

CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

R. E. RABALAIS CONSTRUCTORS LLC
11200 UP RIVER ROAD
CORPUS CHRISTI, TEXAS, 78410

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated R. E. Rabalais Constructors LLC's ("Rabalais") facility located at 11200 Up River Road, Corpus Christi, Texas, 78410 and found that Rabalais was not in compliance with the 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"), 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. Sections 60-1, 60-2, 60-3, 60-300, and 60-741. OFCCP notified Rabalais of the specific violations found and the corrective actions required in a Notice of Violations on July 23, 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 Rabalais 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 Rabalais' 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 Rabalais violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Rabalais 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. Rabalais will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Rabalais understands that nothing in this Agreement relieves Rabalais of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. Rabalais 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 C.F.R. § 60-1.32(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 day it is signed by the District Director of the San Antonio District Office in the Southwest and Rocky Mountain Region (the "Effective Date").
9. This Agreement will expire sixty (60) days after Rabalais submits the final progress report required in Part IV (D), below, unless OFCCP notifies Rabalais in writing prior to the expiration date that Rabalais has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determine Rabalais has met all of its obligations under the Agreement.
10. If Rabalais violates this Conciliation Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that Rabalais violated any term of the Agreement while it was in effect, OFCCP will send Rabalais a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) Rabalais 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 Rabalais 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. Rabalais may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. § 60-741.66, or 41 C.F.R. § 60-300.66 and/or other appropriate relief for violation of this Agreement.
11. This Agreement does not constitute an admission by Rabalais of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Rabalais violated any laws.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. **VIOLATION:** OFCCP found that Rabalais failed to preserve personnel or employment records in accordance with the requirements of 41 C.F.R. § 60-1.12, § 60-3.4 and § 60-3.15. Specifically, during the period of May 3, 2016 through September 6, 2018, Rabalais failed to track and/or preserve and make available for inspection complete and accurate records, including self-identification forms, applications and applicant flow logs.

OFCCP determined Rabalais did not utilize an applicant tracking system and applications for unsuccessful applicants were shredded after six months. Furthermore, Rabalais did not solicit race, ethnicity or gender from applicants.

REMEDY: Rabalais will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. § 60-1.12, § 60-3.4 and § 60-3.15.

2. **VIOLATION:** OFCCP found that during the period of May 3, 2016 through September 6, 2018 Rabalais failed to conduct adverse impact analyses of the overall selection process, to include analysis for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce, in accordance with 41 C.F.R. § 60-2.17(b), § 60-3.4 and § 60-3.15A (2).

REMEDY: Rabalais will conduct adverse impact analyses on at least an annual basis for purposes of determining whether adverse impact exists against applicants based on race, sex, or ethnic groups in hiring, promotion, or termination and other personnel activities. These analyses will be done by job group for each group constituting more than 2% of the labor force in the relevant labor area. If adverse impact is identified in the total selection process, Rabalais will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, Rabalais will validate the component(s) in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures that do not result in adverse impact.

3. **VIOLATION:** During the period of May 3, 2016 through June 30, 2018¹, Rabalais failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system ("ESDS") serving the location where the openings occurred in violation of 41 C.F.R. § 60-300.5 (a) 2-6.

REMEDY: Rabalais will list all employment openings as they occur with an appropriate 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 Rabalais, as required by 41 C.F.R. § 60-300.5(a) 2-6. With its initial listing, and as subsequently needed to update the information, Rabalais will also advise the ESDS 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 ESDS 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 C.F.R. § 60-300.5(a) 4. Should any of the information in the disclosures change since it was last reported to the ESDS, Rabalais shall provide updated information simultaneously with its next job listing.

4. **VIOLATION:** During the period of May 3, 2016 through September 6, 2018, Rabalais failed to invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA

¹ Rabalais began listing with the ESDS in July 2018.

in violation of 41 C.F.R. § 60-300.42.

REMEDY: Rabalais shall invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA, as required by 41 C.F.R. § 60-300.42.

Specifically, Rabalais shall invite applicants for employment, prior to an offer of employment, to voluntarily identify as a protected veteran. Additionally, Rabalais shall invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he or she is a protected veteran. Rabalais may invite the applicant to also indicate if he or she belongs to one or more of the specific categories of protected veterans, as defined by 41 C.F.R. § 60-300.2(q). All invitations to self-identify as a protected veteran will comply with the requirements of 41 C.F.R. § 60-300.42(c). Rabalais will 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 C.F.R. § 60-300.42(e).

5. **VIOLATION:** During the period of May 3, 2016 through September 6, 2018, Rabalais failed to invite its 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 C.F.R. § 60-741.42. Further, Rabalais failed to invite self-identification pre-offer and failed to invite self-identification post-offer.

REMEDY: Rabalais shall invite its applicants for employment to voluntarily self-identify as an individual with a disability, in accordance with 41 C.F.R. § 60-741.42. All invitations to self-identify will be made using the OMB-approved form for this purpose (available on the OFCCP website).

Specifically, Rabalais 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 C.F.R. § 60-741.2(g)(1)(i) or (ii). Rabalais 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, Rabalais 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, Rabalais shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. Rabalais will 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 C.F.R. § 60-741.42(e).

Part IV. REPORTS REQUIRED

1. Rabalais must submit the documents and reports described below to:

Dinorah S. Boykin
District Director
U.S. Department of Labor/OFCCP
615 East Houston Street, Suite 340
San Antonio, Texas 78205

Rabalais will submit two semi-annual progress reports. The first progress report shall be due on February 28, 2020 (seven months after the Effective Date of this Agreement) and must cover the

period of August 1, 2019 through January 31, 2020 (the six-month period beginning with the Effective Date). The second progress report shall cover the successive six-month period of February 1, 2020 through July 31, 2020, and must be submitted within 30 calendar days after the close of that six-month period, August 31, 2020. Rabalais will submit the following in each progress report:

- 1) Pursuant to Violations 1, 4 and 5 in Part III of the Agreement, for each job group, job title and/or requisition during the reporting period, the total number of all job seekers, applicants, hires and rehires and the breakdown by race, gender, ethnic group, veteran status and disability status, including all full-time, temporary, part time, seasonal and contract employees as required by of 41 C.F.R. § 60-1.12, § 60-3.4, § 60-3.15, § 60-300.42(c) and § 60-741.42;
- 2) Pursuant to Violations 1, 4 and 5 in Part III of the Agreement, an explanation with supporting documentation of the method/system used to collect, identify and maintain applicable race, gender, ethnicity, veteran and disability status of all job seekers, applicants, hires and rehires (i.e. applicant and employee tracking procedures/policies, sample Section 503 and VEVRAA self-identification forms, etc.) as required by of 41 C.F.R. § 60-1.12, § 60-3.4, 60-3.15, § 60-300.42(c) and § 60-741.42;
- 3) Pursuant to Violation 2 in Part III of the Agreement, the results of Rabalais' analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those members of groups set forth in 41 C.F.R. § 60-3.4B;
- 4) Pursuant to Violation 2 in Part III of the Agreement, for each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, the results of Rabalais' evaluation of the individual components of the selection process for adverse impact;
- 5) Pursuant to Violation 2 in Part III of the Agreement, the actions taken by Rabalais upon determining that any component of the selection process has an adverse impact on members of groups set forth in number four above; and
- 6) Pursuant to Violation 3 in Part III of the Agreement, supporting documentation showing Rabalais is listing all employment openings with either the state workforce agency job bank or a local ESDS serving the location where the openings occurred pursuant to 41 C.F.R. § 60-300.5 (a) 2-6 (i.e. sample job postings, email submissions to the state workforce agency job bank or a local ESDS, etc.).

2. Rabalais will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later (or "whichever time period is longer").

Part V. SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Rabalais.

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

Kevin Sharp
President/CEO
R. E. Rabalais Constructors LLC

Date: 7-31-19

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

(b) (7)(E), (b) (7)(C)
Compliance Officer
OFCCP

Date: 7-31-2019

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

Dinorah S. Boykin
District Director
OFCCP

Date: 07-31-2019