

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

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the PORTCO, Inc. establishment located at 800 Loudoun Avenue, Portsmouth, VA 23707-3235, beginning on January 8, 2020. OFCCP found that PORTCO, Inc. 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/or 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 Part 60-1.

OFCCP notified PORTCO, Inc. of the specific violations and the corrective actions required in a Notice of Violation issued on August 18, 2020 (NOV).

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 PORTCO, Inc. enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for PORTCO, Inc.'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 PORTCO, Inc. 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 PORTCO, Inc.'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. PORTCO, 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 it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves PORTCO, 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. PORTCO, Inc. 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. PORTCO, 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.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. 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.
8. This Agreement becomes effective on the day it is signed by the Assistant 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 PORTCO, Inc. submits its final progress report required in Section VIII, below, unless OFCCP notifies PORTCO, Inc. in writing before the expiration date that PORTCO, 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 PORTCO, Inc. has met all of its obligations under the Agreement.
11. If PORTCO, Inc. 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):
 - i. OFCCP will send PORTCO, Inc. a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. The PORTCO, 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 PORTCO, Inc. 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 PORTCO, 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 agreed to in the Agreement.

- b. PORTCO, Inc. 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), or 41 C.F.R. 60-300.66 (2014), and/or other appropriate relief for violating this Agreement.
12. PORTCO, Inc. 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 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:** PORTCO, Inc.'s E.O. 11246 AAP failed to include minority and female availability for each job group, as required by 41 CFR 60-2.10(b)(1)(iv) and 60-2.14(b).
REMEDY: PORTCO, Inc. will include the availability of minorities and women for each job group in its E.O. 11246 AAP, as required by 41 CFR 60-2.10(b)(1)(iv) and 60-2.14(b).
2. **VIOLATION:** During the period January 13, 2018 through December 31, 2018, PORTCO, Inc. 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. Specifically, PORTCO, Inc. failed to list the job openings for Job Group 2 and rehired a former employee directly without listing the job with the state workforce agency job bank or a local employment service delivery system serving the location where the opening occurred.
REMEDY: PORTCO, Inc. will 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 PORTCO, Inc., as required by 41 CFR 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, PORTCO, 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 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, PORTCO, Inc. shall provide updated information simultaneously with its next job listing.

3. **VIOLATION:** PORTCO, Inc.'s VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, PORTCO, Inc.'s AAP failed to include the training element described in 41 CFR 60-300.44(j).

REMEDY: PORTCO, Inc. will include the training element described in 41 CFR 60-300.44(j) in its VEVRAA AAP, as required by 41 CFR 60-300.44.

4. **VIOLATION:** PORTCO, Inc.'s Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, PORTCO, Inc.'s AAP failed to include the training element described in 41 CFR 60-741.44(j).

REMEDY: PORTCO, Inc. will include the training element described in 41 CFR 60-741.44(j) in its Section 503 AAP, as required by 41 CFR 60-741.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** PORTCO, 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. PORTCO, Inc. 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.** PORTCO, Inc. agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

The first report will cover January 1, 2020 through December 31, 2020, and will be due January 30, 2021. The second report will cover January 1, 2021 through December 31, 2021, and will be due by January 30, 2022. Each report shall contain the following:

- a) Documentation of determination of availability for minorities and women for

each job group in the E.O. 11246 AAP.

- b) Documentation showing that PORTCO, Inc. listed all job openings with the appropriate employment service delivery system where the opening occurred as specified in the Remedy to Violation 3. PORTCO, Inc. will provide documentation of referrals from the state employment service including, but not limited to, the name(s) of the individual(s) referred; date(s) of referral; final disposition of the referred individual's application; and, when applicable, the reason(s) why a referred individual was not hired by PORTCO, Inc. For referrals hired from the state employment service, please include the job title and salary or hourly rate of pay.
- c) The training elements in the VEVRAA AAP.
- d) The training elements in the Section 503 AAP.

PORTCO, Inc. will submit reports to Dianna Adams, Assistant District Director—
Richmond Area Office, 400 North 8th Street, Suite 466, Richmond, Virginia 23219,
(b) (6), (b) (7)(C)@dol.gov. PORTCO, Inc. 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 PORTCO, Inc. provides in accordance with this agreement are customarily
kept private or closely-held, and PORTCO, Inc. believes should remain confidential
under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA
request, PORTCO, Inc. 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.

- 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 PORTCO, Inc.'s final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify PORTCO, Inc. in writing within sixty (60) days of the date of the final progress report that PORTCO, 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 PORTCO, 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 PORTCO, Inc. has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and PORTCO, Inc. Portsmouth, VA 23707-3235.

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

MARK WILSON
President & CEO
PORTCO, Inc.
Portsmouth, VA 23707-3235

DATE: 8/21/2020

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

DIANNA ADAMS
Assistant District Director
Richmond Area Office
Mid-Atlantic Region

DATE: _____

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

(b) (6), (b) (7)(E)

Compliance Officer
Richmond Area Office
Mid-Atlantic Region

DATE: _____