

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
S M Hentges & Sons Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the S M Hentges & Sons Inc. (Contractor) establishment located at 650 Quaker Avenue, Jordan, MN 55352, beginning on April 27, 2022. OFCCP found that Contractor 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), 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 Code of Federal Regulations (CFR) Chapter 60.

OFCCP notified Contractor of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on May 25, 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 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 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 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 1:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to post the location and hours during which its VEVRAA AAP could be obtained, as required by 41 CFR 60-300.41.

Remedy 1: S M Hentges & Sons Inc will make available its VEVRAA AAP, absent the data metrics required by 41 CFR 60-300.44(k), to all employees and/or applicants for employment for inspection upon request; and post the location and hours during which the AAP can be obtained, as required by 41 CFR 60-300.41.

- 2. **Violation 2:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to post the location and hours during which its Section 503 AAP could be obtained, as required by 41 CFR 60-741.41.

Remedy 2: S M Hentges & Sons Inc will make available its Section 503 AAP, absent the data metrics required by 41 CFR 60-741.44(k), to all employees and/or applicants for employment for inspection upon request; and post the location and hours during which the AAP can be obtained, as required by 41 CFR 60-741.41.

3. **Violation 3:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to invite its employees to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60-741.42(e). Specifically, the contractor failed to use approved form.

Remedy 3: S M Hentges & Sons Inc will immediately invite its employees to voluntarily inform it whether the employee believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60-741.2(g)(1)(i) or (ii). All invitations to self-identify will be made using the OMB-approved form for this purpose (available on the OFCCP website). In addition, S M Hentges & Sons Inc shall extend this invitation again at five-year intervals, thereafter. At least once during each interval, S M Hentges & Sons Inc shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. S M Hentges & Sons Inc will keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

4. **Violation 4:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified protected veterans, as required by 41 CFR 60-300.44(f)(3).

Remedy 4: S M Hentges & Sons Inc will 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 S M Hentges & Sons Inc concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it will identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2).

5. **Violation 5:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified individuals with disabilities as required by 41 CFR 60-741.44(f)(3).

Remedy 5: S M Hentges & Sons Inc will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). If S M Hentges & Sons Inc concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it will identify and implement alternative efforts listed in 41 CFR 60-741.44(f)(1) or (f)(2).

6. **Violation 6:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc 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.

Remedy 6: S M Hentges & Sons Inc 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 will allow the ESDS to provide priority referrals of protected veterans to S M Hentges & Sons Inc, as required by 41 CFR 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, S M Hentges & Sons Inc 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, S M Hentges & Sons Inc will provide updated information simultaneously with its next job listing.

7. **Violation 7:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to include the equal opportunity clause for Section 503 in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-741.5(a)-(d).

Remedy 7: S M Hentges & Sons Inc will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-741.5(a)-(d). If S M Hentges & Sons Inc incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it will incorporate the clause in the manner prescribed by 41 CFR 60-741.5(d).

8. **Violation 8:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to include the equal opportunity clause for VEVRAA in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-300.5(a)-(d).

Remedy 8: S M Hentges & Sons Inc will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-300.5(a)-(d). If S M Hentges & Sons Inc incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it will incorporate the clause in the manner prescribed by 41 CFR 60-300.5(d).

9. **Violation 9:** During the period April 27, 2021 through April 26, 2023, S M Hentges & Sons Inc failed to provide written notification to OFCCP within 10 working days of 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 9: S M Hentges & Sons Inc will provide written notification to OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 that is made under a covered federal or federally assisted construction contract, as required by 41 CFR 60-4.2(d)3. The notification will list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

IV. OFCCP Monitoring Period

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

Contractor agrees to furnish OFCCP with the following report during the Monitoring Period: Due on August 1, 2024, covering the period of June 1, 2023 through May 31, 2024. This report will contain the following documentation:

- a. Evidence that Contractor posted the location and hours during which applicants and employees can obtain and inspect the Section 503 and VEVRAA AAPs;
- b. Evidence that Contractor invited its applicants and employees to voluntarily self-identify as an individual with a disability, using the OMB-approved form;
- c. Evidence that Contractor annually reviewed its outreach and recruitment activities and assessed their effectiveness in identifying and recruiting qualified protected veterans. If S M Hentges & Sons Inc concluded that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, evidence that it identified and implemented alternative efforts;
- d. Evidence that Contractor annually reviewed its outreach and recruitment activities and assessed their effectiveness in identifying and recruiting qualified individuals with disabilities. If S M Hentges & Sons Inc concluded that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, evidence that it identified and implemented alternative efforts;

- e. Copies of all employment openings listed with an appropriate employment service delivery system (ESDS) - a state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred - in a manner and format that allows the ESDS to provide priority referrals of protected veterans to Contractor;
- f. Evidence that Contractor advised the ESDS that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provided the ESDS 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;
- g. Evidence that Contractor included the equal opportunity clauses for Section 503 and VEVRAA in its subcontracts and/or purchase orders, either directly or by reference;
- h. Evidence that Contractor provided written notification to OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 that was made under a covered federal or federally assisted construction contract.

Contractor will submit reports to Compliance Officer (b) (6), (b) (7)(C) 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 S M Hentges & Sons Inc., 650 Quaker Avenue, Jordan, MN 55352.

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

Steve Hentges
Chief Executive Officer
S M Hentges & Sons Inc.
Jordan, Minnesota

DATE: 06.14.2023

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

Margaret Drnak
District Director
Midwest Region

DATE: 06-23-2023

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

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

Compliance Officer
Midwest Region

DATE: _____