

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

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the compliance of Ames Construction, Inc. (Contractor) federal, federally assisted, and non-federal construction projects located in the Salina, KS Non-Standard Metropolitan Statistical Area (Non-SMSA beginning on July 15, 2021 through July 14, 2022). OFCCP found that Contractor failed to comply with Executive Order 11246, as amended, (E.O. 11246), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §793 (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. §4212 (VEVRAA) and their respective implementing regulations at 41 C.F.R. Chapter 60.

OFCCP notified Contractor of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on January 19, 2023.

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 violation(s) 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 41 C.F.R. 60-1.34, 41 C.F.R. 60-300.63, and 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send Contractor a written notice stating the alleged violation(s) 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 Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. Contractor 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 July 15, 2021 through July 14, 2022, Contractor 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 CFR § 60-4.2(d)3.

REMEDY: Contractor agrees to provide 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. Contractor will provide notification via the Notification of Construction Contract Award Portal (NCAP) at <https://www.dol.gov/agencies/ofccp/ncap>.

2. **VIOLATION:** During the period of July 15, 2021 through July 14, 2022, Contractor 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 the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses in accordance with CFR § 60-4.3(a)7.b.

REMEDY: Contractor 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 the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses in accordance with CFR § 60-4.3(a)7.b.

3. **VIOLATION:** During the period of July 15, 2021 through July 14, 2022, Ames Construction failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR § 60-300.44(f).

REMEDY: Contractor agrees to undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR § 60-300.44(f).

4. **VIOLATION:** During the review period of July 15, 2021 through July 14, 2022, Ames Construction failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR § 60-741.44(f).

REMEDY: Contractor will undertake appropriate outreach and positive recruitment activities designed to recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR § 60-741.44(f).

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.**

Ames Construction Inc 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 August 15, 2023, covering the period of the effective date through July 31, 2023.
- b. Progress Report 2: Due on January 15, 2024, covering the period of August 1, 2023 through December 31, 2023.

Both reports shall contain the following information:

- i. For Violation 1: Contractor will submit a copy of each notification to OFCCP of each award of any construction subcontracts in excess of \$10,000 that were made under a covered federal or federally assisted construction contract during the reporting period.
- ii. For Violation 2: Contractor will submit a copy of the current list of minority and female recruitment sources, a copy of each written notification to minority and female recruitments sources and to community organizations, and a copy of the record of each organizations' responses when the Contractor or its unions have employment opportunities during the reporting period.

Contractor will also submit a report listing the number of female and minority referrals from any of the minority and female recruitments sources and community organizations and the number of female and minority hires from any of these sources.

- iii. For Violation 3: Contractor will submit documentation that demonstrates it undertook appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans in accordance with 41 CFR § 60-300.44(f).

The report will include the contractor's written assessment on their outreach and recruitment activities, in accordance with 41 CFR § 60-300.44(f)(3).

- iv. For Violation 4: Contractor will submit documentation that demonstrates that it undertook appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities as described in 41 CFR § 60-741.44(f).

The report will include the contractor's written assessment on their outreach and recruitment activities, in accordance with 41 CFR § 60-741.44(f)(3).

Contractor will submit reports to (b) (7)(C), (b) (7)(E)@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 Ames Construction, Inc., 2000 Ames Drive, Burnsville, MN 55337.

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

TRENT IRICK
Vice President Rocky Mountain
Ames Construction, Inc.
2500 County Road 42 W
Burnsville, MN 55331

DATE: 2/6/2023

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

DAVID SMITH
District Director
OFCCP Indianapolis District

DATE: 2/06/2023