

Conciliation Agreement  
Between the

U.S. Department of Labor Office of Federal Contract Compliance Programs

And

Midwest Laboratories, Inc.  
13611 B Street  
Omaha, NE 68144

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Midwest Laboratories (Contractor) establishment located at 13611 B Street Omaha, NE 68144 beginning on February 18, 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 CFR Sections 60-1, 60-2, 60-300, and 60-741.

OFCCP notified Contractor of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on September 8, 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 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 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/or 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 January 1, 2022, through December 31, 2022, Contractor failed to develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Contractor failed to demonstrate that it made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results for women in job groups 2, 3, 4, 6 and minorities in job groups 2, 3, 4, and 6.

**REMEDY:** If it becomes a federal contractor during the term of this agreement, Contractor will develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Contractor will demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results for women in job groups 2, 3, 4 and 6; and for minorities in job groups 2, 3, 4 and 6.

These activities must include, but must not be limited to, establishing contact and detailed correspondence with the following organization in order to seek their aid in referring qualified women and minorities:

Job Corps Omaha  
Amy McKeigh  
Program Manager  
**(b) (6), (b) (7)(C)**@jobcorps.org  
4521 Leavenworth Street  
Omaha, NE 68106  
(402) 926-2810

2. **VIOLATION:** During the period of January 1, 2022 through December 31, 2022, Contractor failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit protected veterans, in violation of 41 CFR 60 300.44(f)(1)(i).

**REMEDY:** If it becomes a federal contractor during the term of this agreement, Contractor will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans, such as those described at 41 CFR 60 300.44(f)(2).

These activities must include, but must not be limited to, establishing contact and detailed correspondence with the following organization in order to seek their aid in referring qualified protected veterans:

DOL-Veterans' Employment and Training  
Services (VETS)  
Cecilia Coatney  
Program Manager  
**(b) (6), (b) (7)(C)**@dol.gov  
550 S 16<sup>th</sup> Street  
Lincoln, NE 68508  
(202) 306-2796

3. **VIOLATION:** During the period of January 1, 2022 through December 31, 2022, Contractor 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:** If it becomes a federal contractor during the term of this agreement, Contractor 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 Contractor concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2).

4. **VIOLATION:** During the period of January 1, 2022 through December 31, 2022, Contractor failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, in violation of 41 CFR 60-741.44(f)(1)(i).

**REMEDY:** If it becomes a federal contractor during the term of this agreement, Contractor will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2).

These activities must include, but must not be limited to, establishing contact and detailed correspondence with the following organization in order to seek their aid in referring qualified individuals with disabilities:

Nebraska VR (Disabilities)  
Rich McFall  
Business Account Manager  
(b) (6), (b) (7)(C) @nebraska.gov  
12003 Q Street  
Omaha, NE 68137  
(402) 417-3913

5. **VIOLATION:** During the period of January 1, 2022 through December 31, 2022, Contractor 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:** If it becomes a federal contractor during the term of this agreement, Contractor 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 Contractor concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in 41 CFR 60-741.44(f)(1) or (f)(2).

#### IV. OFCCP Monitoring Period

**Recordkeeping.** If it becomes a federal contractor during the term of this agreement, 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:

1. Provide the actual number of female placements (hires plus promotions) made during the AAP year into job groups 2, 3, 4, 6. For goals not attained, describe the specific good faith efforts were made to remove identified barriers, expand equal employment opportunity, and produce measurable results.
2. Provide the actual number of minority placements (hires plus promotions) made during the AAP year into job groups 2, 3, 4, 6. For goals not attained, describe the specific good faith efforts were made to remove identified barriers, expand equal employment opportunity, and produce measurable results.
3. Provide copies of all letters, memos, records of telephone calls, and any other correspondence and documents relating to Contractor's outreach/recruitment activities for veterans with at least the recruitment sources identified, and any additional outreach sources Contractor utilized.
4. Provide copies of all letters, memos, records of telephone calls, and any other correspondence and documents relating to Contractor's outreach/recruitment activities for individuals with disabilities with at least the recruitment sources identified, and any additional outreach sources Contractor utilized.
5. Documentation of the annual assessment of outreach activities for veterans.
6. Documentation of the annual assessment of outreach activities individuals with disabilities.

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.

#### Contractor Reports.

If the Contractor becomes a federal contractor during the term of this agreement, 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:

1. Progress Report 1: Due on April 15, 2024, covering the period of the effective date of the agreement through March 31, 2024. Provide documentation for all items in the Recordkeeping section above.
2. Progress Report 2: Due on October 15, 2025, covering the period of April 1, 2024 through September 30, 2025. Provide documentation for all items in the Recordkeeping section above.

Contractor will submit reports to (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.

**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 Midwest Laboratories Inc., 13611 B Street Omaha, NE 68144.

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

Dana Burkey  
CSO  
Midwest Laboratories Inc.  
Omaha, NE

DATE: 9/22/2023

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

David A. Smith  
District Director  
Indianapolis District Office

DATE:

9/25/2023