

CONCILIATION AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND
THE PERFORMANCE COMPANIES, INCORPORATED
5053 BROADWAY AVENUE
GARY, INDIANA 46409
(R00207745)

PART I: GENERAL PROVISIONS

1. This Agreement is between the Office of Federal Contract Compliance Programs (OFCCP) and Performance Companies, Inc. located at 5053 Broadway Avenue in Gary, Indiana.
2. The violations identified in this Agreement were found during a compliance evaluation of Performance Companies, Inc. that began on June 5, 2018, and were specified in a Notice of Violation issued on May 14, 2019. OFCCP alleges that Performance Companies, Inc. has violated Executive Order 11246, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended, and the implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Performance Companies, Inc.'s of any violation of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended and their implementing regulations.
4. The provisions of this Agreement will become part of Performance Companies, Inc.'s Affirmative Action Program (AAP). Subject to the performance by Performance Companies, Inc. of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Performance Companies, Inc. with all OFCCP programs will be deemed resolved. However, Performance Companies, Inc. is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. Performance agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Performance Companies, Inc.'s compliance. Performance Companies, Inc. shall permit access to its premises during normal business hours for these purposes.

6. Nothing herein is intended to relieve Performance Companies, Inc. from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. Performance Companies, Inc. agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).
8. This Agreement becomes effective on the day it is signed by the District Director for OFCCP (the "Effective Date").
9. If, at any time in the future, OFCCP believes that Performance Companies, Inc. has violated any portion of this Agreement during the term of this Agreement, Performance Companies, Inc. will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Performance Companies, Inc. with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Performance Companies, Inc. has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violation resolved by this Agreement.

Liability for violation of this Agreement may subject Performance Companies, Inc. to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.65 and .66 and/or 41CFR 741.65 and .66 and other appropriate relief.

PART II: SPECIFIC PROVISIONS

1. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to preserve any personnel or employment record made for a period of not less than two years from the date of the making of the record or the personnel action involved in violation of 41 CFR 60-1.12(a). Specifically, Performance Companies, Inc. could not produce accurate and complete personnel and employment activity.

CORRECTIVE ACTION: Performance Companies, Inc. will preserve any personnel or employment record made for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later in accordance with 41 CFR 60-1.12(a).

2. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to identify, where possible, the gender, race, and ethnicity of each applicant or internet applicant, in violation of 41 CFR 60-1.12(c)(ii). Specifically, a representative from Performance Companies, Inc. stated on September 18, 2018, that the contractor "did not track race, ethnicity and gender for each applicant [it] did not know it was necessary."

CORRECTIVE ACTION: Performance Companies, Inc. will identify, where possible, the gender, race, and ethnicity of each applicant, as required by 41 CFR 60-1.12(c)(ii).

3. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to develop and maintain a written affirmative action program (AAP), as set forth in 41 CFR 60-2, for each of its establishments with 50 or more employees, in violation of 41 CFR 60-2.1(b)-(e).

CORRECTIVE ACTION: Performance Companies, Inc. will develop and maintain a written affirmative action program (AAP) for reach of its establishments if it has 50 or more employees and (i) Has a contract of \$50,000 or more; or (ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (iii) Serves as a depository of Government funds in any amount; or (iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

Each employee shall be included in the AAP of the establishment at which he or she works, except that: (1) Employees who work at establishments other than that of the manager to whom they report shall be included in the AAP of their manager. (2) Employees who work at an establishment where Performance Companies, Inc. employs fewer than 50 employees, may be included under any of the following three options: In an AAP which covers just that establishment; in the AAP which covers the location of the personnel function which supports the establishment; or in the

AAP which covers the location of the official to whom they report. (3) Employees for whom selection decisions are made at a higher level establishment within the organization shall be included in the AAP of the establishment where the selection decision is made.

4. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to conduct in-depth analysis of its total employment process to determine whether and where impediments to equal employment opportunity exist in violation of 41 CFR 60-2.17(b).

CORRECTIVE ACTION: Performance Companies, Inc. will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by CFR 60-2.17(b).

5. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to develop and execute action oriented programs designed to correct any problem areas as required by 41 CFR 60-2.17(c).

CORRECTIVE ACTION: Performance Companies, Inc. will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by 41 CFR 60.2.17(b) and will subsequently develop and execute action oriented programs designed to correct any problem areas identified in compliance with 41 CFR 60-2.17(c).

6. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program in violation of 41 CFR 60-2.17(d) and 41 CFR 741.44(h).

CORRECTIVE ACTION: Performance Companies, Inc. will develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program in compliance with 41 CFR 60-2.17(d) and 41 CFR 741.44(h).

7. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to submit its affirmative action program for qualified individuals with disabilities within 30 days of OFCCP's request in violation of 41 CFR 60-741.40(c). Specifically, although Performance Companies, Inc. received OFCCP's scheduling letter on June 7, 2018, it did not submit to OFCCP an affirmative action program for qualified individuals with disabilities.

CORRECTIVE ACTION: Performance Companies, Inc. will prepare and maintain an AAP for qualified individuals with disabilities at each establishment. The AAP shall set forth Performance Companies, Inc.'s policies and procedures in accordance with 41 CFR 60-741.40-45. This AAP

may be integrated into or kept separate from other AAPs. Performance Companies, Inc. shall review and update annually its AAP pursuant to 41 CFR 60-741.40(c), and must comply with all obligations set forth in Subpart C of the regulations, 41 CFR 60-741.40-45.

8. **VIOLATION**: Since at least January 1, 2017, Performance Companies, Inc. failed to file annually, on or before September 30, complete and accurate reports on Standard Form 100 (EEO-1) in violation of 41 CFR 60-1.7(a).

CORRECTIVE ACTION: Performance Companies, Inc. will file annually, on or before September 30, complete and accurate reports on Standard Form 100 (EEO-1), in accordance with 41 CFR 60-1.7(a).

9. **VIOLATION**: Since January 1, 2017 to the present, Performance Companies, Inc. failed to notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, of its commitments under Section 202 of EO 11246, in violation of 41 CFR 60-1.4(a) 3.

CORRECTIVE ACTION: Performance Companies, Inc. shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, of its commitments under Section 202 of EO 11246, as required by 41 CFR 60-1.4(a) 3.

10. **VIOLATION** Since January 1, 2017 to the present, Performance Companies, Inc. failed to notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, of its commitments under Section 503, and is committed to take affirmative action to employ and advance in employment individuals with disabilities, in violation of 41 CFR 60-741.5(a)5.

CORRECTIVE ACTION: Performance Companies, Inc. shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, of its commitments under Section 503, in accordance with 41CFR 60- 741.5(a)5.

11. **VIOLATION**: Since January 1, 2017 to the present, Performance Companies, Inc. failed to invite its employees and applicants for employment to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60-741.42.

CORRECTIVE ACTION: Performance Companies, Inc. shall invite both its applicants for employment, and its employees, to voluntarily self-identify as an individual with a disability, in accordance with 41 CFR 60-741.42. All invitations to self-identify must be made using the OMB-approved form for this purpose available on the OFCCP website.

More specifically, Performance Companies, Inc. shall invite each of its applicants for employment, prior to an offer of employment, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60–741.2(g)(1)(i) or (ii). Performance Companies, Inc. shall also invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability. In addition, during the first year it is subject to this requirement, Performance Companies, Inc. shall invite each of its employees to voluntarily self-identify as an individual with a disability, and then extend this invitation again at five year intervals, thereafter. At least once during each interval, Performance Companies, Inc. shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. Performance Companies, Inc. must keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60–741.42(e).

12. **VIOLATION** Since January 1, 2017 to the present, failed to document and maintain the required data pertaining to applicants and hires, in violation of 41 CFR 60–741.44(k).

CORRECTIVE ACTION: Performance Companies, Inc. will document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60–741.44(k):

- The number of applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities;
- The total number of job openings and total number of jobs filled;
- The total number of applicants for all jobs;
- The number of applicants with disabilities hired; and
- The total number of applicants hired.

13. **VIOLATION:** Since January 1, 2017 to the present, Performance Companies, Inc. failed to evaluate its utilization of individuals with disabilities using the goal established by OFCCP, in violation of 41 CFR 60–741.45.

CORRECTIVE ACTION: Performance Companies, Inc. will annually evaluate its utilization of individuals with disabilities using the 7 percent goal established by OFCCP, as required by 41 CFR 60–741.45. When conducting this utilization analysis, Performance Companies, Inc. must use the job groups established for utilization analyses required by Executive Order 11246, as required by 41 CFR 60–741.45(d)(2). However, if Performance

Companies, Inc. has a total workforce of 100 or fewer employees, it may, instead, choose to measure the representation of individuals with disabilities in its workforce as a whole, using the 7 percent goal established by OFCCP, as permitted by 41 CFR 60-741.45(d)(2)(i). Should the percentage of individuals with disabilities in one or more job groups or in Performance Companies, Inc. workforce be less than the utilization goal, Performance Companies, Inc. must take steps, as required by 41 CFR 60-741.45(e), to determine whether and where impediments to equal employment exist, and must develop and execute action-oriented programs to correct any identified problems, as required by 41 CFR 60-741.45(f).

14. **VIOLATION**: Since January 1, 2017 to the present, Performance Companies, Inc. failed to keep and preserve all personnel and employment records, in violation of 41 CFR 60-741.80. Specifically, Performance Companies, Inc. failed to keep applicant, interview, hiring or other general personnel or employment records specific to Section 503 obligations as specified in 60-741.80(b) for three years.

CORRECTIVE ACTION: Performance Companies, Inc. will keep and preserve all personnel and employment records, in accordance with 41 CFR 60-741.80, and will keep and preserve those records specified in 41 CFR 60-741.80(b) for a period of three years from the date of the making of the record.

PART III: REPORTING

1. Performance Companies, Inc. will retain records pertinent to the violations cited in Part II above, and the reports submitted in compliance with Paragraph 2 below. These records shall include data and/or information underlying the required reports, specifically, but not limited to all applications, personnel records and analyses required to remedy the violations. These records will be retained until the expiration of the Agreement or consistent with regulatory requirements, whichever is later.
2. Performance Companies, Inc. agrees to furnish the OFCCP Chicago District Office, 230 S. Dearborn Street, Suite 434, Chicago, IL 60604 with the following report:

<u>Report</u>	<u>Due Date</u>	<u>Covered Period</u>
Report 1	February 15, 2020	January 1, 2019 – December 31, 2019

The report shall contain the following:

- a. For each job group and job title, the total number of applicants and hires, promotions and terminations identified by race/ethnicity (African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, White), and sex. For each job group and job

title the total number of applicants for whom race and/or sex is not known should be included in the data submitted.

- b. A copy of your 2019 Executive Order Affirmative Action Programs (AAP) for each establishment (as appropriate) prepared in accordance with the requirements of 41 CFR 60-1.40, and 41 CFR 60-2.1 through 60-2.17;
- c. A copy of your 2019 Section 503 AAPs for each establishment (as appropriate) prepared in accordance with the requirements of 41 CFR 60-741.40 through 60-741.44;
- d. A copy of your most recent EEO-1 Report;
- e. Documentation of notice to each labor union or representative of workers with which Performance Companies, Inc. has a collective bargaining agreement or other contract of understanding, of its commitments under Section 202 of EO 11246, and Section 503.

TERMINATION DATE: This Agreement will expire 60 days after OFCCP receives the report required in Part III above or on the date that the District Director gives notice to Performance Companies, Inc. that Performance Companies, Inc. has satisfied its reporting requirements, whichever occurs earlier, unless OFCCP notifies Performance Companies, Inc. in writing prior to the end of the 60-day period that Performance Companies, Inc. has not satisfied its reporting requirements pursuant to this Agreement.

INTEGRATION CLAUSE: This Agreement represents the full Agreement between Performance Companies, Inc. and the OFCCP and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither Performance Companies, Inc. nor the OFCCP relies upon any promise, representation of fact or law, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of the Parties affected and may not be modified by any oral agreement.

PART IV: Signatures

The person signing this Conciliation Agreement on behalf of Performance Companies, Inc. personally warrants he/she is fully authorized to do so, that Performance Companies, Inc. has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on Performance Companies, Inc. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Performance Companies, Inc.

5/17/2019
Date
(b) (6), (b) (7)(C)

Paula Broutman
President
Performance Companies, Inc.

5/22/2019
Date
(b) (6), (b) (7)(C)

Compliance Officer
U.S. Department of Labor
OFCCP Chicago District Office

5/22/19
Date
(b) (6), (b) (7)(C)

Jamyan K. Watkins
Assistant District Director
U.S. Department of Labor
OFCCP Chicago District Office

May 22, 2019
Date
(b) (6), (b) (7)(C)

Michael J. Thomas
District Director
U.S. Department of Labor
OFCCP Chicago District Office