

**CONCILIATION AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS
AND
FH CANN & ASSOCIATES, INC.
1600 OSGOOD STREET, SUITE 2
NORTH ANDOVER, MA 01845
R00303424**

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated FH Cann & Associates, Inc. (Contractor) establishment located at 1600 Osgood Street Suite #2, North Andover, MA 01845, beginning on March 31, 2021. OFCCP found that Contractor failed to comply with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations.

OFCCP notified Contractor of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on December 6, 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 Contractor 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 Contractor'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 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 Contractor'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. Contractor 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 Contractor 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. Contractor 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 Contractor submits its final progress report required in Section IV, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor 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 Contractor has met all of its obligations under the Agreement.
10. If Contractor violates this Agreement:
 - a. The procedures at 60-300.63 will govern:
 - i. OFCCP will send Contractor a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. The Contractor 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 Contractor 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 Contractor, 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. Contractor may be subject to the sanctions set forth in 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. Contractor does not admit any violation of 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 of January 1, 2020 through June 7, 2021, Contractor failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 CFR 60-300.5(a)2-6. Specifically, Contractor did not post all of their employment openings and only posted one (1) of its job openings, during the above period, with with the appropriate employment service delivery system (ESDS) in the manner prescribed under 41 CFR 60-300.5(a) 2-6.

REMEDY: Contractor will 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 allows the ESDS to provide priority referrals of protected veterans as required by 41 CFR 60-300.5(a) 2-6. With its initial listing, and as subsequently needed to update the information, Contractor will also advise the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official

responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Contractor will provide updated information simultaneously with its next job listing.

2. **VIOLATION**: During the period of January 1, 2020 through December 31, 2020, Contractor failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified veterans, in violation of 41 CFR 60-300.44(f)(1)(i). Specifically, Contractor's AAP Self-Audit shows that documentation of outreach efforts was scheduled to begin in 2021. On April 7, 2022, Contractor provided documentation to show that it began its outreach efforts in 2021.

REMEDY: Contractor will continue to undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans, such as those described at 41 CFR 60-300.44(f)(2). Examples of types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Using the State Vocational Rehabilitation Service Agency- Veteran Readiness and Employment (VR&E) in the area of the contractor's establishment;
- Participating with the Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;
- Working with the local veteran groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;
- Contacting the placement or career offices of educational institutions that specialize in the placement of protected veterans;
- Participating in job fairs targeting qualified Protected Veterans; and
- Using local protected veteran service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on protected veterans to recruit qualified temporary and permanent job candidates.

Additional examples are in the text of the regulations. Reporting is required.

3. **VIOLATION:** During the period January 1, 2020 through December 31, 2020, Contractor failed to annually review the effectiveness of the outreach and recruitment efforts taken over the previous twelve months to identify and recruit qualified protected veterans, as required by 41 CFR 60-300.44(f)(3). Specifically, Contractor failed to conduct and document this review, including at a minimum the criteria used to evaluate the effectiveness of each outreach and recruitment effort and the conclusion as to whether each effort was effective. On April 7, 2022, Contractor provided documentation to show that it conducted an outreach assessment as required under 41 CFR 60-300.44(f)(3).

REMEDY: Contractor will continue to annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). If Contractor concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2). Reporting is required.

4. **VIOLATION:** During the period of January 1, 2020 through December 31, 2020, Contractor failed to establish a benchmark in order to measure its progress toward achieving equal opportunity for protected veterans as required by 41 CFR 60-300.45. Specifically, Contractor stated on its AAP that it would implement a hiring benchmark starting in 2021. However, as of the date the AAP was submitted on May 26, 2021, this had not been implemented. On April 7, 2022, Contractor provided documentation to show that it documented its hiring benchmark for the 2022 AAP year.

REMEDY: Contractor will continue to set a hiring benchmark on an annual basis. Benchmarks will be set using one of the following two mechanisms: establish a benchmark equaling the national percentage of veterans in the civilian labor force, which will be published and updated annually on the OFCCP Web site; or establish a benchmark by taking into account: The average percentage of veterans in the civilian labor force in the State(s) where the contractor is located over the preceding three years, as calculated by the Bureau of Labor Statistics and published on the OFCCP Web site; the number of veterans, over the previous four quarters, who were participants in the employment service delivery system in the State where the contractor is located, as tabulated by the Veterans' Employment and Training Service and published on the OFCCP Web site; the applicant ratio and hiring ratio for the previous year, based on the data collected pursuant to § 60-300.44(k); the contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as set forth in § 60-300.44(f)(3); and any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans.

Contractor will continue to document the hiring benchmark it has established each year. If Contractor sets its benchmark using the procedure in 41 CFR 60-300.45(b)(2), it will continue to document each of the factors that it considered in establishing the hiring benchmark and the relative significance of each of these factors. The contractor will continue to retain these records for a period of three (3) years. Reporting is required.

5. **VIOLATION:** During the period of January 1, 2020 through December 31, 2020, Contractor failed to implement an effective audit and reporting system which measured the effectiveness of its affirmative action program, indicated the need for remedial action, determined the degree to which its objectives have been attained and measured its compliance with the affirmative action program's specific obligations. Contractor's audit and reporting system failed to recognize its failure to implement and document effective outreach and recruitment for qualified veterans as noted on violation 2.

REMEDY: Contractor will design and implement an audit and reporting system which measure the effectiveness of its affirmative action program, indicates the need for remedial action, determines the degree to which its objectives have been attained and measures its compliance with the affirmative action program's specific obligations. Contractor will document the actions it takes to comply with these audit and reporting obligations, and will undertake any necessary action to bring the program into compliance where the affirmative action program is found to be deficient. Contractor will preserve all documentation it makes or keeps in either electronic or hard copy format to audit the progress of its AAPs. Contractor will incorporate these analyses and determinations into its now-current AAPs. Contractor will update this audit and reporting system annually and incorporate them into Contractor's future AAPs. 41 CFR 60-300.44 (h) (1) and (2).

6. **VIOLATION:** Contractor failed to document and maintain the required data pertaining to applicants and hires, in violation of 41 CFR 60-300.44(k). Specifically, Contractor provided data collection for 2020 but failed to document data collection for a period of three years, as required by 60-300.44(k).

REMEDY: Contractor will document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years, as required by 60-300.44(k): The number of applicants who self-identified as protected veterans pursuant to § 60-300.42(a), or who are otherwise known as protected veterans; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; The number of protected veteran applicants hired; and the total number of applicants hired, as required by 41 CFR 60-300.44(k).

IV. OFCCP Monitoring Period

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

2. **Contractor Reports.**

a) **Schedule and Instructions.** Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Contractor will submit two (2) progress reports. The first progress report shall be due August 30, 2023, and will cover the period of January 1, 2023, through June 30, 2023. The second progress report shall be due February 28, 2024, and will cover the period of July 1, 2023, through December 31, 2023.

The *first report* shall consist of the following:

- a) Provide documentation of listing all employment openings with either state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred. (Violation 1)
- b) A description and documentation of each outreach and recruitment targeted to recruit protected veterans taken by contractor during the reporting period. This may include a variety of activities and efforts, such as participation in job fairs, recruitment efforts in coordination with educational institutions, apprenticeships, and providing identified sources serving protected veterans with job announcements. (Violation 2)

The *second report* shall consist of the following:

- a) Provide documentation of listing all employment openings with either state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred. (Violation 1)
- b) A description and documentation of each outreach and recruitment targeted to recruit protected veterans taken by contractor during the reporting period. This may include a variety of activities and efforts, such as participation in job fairs, recruitment efforts in coordination with educational institutions, apprenticeships, and providing identified sources serving protected veterans with job announcements. (Violation 2)
- c) Provide the assessment of each outreach and recruitment activity, the criteria used to assess each activity and Contractor's assessment of the totality of all its activities.

If Contractor concludes that the totality of its efforts was not effective in identifying and recruiting veterans, it shall identify and report what alternative efforts were made. (Violation 3)

- d) A copy of Contractor's VEVRAA hiring benchmark for the current AAP, including a description of the methodology used to establish the hiring benchmark. (Violation 4)
- e) A copy of Contractor's current year Audit and Reporting section from its VEVRAA AAP developed pursuant to 41 CFR 60-300.44(h)(1) and (2). (Violation 5)
- f) Provide evidence that contractor is complying with the data collection analysis element described in 41 CFR 60-300.44(k) in its VEVRAA AAP:
 - 1. The number of applicants who self-identified as protected veterans, or who are otherwise known to be 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 protected veteran applicants hired.
 - 5. The total number of applicants hired. (Violation 6)

Contractor will submit reports to District Director Rhonda Aubin-Smith via e-mail at (b) (6), (b) (7)(C)@dol.gov.

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

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and FH Cann & Associates, Inc. 1600 Osgood Street, Suite #2, North Andover, MA 01845.

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

Sheri Cann
President
FH Cann & Associates, Inc.

DATE: 1/11/2023

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

Adriana Lopez
Assistant District Director
Boston District Office
Northeast Region

DATE: 1/17/2023

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

Rhonda Aubin-Smith
District Director
Boston District Office
Northeast Region

DATE: 1/18/2023