

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
EXB Solutions, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the EXB Solutions, Inc. (Contractor) establishment located at 12755 Highway 55, Suite J210, Plymouth, Minnesota 55441, beginning on February 24, 2023. 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 C.F.R. § 60-1.12(c); 41 C.F.R. § 60-300.42; 41 C.F.R. § 60-300.5(a)(2) – (6); and 41 C.F.R. § 60-741.42.

OFCCP notified Contractor of the specific violations and the corrective actions required in a Notice of Violation issued on May 11, 2023.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable 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.

The attachments to this Agreement are deemed incorporated into this Agreement.

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 11, 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 it 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 and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. 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.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, 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.
8. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Contractor submits its final progress report required in Section VIII, 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.
11. If Contractor violates this Agreement:
 - a. The procedures at 41 C.F.R. § 60-1.34; 41 C.F.R. § 60-300. 63 (2014) and/or 41 C.F.R. § 60-741.63 (2014) 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's 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 agreed to 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 (2014), 41 C.F.R. § 60-300.66 (2014), and/or other appropriate relief for violating this Agreement.
- 12. Contractor neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
- 13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 14. 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.
- 15. Each party shall bear its own fees and expenses with respect to this matter.
- 16. 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.
- 17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, 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 January 1, 2022 through December 31, 2022, Contractor failed to maintain and/or 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 C.F.R. § 60-1.3, as required by 41 C.F.R. § 60-1.12(c).

REMEDY: Contractor shall maintain and/or 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 C.F.R. § 60-1.3, as required by 41 C.F.R. § 60-1.12(c).

- 2. **VIOLATION:** During the period January 1, 2022 through December 31, 2022, 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.

REMEDY: Contractor shall 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 Contractor, as required by 41 C.F.R. § 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, Contractor shall also advise 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 provide 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, in accordance with 41 C.F.R. § 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Contractor shall provide updated information simultaneously with its next job listing.

3. **VIOLATION:** During the period January 1, 2022 through December 31, 2022, Contractor failed to invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA in violation of 41 C.F.R. § 60-300.42.

REMEDY: Contractor shall invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA, as required by 41 C.F.R. § 60-300.42. Specifically, Contractor shall invite applicants for employment, prior to an offer of employment, to voluntarily identify as a protected veteran. Additionally, Contractor shall invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he or she is a protected veteran. Contractor may invite the applicant to also indicate if he or she belongs to one or more of the specific categories of protected veterans, as defined by 41 C.F.R. § 60-300.2(q). All invitations to self-identify as a protected veteran must comply with the requirements of 41 C.F.R. § 60-300.42(c). Contractor shall 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 C.F.R. § 60-300.42(e).

4. **VIOLATION:** During the period January 1, 2022 through December 31, 2022, Contractor failed to invite its employees and applicants for employment to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 C.F.R. § 60-741.42. Specifically, Contractor failed to conduct the initial survey of its employees; failed to invite self-identification pre-offer; failed to

invite self-identification post-offer; and failed to use the OMB-approved form.

REMEDY: Contractor shall invite both its applicants for employment, and its employees, to voluntarily self-identify as an individual with a disability, in accordance with 41 C.F.R. § 60-741.42. All invitations to self-identify must be made using the OMB-approved form for this purpose, which is available on the OFCCP website. More specifically, Contractor shall invite each of its applicants for employment, prior to an offer of employment, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 C.F.R. § 60-741.2(g)(1)(i) or (ii). Contractor shall also invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability. In addition, during the first year it is subject to this requirement, Contractor shall invite each of its employees to voluntarily self-identify as an individual with a disability, and then extend this invitation again at five year intervals, thereafter. At least once during each interval, Contractor shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. Contractor shall 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 C.F.R. § 60-741.42(e).

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.**
 - a. **Schedule and Instructions.** Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:
 - i. **Progress Report 1:** Due on August 1, 2024, covering the period of July 1, 2023, through June 30, 2024.
 - ii. **Progress Report 2:** Due on August 1, 2025, covering the period of July 1, 2024, through June 30, 2025.
 - b. **Submission:** Contractor agrees to submit the two (2) reports to OFCCP Compliance Officer (b) (6), (b) (7)(C), located at 920 2nd Avenue South, Suite 575, Minneapolis,

Minnesota 55402; e-mail: (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 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 treat any such documents received as confidential documents. Each report shall contain the following:

1. A screenshot or copy of the invitation to self-identify the race and gender of each job applicant as required by 41 C.F.R. § 60-1.12(c).
2. Information on your EO 11246 affirmative action goals for the 12-month reporting period including information that reflects:
 - a. Job group representation at the start of the 12-month reporting period (i.e., total incumbents, total minority incumbents, and total female incumbents);
 - b. The placement goals established for minorities and women at the start of the 12-month reporting period; and
 - c. The actual number of placements (hires plus promotions) made during the 12-month reporting period into each job group with goals (i.e., total placements, total minority placements, and total female placements).
3. Data on your employment activity (applicants, hires, promotions, and terminations) for the 12-month reporting period. Provide the information in (a) through (d) below by job group (as defined in your AAP) or by job title:
 - a. Applicants: For each job group or job title, this analysis must consist of the total number of applicants identified by gender and by race/ethnicity. For each job group or job title, applicants for whom race and/or gender is not known should be included in the data submitted. However, if some of your job groups or job titles (most commonly, entry-level) are filled from the same applicant pool, you may consolidate your applicant data for those job groups or titles. For example, where applicants expressly apply for or would qualify for a broad spectrum of jobs (such as “Production,” “Office,” etc.) that includes several job groups, you may consolidate applicant data.
 - b. Hires: For each job group or job title, this analysis must consist of the total number of hires identified by gender and race/ethnicity.
 - c. Promotions: For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of “promotion” as used by your company and the basis on which they were compiled (e.g. promotions to the job group, from and/or within the job group,

etc.). If it varies for different segments of your workforce, please define the term as used for each segment. If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.

- d. Terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, include the department and job group from which the person(s) terminated.
4. Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, and temporary employees) at the end of the reporting period. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-1 Category and job group in a single file. If the requested data is maintained in an electronic format, please provide it electronically:
 - a. For all employees, compensation includes base salary and or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee.
 - b. You may provide any additional data on factors used to determine employee compensation, such as education, past experience, duty location, performance ratings, department or function, and salary level/band/range/grade.
 - c. Documentation and policies related to compensation practices of the contractor should also be included in the submission, particularly those that explain the factors and reasoning used to determine compensation.
 5. A screenshot or copy of the invitation to self-identify as a protected veteran to all job applicants (pre-offer), as required by 41 C.F.R. § 60-300.42(a).
 6. For each job offer, provide copies of e-mails, letters or faxes showing the invitation to self-id as protected veteran made after a job offer but before the applicant begins his or her job duties (post-offer) as required by 41 C.F.R. § 60-300.42(b).
 7. Documentation of the computations or comparisons described in 41 C.F.R. § 60-300.44(k) for the 12-months reporting period.
 8. Documentation of the hiring benchmark adopted, the methodology used to establish it if using the five factors described in 41 C.F.R. § 60-300.45(b)(2).

9. Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified protected veterans as described in 41 C.F.R. § 60-300.44(f).
 10. A list of all employment openings as they occur that were posted with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, as required by 41 CFR 60-300.5(a)2-6.
 11. Provide copies of e-mails, letters or faxes sent over the state workforce agency job bank or a local ESDS pursuant to item (10) above.
 12. A screenshot or copy of the invitation to self-identify as an individual with a disability to each job applicant (pre-offer), as required by 41 C.F.R. § 60-741.42(a)(1)-(2).
 13. For each job offer, provide copies of e-mail, letters or faxes showing the invitation to self-id as an individual with a disability made after a job offer but before the applicant begins his or her job duties (post-offer) as required by 41 C.F.R. § 60-741.42(b)(1)-(2).
 14. Copies of e-mail, letters or faxes showing the latest invitation to self-id as an individual with a disability to all employees as required by 41 C.F.R. § 60-741.42(c).
 15. The utilization analysis evaluating the representation of individual with disabilities in each job group, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 C.F.R. § 60-741.45.
 16. Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified individuals with disabilities as described in 41 C.F.R. § 60-741.44(f).
- 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 Part II, Paragraph 10 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 EXB Solutions, Inc., Plymouth, Minnesota 55441.

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

Chris Schwartzbauer
President & Chief Executive Officer
EXB SOLUTIONS INC
PLYMOUTH, MN 55441-3837

DATE: June 20, 2023

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

Margaret Kraak
Acting District Director
Minneapolis

DATE: 6/26/23

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

Laura Goulding
Assistant District Director
Minneapolis

DATE: 6/26/23

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

Compliance Officer
Minneapolis

DATE: 6/26/23