

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
and  
Schwartz Excavating, Inc.  
OFCCP Case No. C00306493

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the establishment of Schwartz Excavating, Inc., located at 7023 Willow Springs Road, Countryside, IL 60525, beginning on June 9, 2022. OFCCP found that Schwartz Excavating, Inc., failed to comply with Executive Order 11246, as amended (E.O. 11246) 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 Schwartz Excavating, Inc., of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on May 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 Schwartz Excavating, Inc., 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 Schwartz Excavating, Inc.'s fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 and VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Schwartz Excavating, Inc. 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 the compliance of Schwartz Excavating, Inc., with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Schwartz Excavating, Inc. 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 Schwartz Excavating, Inc., 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. Schwartz Excavating, Inc., 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 Schwartz Excavating, Inc., submits its final progress report required in Section IV, below, unless OFCCP notifies Schwartz Excavating, Inc., in writing before the expiration date that Schwartz Excavating, Inc. 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 Schwartz Excavating, Inc., has met all of its obligations under the Agreement.
10. If Schwartz Excavating, Inc., violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34 and 41 C.F.R. 60-300.63 will govern:
    - i. OFCCP will send Schwartz Excavating, Inc., a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. Schwartz Excavating, Inc., 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 Schwartz Excavating, Inc., 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 Schwartz Excavating, Inc., 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. Schwartz Excavating, Inc., may be subject to the sanctions set forth in: Section 209 of the Executive Order, 41 C.F.R. 60-1.27 or 41 C.F.R. 60-300.66 and/or other appropriate relief for violating this Agreement.
- 11. Schwartz Excavating, Inc., 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 of March 1, 2021, through April 30, 2022, Schwartz Excavating Inc., 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 41 C.F.R. 60-4.2(d)3.

**REMEDY:** Schwartz Excavating, Inc., will provide written notification to OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under a federal or federally assisted construction contract resulting from this solicitation. 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 geographical location in which the subcontract is to be performed, as required by 41 C.F.R. 60-4.2(d)3. Schwartz Excavating Inc. 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 March 1, 2021, through April 30, 2022, Schwartz Excavating, Inc., failed to include the Standard Federal Equal Employment Opportunity

Construction Contract Specifications in its construction subcontracts in excess of \$10,000 as required by 41 C.F.R. 60-4.3(a).

**REMEDY:** Schwartz Excavating, Inc., will include the Standard Federal Equal Employment Opportunity Construction Contract Specifications in all Federal and federally assisted construction subcontracts in excess of \$10,000 to be performed in the geographical areas designated by the Director and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive Order in accordance with 41 C.F.R. 60-4.3(a).

3. **VIOLATION:** During the period of March 1, 2021, through April 30, 2022, Schwartz Excavating, Inc., failed to establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and community organizations when Schwartz Excavating, Inc., or its unions had employment opportunities available, and to maintain a record of the organizations' responses as required by 41 C.F.R. 60-4.3(a)7.b.

**REMEDY:** Schwartz Excavating, Inc., will establish and maintain a current list of female and minority recruitment sources, provide written notification to female and minority recruitment sources and to community organizations when Schwartz Excavating, Inc., or its unions have employment opportunities available, and maintain a record of the organization responses in accordance with 41 C.F.R. 60-4.3(a)7.b.

4. **VIOLATION:** During the period of March 1, 2021, through April 30, 2022, Schwartz Excavating, Inc., failed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Schwartz Excavating, Inc.'s, recruitment area and employment needs, as required by 41 C.F.R. 60-4.3(a)7.i.

**REMEDY:** Schwartz Excavating, Inc., will direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the recruitment area and employment needs of Schwartz Excavating, Inc. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, Schwartz Excavating, Inc., will send written notification to organizations such as the above, describing the openings, and screening procedures in accordance with 41 C.F.R. 60-4.3(a)7.i.

5. **VIOLATION:** During the period of March 1, 2021, through April 30, 2022, Schwartz Excavating, Inc., failed to immediately list all openings with either the state workforce agency job bank or a local employment service delivery system (ESDS) serving the location where the openings occurred as required by 41 C.F.R. 60-300.5(a)2-6.

**REMEDY:** Schwartz Excavating, Inc., will list all employment openings as they occur with an appropriate 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 referrals of protected veterans to Schwartz Excavating, Inc., 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, Schwartz Excavating, 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 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, Schwartz Excavating Inc., will provide updated information simultaneously with its next job listing.

#### IV. OFCCP Monitoring Period

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

2. **Progress Reports**

- A. Schwartz Excavating, Inc., will submit the documents and progress report described below by email to OFCCP Chicago District Compliance Officer (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)@dol.gov.

Schwartz Excavating, Inc., agrees to furnish OFCCP with the following progress report during the Monitoring Period according to the following schedule:

Progress Report will be due June 15, 2024, and cover the period from the effective date of this Agreement through May 15, 2024.

Progress Report shall include:

Pursuant to Violation 1:

- Documentation that Schwartz Excavating, Inc., provided written notification to OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under a federal or federally assisted construction contract resulting from this solicitation.
- Documentation must 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 geographical location in which the subcontract is to be performed.

Pursuant to Violation 2:

- Documentation that Schwartz Excavating, Inc., included the Standard Federal Equal Employment Opportunity Construction Contract Specifications in all Federal and federally assisted construction subcontracts in excess of \$10,000.

Pursuant to Violation 3:

- A copy of Schwartz Excavating Inc's list of minority and female recruitment sources used.
- Copies of all (correspondences to and responses received) written notification to minority and female recruitment sources, community organizations and any union referrals regarding all available employment opportunities. Job opportunities will be listed with sources at least 10 days prior to hire date, when possible.
- Documentation of all recruitment contacts, specifying date of contact, job openings listed, name of contact person and disposition.

Pursuant to Violation 4:

- Documentation that Schwartz Excavating, Inc., directed recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the recruitment area of Schwartz Excavating, Inc., no later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source.

Pursuant to Violation 5:

- Documentation that Schwartz Excavating, Inc., listed all suitable employment openings with an appropriate ESDS (either the state workforce agency job bank or a local ESDS) as the openings occurred.
- Evidence that Schwartz Excavating, Inc., with its initial listing has advised ESDS that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state.
- Evidence that Schwartz Excavating, Inc., provided the ESDS with the name and address of each its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location.
- A list (preferably in MS Excel format), of all job titles in which hiring occurred during the review progress reporting period. This list must include the hire date of each hired applicant.

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

## V. Signatures

The person signing this Agreement on behalf of Schwartz Excavating, Inc., personally warrants that he or she is fully authorized to do so, that Schwartz Excavating, Inc., has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Schwartz Excavating, Inc. This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Schwartz Excavating, Inc., located at 7023 Willow Springs Road, Countryside, IL 60525.

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

Patricia Schwartz  
President  
Schwartz Excavating, Inc.

DATE: 7/21/2023

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

Karen D. Wallace  
District Director  
OFCCP, Chicago District Office

DATE: 7/21/23

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

Compliance Officer  
OFCCP, Chicago District Office

DATE: \_\_\_\_\_