.c.

4. **VIOLATION:** During the period March 8, 2021 through March 7, 2022, Bergkamp failed to conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities as required by CFR 41 60-4.3(a)7l.

REMEDY: Bergkamp agrees to conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities for promotion.

5. **VIOLATION:** During the period March 8, 2021 through March 7, 2022, Bergkamp failed to ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out as required by CFR 41 60-4.3(a)7m.

REMEDY: Bergkamp agrees to ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

IV. OFCCP Monitoring Period

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

Bergkamp 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: Due on June 15, 2023, covering the period of Effective Date through May 31, 2023.
- b. Progress Report 2: Due on December 15, 2023, covering the period of June 1, 2023 through November 30, 2023.

Both reports shall contain the following information:

- i. Copies of self-identification forms for all applicants and Internet Applicants during the reporting period.
- ii. Documentation showing the current list of minority and female recruitment sources, providing dates and nature of communication to said organization, including the resources identified by OFCCP and additional sources developed by Bergkamp. Also, provide a list of employment opportunities available, and maintain a record of the organizations' responses.
- iii. Documentation showing that Bergkamp maintained a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a recruitment source or community organization and of what action was taken concerning each individual. This will include the methodology by which Bergkamp affords applicants the opportunity to self-identify their race and gender.

- iv. Documentation at the pre-offer stage, and the number of applicants and hires by race and gender to trade positions during the reporting period.
- v. Documentation that shows Bergkamp conducted, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities for promotion.
- vi. Documentation that shows Bergkamp's methodology by which they ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

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

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Bob Bergkamp Construction Company, 3709 S. West Street, Wichita, KS 67217.

(b) (6), (b) (7)(C)
[Redacted Signature]

CHRIS SNOOK
Chief Executive Officer
Bob Bergkamp Construction
Wichita, Kansas

DATE: 11/30/22

(b) (6), (b) (7)(C)
[Redacted Signature]

DAVID SMITH
District Director
OFCCP Indianapolis District

DATE: 12/01/2022