

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
Blue Yonder Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the construction projects of Blue Yonder Inc. (Blue Yonder) located in the Chicago, IL Standard Metropolitan Statistical Area (SMSA) beginning on October 28, 2022. OFCCP found that Blue Yonder failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its implementing regulations at Title 41 of the Code of Federal Regulations (CFR) Chapter 60.

OFCCP notified Blue Yonder of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on July 19, 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 Blue Yonder 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 Blue Yonder'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 Blue Yonder 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 Blue Yonder with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Blue Yonder 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 Blue Yonder 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. Blue Yonder 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 are deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Blue Yonder submits its final progress report required in Section IV below, unless OFCCP notifies Blue Yonder in writing before the expiration date that Blue Yonder 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 Blue Yonder 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 will govern:
 - i. OFCCP will send Blue Yonder a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. Blue Yonder 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 Blue Yonder 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 Blue Yonder, 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. Blue Yonder may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. § 60-1.27, and/or other appropriate relief for violating this Agreement.
11. Blue Yonder 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 January 1, 2021, through December 31, 2021, Blue Yonder failed to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice provided by the agency contracting officer, advising the labor union or workers’ representative of Blue Yonder’s commitments under section 202 of Executive Order 11246, as required by 41 C.F.R. § 60-1.4(a)(4).

CORRECTIVE ACTION: Blue Yonder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice provided by the agency contracting officer, advising the labor union or workers’ representative of Blue Yonder’s commitments under section 202 of Executive Order 11246, as required by 41 C.F.R. § 60-1.4(a)(4).

2. **VIOLATION:** During the period January 1, 2021, through December 31, 2021, Blue Yonder failed to include the equal opportunity clause published at 41 C.F.R. § 60-1.4(a) in all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts, as required by 41 C.F.R. § 60-4.3(a).

CORRECTIVE ACTION: Blue Yonder will include the equal opportunity clause published at 41 C.F.R. § 60-1.4(a) in all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts, as required by 41 C.F.R. § 60-4.3(a).

3. **VIOLATION:** During the period January 1, 2021, through December 31, 2021, Blue Yonder failed to develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to its needs, especially those programs funded or approved by the Department of Labor, as required by 41 C.F.R. § 60-4.3(a)7.e.

CORRECTIVE ACTION: Blue Yonder will develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to its needs, especially those programs funded or approved by the Department of Labor, as required by 41 C.F.R. § 60-4.3(a)7.e.

4. **VIOLATION:** During the period January 1, 2021, through December 31, 2021, Blue Yonder failed to disseminate its EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Blue Yonder in meeting its EEO obligations, and by specific review of the policy with all management personnel and with all minority and female employees at least once a year, as required by 41 C.F.R. § 60-4.3(a)7.f.

CORRECTIVE ACTION: Blue Yonder will disseminate its EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Blue Yonder in meeting its EEO obligations, and by specific review of the policy with all management personnel and with all minority and female employees at least once a year, as required by 41 C.F.R. § 60-4.3(a)7.f.

5. **VIOLATION:** During the period January 1, 2021, through December 31, 2021, Blue Yonder failed to review, at least annually, its EEO policy and affirmative action obligations under the Standard Federal Equal Employment Construction Specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site; and make and maintain a written record identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter, as required by 41 C.F.R. § 60-4.3(a)7.g.

CORRECTIVE ACTION: Blue Yonder will review, at least annually, its EEO policy and affirmative action obligations under the Standard Federal Equal Employment Construction Specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site; and make and maintain a written record identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter, as required by 41 C.F.R. § 60-4.3(a)7.g.

6. **VIOLATION:** During the period January 1, 2021, through December 31, 2021, Blue Yonder 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.

CORRECTIVE ACTION: Blue Yonder will 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 C.F.R. § 60-4.2(d)3. Blue Yonder must provide notification via the Notification of Construction Contract Award Portal (NCAP) at <https://www.dol.gov/agencies/ofccp/ncap>

IV. OFCCP Monitoring Period

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

Blue Yonder agrees to furnish OFCCP with the following report during the Monitoring Period according to the following schedule:

The Progress Report will be due on January 30, 2024, and will cover the period from the effective date of this Agreement through December 31, 2023.

Progress Report will include the following:

Pursuant to Violation 1:

- Documentation that Blue Yonder sent to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice provided by the agency contracting officer, advising the labor union or workers' representative of Blue Yonder's commitments under section 202 of Executive Order 11246.

Pursuant to Violation 2:

- Documentation that Blue Yonder included in each subcontract the equal opportunity clause published at 41 C.F.R. § 60-1.4(a).

Pursuant to Violation 3:

- Documentation of action taken to develop on-the-job training opportunities and/or participation in training programs for the area that expressly include minorities and women.

Pursuant to Violation 4:

- A copy of Blue Yonder's current EEO Policy Statement.

- Documentation that Blue Yonder disseminated its EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Blue Yonder in meeting its EEO obligations.

Pursuant to Violation 5:

- Documentation that Blue Yonder reviewed its EEO policy with all management personnel working in the Chicago, IL Standard Metropolitan Statistical Area (SMSA).
- Documentation must identify the time and place of meetings held to review the EEO policy, name and job title of persons attending, subject matter discussed, and disposition of the subject matter.

Pursuant to Violation 6:

- Documentation that Blue Yonder 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.

Blue Yonder will submit reports to Compliance Officer (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)@dol.gov. Blue Yonder 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 Blue Yonder provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely held, and Blue Yonder believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Blue Yonder will provide such reports to OFCCP marked as “Confidential.” In the event of a FOIA request, OFCCP will promptly notify Blue Yonder of the FOIA request and provide Blue Yonder 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 Blue Yonder’s final progress report as set forth in Part II, Paragraph 9 above. If OFCCP fails to notify Blue Yonder in writing within sixty (60) days of the date of the final progress report that Blue Yonder 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 Blue Yonder within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Blue Yonder has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Blue Yonder Inc. located at 1730 Park St., Suite 123, Naperville, IL 60563.

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

Seth Malley
Owner
Blue Yonder Inc.

DATE: 28 July 2023

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

Karen D. Wallace
District Director
OFCCP, Chicago District Office

DATE:

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

Sarronda C. Harris
Assistant District Director
OFCCP, Chicago District Office

DATE:

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

Compliance Officer
OFCCP, Chicago District Office

DATE: _____