

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE)	
PROGRAMS, UNITED STATES DEPARTMENT)	
OF LABOR,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
ABM JANITORIAL SERVICES,)	
)	
Defendant.)	

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), by its attorneys, alleges the following facts.

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Executive Order 11246 (30 Fed. Reg. 12319), as amended (“Executive Order 11246” or “Executive Order”), and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.

2. This Court has jurisdiction over this action under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. § 60-1.26, 41 C.F.R. § 60-4.8, and 41 C.F.R. Part 60-30.

3. Defendant ABM Janitorial Services (“Defendant” or “ABM”), is a commercial cleaning business with a business office in Baltimore, Maryland.

4. At all times relevant hereto, ABM was a wholly-owned subsidiary of ABM Industries Incorporated, a government contractor with multiple ongoing contracts to provide cleaning and janitorial services to the U.S. Army from March 25, 2015 through June 30, 2018 in

excess of \$174 million. ABM Industries Incorporated also has an ongoing contract from January 31, 2015 through December 31, 2023 to provide cleaning and janitorial services to the General Services Administration in excess of \$68 million.

5. ABM is a Government contractor within the meaning of the Executive Order. ABM Industries Incorporated exercises day-to-day *de facto* control over ABM through policies, management, and supervision of ABM's operations. Further, the personnel policies of ABM Industries Incorporated and ABM emanate from a centralized source, which is ABM Industries Incorporated, as shown by evidence including but not limited to an Employee Policy Handbook setting forth the written human resources policies for ABM Industries Incorporated and its subsidiary corporations, including ABM. The services of ABM are provided principally for the benefit of ABM Industries, Inc., as shown by evidence including but not limited to the website at locations.abm.com.

6. ABM is subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and the implementing regulations issued thereunder.

7. The regulations issued pursuant to Executive Order 11246 at 41 C.F.R. § 60-1.4 and 1.5 provide that each employer with a non-exempt federal contract is required to comply with the nondiscrimination provisions of Executive Order 11246 and its implementing regulations. ABM Industries, Inc.'s contracts, which were in excess of \$10,000 per year, were not exempt.

8. OFCCP conducted compliance reviews of three ABM establishments, one in Baltimore, Maryland, and two in Alexandria, Virginia beginning in 2016. All three establishments share a common human resources department, which is led by ABM'S Human

Resources Director. As a result of these compliance reviews, OFCCP found that ABM violated the Executive Order in that ABM engaged in racially discriminatory hiring practices, failed to preserve and maintain its personnel and employment records, failed to conduct adverse impact analyses, and failed to develop an auditing system, thereby violating the Executive Order and its implementing regulations.

Defendant Discriminated Against Black Applicants at Establishment 55502

9. On June 16, 2016, OFCCP began a compliance review of ABM's establishment at 113 Claremont Avenue, Alexandria, Virginia, 22304 (hereinafter Establishment 55502).

10. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4(a)(1), Defendant agreed not to discriminate against any employee or applicant for employment because of race.

11. During the period of November 1, 2014 through April 30, 2016, at Establishment 55502, ABM discriminated against Black applicants seeking cleaning positions, in favor of hiring Hispanic applicants, on the basis of race.

12. During the investigative period, this discrimination was the standard operating procedure - the regular, rather than the unusual practice. Despite OFCCP's repeated requests, Defendant has submitted no evidence showing that it has corrected this pattern or practice of racial discrimination. Accordingly, upon information and belief OFCCP alleges that this discrimination continues to the present.

13. At all relevant times, the cleaning jobs at issue for Establishment 55502 involved providing basic janitorial services in commercial buildings operated by ABM's clients. The cleaning jobs are entry-level, unskilled, hourly positions paying approximately \$10.00 to \$11.00 per hour plus benefits. ABM's minimum qualifications for cleaning jobs are being at least 18

years old and having the legal right to work in the United States. The majority of employees performing these cleaning jobs had the job title “Cleaner,” but some had the job titles “Porter,” “Day Porter,” and “Floor Person.” The tasks assigned to employees with any of these job titles were substantially similar, as were the minimum qualifications. Hereinafter, employees in the job titles “Cleaner,” “Porter,” “Day Porter,” and “Floor Person” will be referred to collectively as “Cleaners.”

14. Since at least November 1, 2014, hiring managers at Establishment 55502 have determined which applicants are hired by ABM as Cleaners. ABM’s human resources department forwarded groups of applications to these hiring managers, who exercised unfettered discretion in selecting which applicants to hire. The hiring managers reviewed the written applications and selected which applicants to interview. Some hiring managers interviewed applicants by phone, and others interviewed applicants in person.

15. Many hiring managers claimed to prefer applicants with cleaning experience, but many Cleaners hired at Establishment 55502 lacked cleaning experience. The hiring managers regularly hired inexperienced Hispanic applicants for job openings while rejecting experienced Black applicants for those openings.

16. ABM did not require hiring managers at Establishment 55502 to explain why they hired some applicants and rejected others. ABM kept no records explaining why it rejected applicants, even though it was required to do so by regulations at 41 C.F.R. § 60-1.12(a) and (3), 3.4, 60-300.80, and 60-741.80. ABM conducted no review of its hiring practices to assess whether its hiring practices had adverse impact on Black applicants, even though it was required to do so by 41 C.F.R. 60-3.4 and 3.15(A)(2)(a). ABM conducted no review of any affirmative

action policy to see whether its hiring had racially adverse impacts, even though it was required to do so by 41 C.F.R. §60-2.17(d).

17. Defendant rejected substantially more Black applicants than Hispanic applicants during this hiring process, and statistical regression analyses indicate that Defendant's stated objective minimum and preferred qualifications do not explain the racial disparity.

ABM Discriminated Against Black Applicants at Establishment 55503

18. On June 16, 2016, OFCCP began a compliance review of ABM's establishment at 103 Claremont Avenue, Suite O, Alexandria, Virginia, 22304 (hereinafter Establishment 55503).

19. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4(a)(1), Defendant agreed not to discriminate against any employee or applicant for employment because of race.

20. During the period of November 1, 2014 through October 31, 2015, at Establishment 55503, ABM discriminated against Black applicants seeking cleaning positions, in favor of hiring Hispanic applicants, on the basis of race.

21. During the investigative period, this discrimination was the standard operating procedure - the regular, rather than the unusual practice. Despite OFCCP's repeated requests, Defendant has submitted no evidence showing that it has corrected this pattern or practice of racial discrimination. Accordingly, upon information and belief, OFCCP alleges that this discrimination continues to the present.

22. At all relevant times, the cleaning jobs at issue for Establishment 55503 involved providing basic janitorial services in commercial buildings operated by ABM's clients. The cleaning jobs are entry-level, unskilled, hourly positions paying approximately \$10.00 to \$11.00 per hour plus benefits. ABM's minimum qualifications for cleaning jobs are being at least 18

years old and having the legal right to work in the United States. The majority of employees performing these cleaning jobs had the job title “Cleaner,” but some had the job titles “Porter,” “Day Porter,” and “Floor Person.” The tasks assigned to employees with any of these job titles were substantially similar, as were the minimum qualifications. Hereinafter, employees in the job titles “Cleaner,” “Porter,” “Day Porter,” and “Floor Person” will be referred to collectively as “Cleaners.”

23. Since at least November 1, 2014, ABM’s hiring managers at Establishment 55503 have determined which applicants are hired by ABM as Cleaners. ABM’s human resources department forwarded groups of applications to Establishment 55503’s hiring managers, who exercised unfettered discretion in selecting which applicants to hire. The hiring managers reviewed the written applications and selected which applicants to interview. Some hiring managers interviewed applicants by phone, and others interviewed applicants in person.

24. Many hiring managers claimed to prefer applicants with cleaning experience, but many Cleaners hired at Establishment 55503 lacked cleaning experience. The hiring managers regularly hired inexperienced Hispanic applicants for job openings while rejecting experienced Black applicants for those openings.

25. ABM did not require hiring managers to explain why they hired some applicants and rejected others. ABM kept no records explaining why it rejected applicants, even though it was required to do so by regulations at 41 C.F.R. § 60-1.12(a) and (3), 3.4, 60-300.80, and 60-741.80. ABM conducted no review of its hiring practices to assess whether its hiring practices had adverse impact on Black applicants, even though it was required to do so by 41 C.F.R. 60-3.4 and 3.15(A)(2)(a). ABM conducted no review of any affirmative action policy to see whether

its hiring had racially adverse impacts, even though it was required to do so by 41 C.F.R. §60-2.17(d).

26. Defendant rejected substantially more Black applicants than Hispanic applicants during this hiring process, and statistical regression analyses indicate that Defendant's stated objective minimum and preferred qualifications do not explain the racial disparity.

ABM Discriminated Against Black and White Applicants at Establishment 55504

27. On June 16, 2016, OFCCP began a compliance review of ABM's establishment at 1502 Joh Avenue, Suite 120, Baltimore, Maryland 21227 (hereinafter Establishment 55504).

28. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4(a)(1), Defendant agreed not to discriminate against any employee or applicant for employment because of race.

29. During the period of November 1, 2014 through April 30, 2016, at Establishment 55504, ABM discriminated against Black applicants seeking cleaning positions, in favor of hiring Hispanic applicants, on the basis of race.

30. During the investigative period, this discrimination was the standard operating procedure - the regular, rather than the unusual practice. Despite OFCCP's repeated requests, Defendant has submitted no evidence showing that it has corrected this pattern or practice of racial discrimination. Accordingly, upon information and belief, OFCCP alleges that this discrimination continues to the present.

31. During the period of November 1, 2014 through April 30, 2016, at Establishment 55504, ABM also discriminated against white applicants seeking cleaning positions, in favor of hiring Hispanic applicants, on the basis of race.

32. During the investigative period, this discrimination was the standard operating procedure - the regular, rather than the unusual practice. Despite OFCCP's repeated requests, Defendant has submitted no evidence showing that it has corrected this pattern or practice of racial discrimination. Accordingly, on information and belief, OFCCP alleges that this discrimination continues to the present.

33. At all relevant times, the cleaning jobs at issue in the audit of Establishment 55504 involved providing basic janitorial services in commercial buildings operated by ABM's clients. The cleaning jobs are entry-level, unskilled, hourly positions paying approximately \$10.00 to \$11.00 per hour plus benefits. ABM's minimum qualifications for cleaning jobs are being at least 18 years old and having the legal right to work in the United States. The majority of employees performing these cleaning jobs had the job title "Cleaner," but some had the job titles "Porter," "Day Porter," and "Floor Person." The tasks assigned to employees with any of these job titles were substantially similar, as were the minimum qualifications. Hereinafter, employees in the job titles "Cleaner," "Porter," "Day Porter," and "Floor Person" will be referred to collectively as "Cleaners."

34. Since at least November 1, 2014, ABM's hiring managers at Establishment 55504 have determined which applicants are hired by ABM as Cleaners. The human resources department forwarded groups of applications to these hiring managers, who exercised unfettered discretion in selecting which applicants to hire. These hiring managers reviewed the written applications and selected which applicants to interview. Some hiring managers interviewed applicants by phone, and others interviewed applicants in person.

35. Many hiring managers claimed to prefer applicants with cleaning experience, but the majority of Cleaners hired by ABM at Establishment 55504 lacked cleaning experience. The

hiring managers regularly hired inexperienced Hispanic applicants for job openings while rejecting experienced Black and white applicants for those openings.

36. ABM did not require hiring managers to explain why they hired some applicants and rejected others.

37. Black applicants were substantially more likely than Hispanic applicants to be rejected during this hiring process.

38. White applicants were also substantially more likely than Hispanic applicants to be rejected during this hiring process,

ABM Committed Additional Violations of the Executive Order

39. Pursuant to Section 202 of the Executive Order, 41 C.F.R. § 60-1.12(a), and 41 C.F.R. § 60-1.12(e), ABM agreed to preserve and maintain all personnel and employment records for a period of two years from the date of the making of the record or personnel action involved.

40. Beginning November 1, 2014, ABM failed to preserve and maintain all personnel and employment records of Establishments 55502, 55503, and 55504 for a period of two years from the date of the making of the record or personnel action involved. Specifically, ABM failed to maintain copies of all records related to the selection process, including job applications, screening notes, interview notes, and interview sheets for all applicants for the Cleaner position, in violation of 41 C.F.R. 6-1.12(a), 60-3.4, 60-300.80, 60-741.80.

41. Since at least November 1, 2014, ABM failed to conduct an adverse impact analysis of its total selection process for all positions at Establishments 55502, 55503, and 55504, a violation of 41 C.F.R. 60-3.4 and 3.15(A)(2)(a). Further, ABM failed to develop an

auditing system to periodically measure the success of its affirmative action program at these establishments, in violation of 41 C.F.R. 60-2.17(d).

42. Since at least November 1, 2014, ABM failed to maintain and have available for inspection records or other information for its Cleaner positions at Establishments 55502, 55503, and 55504 that would disclose the impact which its selection procedures had upon employment opportunities of persons by identifiable race, sex, and ethnicity, in order to determine compliance with 41 C.F.R. § 60-3, the Uniform Guidelines on Employee Selection Procedures (UGESP), as required by 41 C.F.R. § 60-3.4. Additionally, at all three establishments, ABM failed to maintain records or other information that would disclose the impact that each step of its selection process for Cleaner positions had upon employment opportunities of persons by identifiable race, sex, and ethnicity, as required by 41 C.F.R. §60-2.17(d).

43. Since at least November 1, 2014, ABM failed to identify and provide complete relief including, but not limited to, a position, lost wages, interest, retroactive seniority, and all other benefits of employment resulting from its discriminatory failure at Establishments 55502, 55503, and 55504 to hire Black applicants to be Cleaners. ABM also failed to identify and provide complete relief including, but not limited to, a position, lost wages, interest, retroactive seniority, and all other benefits of employment resulting from its discriminatory failure at Establishment 55504 to hire white applicants to be Cleaners.

44. Throughout the lengthy conciliation process and through the date of this filing, ABM provided no evidence of having corrected these failures, which continue to the present.

All of the Procedural Requirements Prior to the Filing of this Complaint Have Been Met

45. All of the procedural requirements prior to the filing of this Complaint have been met. On August 7, 2019, OFCCP issued to ABM three Notices of Violations for Establishments

55502, 55503, and 55504 based upon its findings of violations of the Executive Order.

Following the issuance of the Notices of Violations, between August 2019 and August 2020, OFCCP held teleconferences and exchanged emails and letters with ABM's legal representative, who repeatedly requested additional detail about OFCCP's computation of back wages. On April 3, 2020, OFCCP provided information about its back wage computations. On April 14, 2020, ABM requested a 60-day hold on conciliation because of hardships caused by the COVID-19 pandemic. On July 1, 2020, OFCCP sent a follow-up letter to ABM's counsel, seeking to resume conciliation. On July 9, 2020, ABM's counsel said that she would contact her client and respond to OFCCP's request to resume conciliation. On July 29, 2020, ABM's counsel asked additional questions about OFCCP's back wage computation. On July 31, 2020, OFCCP answered those questions and invited ABM to produce additional data that could be relevant to the back wage computation. ABM's counsel did not produce the requested documentation. On August 20, 2020, OFCCP issued a Notice to Show Cause why enforcement proceedings should not be initiated based upon its findings of violations of the Executive Order. On November 13, 2020, OFCCP provided ABM's counsel additional data about its computation of damages.

46. On November 17, 2020, OFCCP sent a letter to ABM's counsel offering to mediate the audits of Establishments 55502, 55503, and 55504 along with 11 additional compliance audits of other ABM establishments. On November 25, 2020, ABM's counsel refused to mediate this group of audits, insisting on excluding 11 of the audits and mediating only three. ABM refused to mediate the audits of Establishments 55502 and 55504.

47. Between November 26, 2020 and April 1, 2021, the parties continued to exchange letters regarding damages and mediation, but could not resolve the matters. OFCCP was unable to achieve voluntary compliance despite reasonable efforts to conciliate these matters.

Violations

48. Through the acts and practices described in paragraphs 11 through 33, above, ABM violated Executive Order 11246 and the regulations promulgated thereunder, as well as ABM's contractual obligations to the Federal Government.

49. Unless restrained by Administrative Order, ABM will continue to violate the obligations imposed upon it by Executive Order 11246 and the regulations promulgated thereunder.

Prayer for Relief

WHEREFORE, plaintiff OFCCP prays for a Decision and Order pursuant to 41 C.F.R. § 60-30.27 and 41 C.F.R. § 60-30.30, providing the following relief:

- 1) Permanently enjoining Defendant ABM, its successors, officers, agents, servants, employees, divisions, subsidiaries, and all persons in active concern with them from failing and refusing to comply with the requirements of the Executive Order and the regulations promulgated thereunder;
- 2) Requiring Defendant ABM to provide complete relief to the affected Black applicants, including, but not limited to, a position, back pay, interest, front pay retroactive seniority, and all other benefits of employment resulting from its discriminatory failure to hire them;
- 3) Requiring Defendant ABM to provide complete relief to affected white applicants, including, but not limited to, a position, back pay, interest,

front pay retroactive seniority, and all other benefits resulting from its discriminatory failure to hire them;

- 4) Requiring ABM to implement a recordkeeping program that complies with 41 C.F.R. 6-1.12(a), 60-3.4, 60-300.80, 60-741.80;
- 5) Requiring ABM implement an internal ABM failed to conduct an adverse impact analysis of its total selection process for all positions, a violation of 41 C.F.R. 60-3.4 and 3.15(A)(2)(a); and
- 6) Requiring ABM to develop an auditing system to periodically measure the success of its affirmative action program, in violation of 41 C.F.R. 60-2.17(d).

In the event Defendant ABM fails to provide relief as ordered, pursuant to 41 C.F.R. § 60-30.30, Plaintiff prays that Defendant be subject to the following:

- 1) An Order canceling all of ABM Industries Incorporated's Government contracts and those of its officers, agents, successors, divisions and subsidiaries, including Defendant, and persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such Government contracts; and
- 2) An Order debarring Defendant, ABM Industries Incorporated, and its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, from entering into future Government contracts until such time as Defendant and ABM Industries Incorporated satisfy the Director of the Office of Federal Contract

Compliance Programs that they have undertaken efforts to remedy their prior noncompliance and is currently in compliance with the provisions of the Executive Order and the regulations promulgated thereunder.

Plaintiff further prays for such other relief as justice may require.

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Respectfully submitted,

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U.S. DEPARTMENT OF LABOR

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Date: Sept. 15, 2021