

CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS

And

AIR METHODS (DBA) BLUE HAWAIIAN HELICOPTERS
1 KAHULUA AIRPORT ROAD, #105
KAHULUI, HAWAII 96732

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated Air Methods (dba) Blue Hawaiian Helicopters, located at 1 Kahului Airport Road, #105, Kahului, Hawaii 96732 and found that Blue Hawaiian Helicopters was not in compliance with Executive Order 11246, as amended (“E.O. 11246”), 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 implementing regulations at [41 C.F.R. Section(s) 60-1, 60-2, 60-3, 60-4, 60-300, and/or 60-741]. OFCCP notified Blue Hawaiian Helicopters of the specific violations found and the corrective actions required in a Notice of Violation issued on January 30, 2019. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Blue Hawaiian Helicopters enter this contract (“Conciliation Agreement” or “Agreement”) and agree to all the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for Blue Hawaiian Helicopters’ fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E. O. 11246, Section 503, and VEVRAA based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if Blue Hawaiian Helicopters violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Blue Hawaiian Helicopters agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Blue Hawaiian Helicopters will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

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3. Blue Hawaiian Helicopters understands that nothing in this Agreement relieves Blue Hawaiian Helicopters of its obligation to fully comply with the requirements of E.O. 11246, Section 503, and VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. Blue Hawaiian Helicopters promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 CFR 601.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the date it is signed by the District Director (the "Effective Date") unless the Regional Director or Director of OFCCP indicates otherwise within 45 calendar days of the date the District Director signs the Agreement.
9. This Agreement will expire sixty (60) days after Blue Hawaiian Helicopters submits the final progress report required in Part IV, below, unless OFCCP notifies Blue Hawaiian Helicopters in writing prior to the expiration date that Blue Hawaiian Helicopters has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Blue Hawaiian Helicopters has met all of its obligations under the Agreement.
10. If Blue Hawaiian Helicopters violates this Conciliation Agreement,
 - A. The procedures set forth at 41 CFR 60-1.34, 60-300.63, and 60-741.63 will govern:
 - 1) If OFCCP believes that Blue Hawaiian Helicopters violated any term of the Agreement while it was in effect, OFCCP will send Blue Hawaiian Helicopters a written notice stating the alleged violations and summarizing any supporting evidence.

- 2) Blue Hawaiian Helicopters will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
- 3) If Blue Hawaiian Helicopters 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.
- 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

B. Blue Hawaiian Helicopters may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66, and 41 CFR 60-741.66 and/or other appropriate relief for violation of this Agreement.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. 41 CFR 60-2.17(b) – IDENTIFICATION OF PROBLEM AREAS – E.O. 11246

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters failed to perform an in-depth analysis of its total employment process to determine whether and where impediments to equal employment opportunity exist as required by 41 C.F.R. 60-2.17(b)(2). Blue Hawaiian Helicopters failed to identify problem areas in its compensation report to determine whether there were any gender, race, or ethnicity selection disparities.

REMEDY: Blue Hawaiian Helicopters must perform in-depth analyses of its employment process to determine whether and where impediments to equal employment opportunity exist. Blue Hawaiian Helicopters must evaluate:

- a. The workforce by organizational unit and job group to determine whether there are problems with minority or female utilization;
- b. Personnel activity, specifically applicant flow, hires, terminations, promotions, and placements to determine whether there are selection disparities;
- c. Compensation system(s) to determine whether there are gender-, race-, or ethnicitybased disparities; and
- d. Selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women.

2. 41 CFR 60-300.5 (a) 2-6 – LIST EMPLOYMENT OPENINGS – VEVRAA

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters 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 41CFR 60–300.5(a) 2–6.

REMEDY: Blue Hawaiian Helicopters 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 Blue Hawaiian Helicopters as required by 41CFR 60–300.5(a) 2–6. With its initial listing, and as subsequently needed to update the information, Blue Hawaiian Helicopters 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’s official responsible for hiring at each location, in accordance with 41CFR 60–300.5(a) 4. Should any of the information in the disclosures change since it was last reported to the ESDS, Blue Hawaiian Helicopters shall provide updated information simultaneously with its next job listing.

3. 41 CFR 60-300.44 (f) – OUTREACH – VEVRAA

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans, document this review, assess their effectiveness, and document these activities, in violation of 41 CFR 60-300.44(f). Specifically, Blue Hawaiian Helicopters indicated that no outreach and recruitment of qualified protected veterans had been taken.

REMEDY: Blue Hawaiian Helicopters will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, such as those described at 41 CFR 60-300.44(f) (2). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, translating military experience, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Working with the veterans’ counselors and coordinators (or "Vet Reps") at local colleges and universities to identify qualified temporary and permanent job candidates;

- Working with the Local Veterans' Employment Representative (LVER) in the American Job Center nearest to the contractor to identify qualified permanent job candidates. See <http://www.careeronestop.org/businesscenter/recruitandhire/hiringadiverseworkforce/veterans.aspx>;
- Participating in job fairs targeting veterans;
- Using the national Veterans Employment Center (VEC) to search verified profiles of veteran job candidates and post job opportunities. See <https://www.vets.gov/veterans-employment-center>; and
- Using local veteran service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on veterans to recruit qualified temporary and permanent job candidates.

Additional examples are in the text of the regulations.

Blue Hawaiian Helicopters must annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f) (3). Blue Hawaiian Helicopters must document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-300.44(f) (4).

4. 41 CFR 60-300.44 (h) – AUDIT AND REPORTING SYSTEM – VEVRAA

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters failed to design and implement an audit and reporting system that measured the effectiveness of its affirmative action program in accordance with the requirements of 41 CFR 60-300.44(h) (1).

REMEDY: Blue Hawaiian Helicopters will design and implement an audit and reporting system that includes the features required by 41 CFR 60-300.44(h) (1). Where the affirmative action program is found to be deficient, Blue Hawaiian Helicopters will undertake necessary action to bring the program into compliance as required by 41 CFR 60-300.44(h) (2).

5. 41 CFR 60-741.44 (f) – OUTREACH – SECTION 503

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document this review, assess their effectiveness, and document these activities, in violation of 41 CFR 60741.44(f). Specifically, Blue Hawaiian Helicopters indicated that no outreach and recruitment of qualified individuals with disabilities had been undertaken.

REMEDY: Blue Hawaiian Helicopters 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). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Creating internship programs for students with disabilities from local colleges and universities;
- Using the Workforce Recruitment Program (WRP) for students and graduates with disabilities to identify qualified temporary and permanent job candidates. See <http://wrp.jobs/employers/>;
- Participating in job fairs targeting qualified individuals with disabilities;
- Using local disability service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on disability to recruit qualified temporary and permanent job candidates; and
- Identifying and recruiting students with disabilities studying in science, engineering, mathematics, computer science, and some fields of business for internships using American Association for the Advancement of Science (AAAS) Entry Point program. See <http://ehrweb01.aaas.org/entrypoint/>.

Additional examples are in the text of the regulations.

Blue Hawaiian Helicopters 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). Blue Hawaiian Helicopters will document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-741.44(f) (4).

6. 41 CFR 60-741.44 (h) – AUDIT AND REPORTING SYSTEM – SECTION 503

VIOLATION: During the period of March 1, 2017 through February 28, 2018, Blue Hawaiian Helicopters failed to design and implement an audit and reporting system that measured the effectiveness of its affirmative action program in accordance with the requirements of 41 CFR 60-741.44(h) (1).

REMEDY: Blue Hawaiian Helicopters will design and implement an auditing and reporting system that includes the features required by 41 CFR 60-741.44(h) (1). Where the affirmative action program is found to be deficient, Blue Hawaiian Helicopters will undertake necessary action to bring the program into compliance as required by 41 CFR 60-741.44(h) (2).

PART IV. REPORTS REQUIRED

Blue Hawaiian Helicopters shall send two (2) reports to: Lynda Sakseangvirat, District Director, Hawaii Area Office, 300 Ala Moana Blvd., P.O. Box 50149, Honolulu, Hawaii 96850. Blue Hawaiian Helicopters agrees to retain records pertinent to the violations cited in Part III above and to the reports submitted in compliance with Paragraph 3, below. These records shall include data and information underlying the required reports, specifically, but not limited to all applications and personnel records. The records will be retained until the expiration of this Agreement or consistent with regulatory requirements, whichever is later.

REPORTS DUE DATES

January 31, 2020
July 31, 2020

PERIOD COVERED

Effective Date through December 31, 2019
January 1, 2020 through June 30, 2020

The reports shall include at least:

A. Violation #1:

1) A report that includes specific documentation showing that Blue Hawaiian Helicopters developed an executed action-oriented program designed to address any problem areas. See 41 CFR 60-2.17. **(The submission of the documentation of the activity is required for both reports, but a copy of the annual assessment of the effectiveness of the totality of its efforts is only required to be submitted with the second report).**

B. Violations #2:

2) Blue Hawaiian Helicopters will provide documentation showing (1) all employment openings were listed with the appropriate local or state ESDS where the openings occurred; (2) the number of referrals corresponding to each listed vacancy.

3) Documentation showing that, with its initial listing, Blue Hawaiian Helicopters advised the ESDS that it is a federal contractor that desires priority referrals of veterans for job openings at all locations within the state, and that it provided the ESDS with the name and address of each of Blue Hawaiian Helicopters' hiring locations within the state and contact information for the contractor official responsible for hiring at each location, as required by 41 CFR 60-300.5(a) 4.

C. Violations #3:

- 4) Blue Hawaiian Helicopters will provide documentation of its outreach and recruitment efforts for **protected veterans**, such as a list with a detailed description of all outreach and recruitment activities undertaken, to include support documentation like letters, emails, memos, and any other related documents that show the name of each organization contacted, contact person name, contact phone number and/or email address, outreach events that company attended and the results from attending the event.
- 5) Blue Hawaiian Helicopters will also conduct and provide an annual assessment of its outreach and recruitment efforts for **protected veterans** in both reports.

D. Violations #4:

- 6) Detailed documentation demonstrating that Blue Hawaiian Helicopters has designed and implemented an appropriate audit and reporting system that:
 - a) Measures the effectiveness of the contractor's **protected veterans'** AAP;
 - b) Indicates any need for remedial action;
 - c) Determines the degree to which their objectives have been attained;
 - d) Determines whether known **protected veterans** have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and
 - e) Measures the contractor's compliance with the AAP's specific obligations.
 - f) Document the actions taken to comply with obligations above (a-e) and retain these documents as employment records.

E. Violations #5:

- 7) Blue Hawaiian Helicopters will provide documentation of its outreach and recruitment efforts for individuals with disabilities (**IWDs**), such as a list with a detailed description of all outreach and recruitment activities undertaken, to include support documentation like letters, emails, memos, and any other related documents that show the name of each organization contacted, contact person name, contact phone number and/or email address, outreach events that company attended and the results from attending the event.
- 8) Blue Hawaiian Helicopters will also conduct and provide an annual assessment of its outreach and recruitment efforts for **IWDs** in both reports.

F. Violations #6:

- 9) Detailed documentation demonstrating that Blue Hawaiian Helicopters has designed and implemented an appropriate audit and reporting system that:
 - a) Measures the effectiveness of the contractor's **IWDs'** AAP;
 - b) Indicates any need for remedial action;
 - c) Determines the degree to which their objectives have been attained;

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- d) Determines whether known IWDs have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and
- e) Measures the contractor's compliance with the AAP's specific obligations.
- f) Document the actions taken to comply with obligations above (a-e) and retain these documents as employment records.

PART V: SIGNATURES

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Blue Hawaiian Helicopters, 1 Kahului Airport Road, Kahului, Hawaii 96732.

DATE: 4/22/19

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

JOHN WELLS
Interim President
Blue Hawaiian Helicopters

DATE: April 25, 2019

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

Compliance Officer
Office of Federal Contract Compliance Programs
Hawaii Area Office

DATE: 05/07/2019

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

LYNDA SAKSEANGVIRAT
District Director
Office of Federal Contract Compliance Programs
San Jose District Office