

CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

INGENESIS, INC.
10231 KOTZEBUE ST.
SAN ANTONIO, TEXAS, 78217

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated InGenesis, Inc.’s (“InGenesis”) facility located at 10231 Kotzebue St., San Antonio, Texas, 78217 and found that InGenesis 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. Section(s) 60-1, 60-2, 60-3, 60-300, and 60-741. OFCCP notified InGenesis of the specific violations found and the corrective actions required in a Notice of Violations issued on July 16, 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 InGenesis 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 InGenesis’ 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 InGenesis violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. InGenesis 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. InGenesis will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. InGenesis understands that nothing in this Agreement relieves InGenesis 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. InGenesis 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 InGenesis submits the final progress report required in Part IV (D), below, unless OFCCP notifies InGenesis in writing prior to the expiration date that InGenesis has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines InGenesis has met all of its obligations under the Agreement.
10. If InGenesis violates this Conciliation Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that InGenesis violated any term of the Agreement while it was in effect, OFCCP will send InGenesis a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) InGenesis 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 InGenesis 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. InGenesis 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 InGenesis of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that InGenesis violated any laws.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. **VIOLATION**: During the period of January 24, 2016 through January 24, 2018, InGenesis failed to annually file complete and accurate reports on Standard Form 100 (EEO-1) in violation of 41 C.F.R. § 60-1.7. Specifically, InGenesis stated in a June 29, 2018 email that its EEO-1 Report for 2016 and 2017 consisted of combined data for three entities: InGenesis Inc., InGenesis Payroll, LLC and InGenesis Healthcare Network, LLC.

REMEDY: InGenesis will file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1), promulgated jointly by the OFCCP and the Equal Employment Opportunity Commission in accordance with 41 C.F.R. § 60-1.7.

2. **VIOLATION**: OFCCP found that InGenesis 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 January 24, 2016 through present, InGenesis 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 InGenesis did not utilize an applicant tracking system and applicants considered for positions were not tracked unless the applicants were referred to clients for potential selection. Specifically, InGenesis recruiters are (1) utilizing same internal database pool multiple times and not tracking how many times they are considering the same individuals; and (2) not tracking the applicants applying through outside sources (i.e. Indeed, Monster, JobScore) unless the applicants will be considered for client referral.

Additionally, for applicants that were tracked, discrepancies were found in race and gender counts when comparing applicants and hires which are maintained on separate logs. Per InGenesis, the discrepancies occurred because either the employee was from a previous contract and was not an applicant on the applicant log or because the applicant did not self-identify at the applicant stage but when the applicant was hired they did self-identify and the applicant log and hire log were not reconciled.

REMEDY: InGenesis 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.

3. VIOLATION: OFCCP found that InGenesis failed to identify single establishments in accordance with the requirements of 41 C.F.R. § 60-2.1. Specifically, during the Affirmative Action Program (“AAP”) period of January 1, 2018 through December 31, 2018, InGenesis combined and reported information and data for three separate establishments¹ in its 2018 E.O. 11246 AAP.

REMEDY: InGenesis will ensure that single establishments/entities are identified in accordance with the requirements of 41 C.F.R. § 60-2.1 and will develop and maintain a written AAP for each of its establishments that are subject to the AAP requirements.

4. VIOLATION: OFCCP found that during the AAP period of January 1, 2018 through December 31, 2018, InGenesis failed to conduct an appropriate job group analysis in accordance with 41 C.F.R. § 60-2.12. Specifically, InGenesis failed to construct job groupings consisting of job titles with similar content, wage rates, and opportunities, which affected the quantitative analyses of subsequent AAP components in accordance 41 C.F.R. § 60-2.13 through 41 C.F.R. § 60-2.16.

REMEDY: InGenesis will construct appropriate job groupings and job group analysis in accordance with 41 C.F.R. § 60-2.12. In the job group analysis, jobs at the establishment with similar content, wage rates, and opportunities, will be combined to form job groups. Similarity of content refers to the duties and responsibilities of the job titles which make up the job group. Similarity of opportunities refers to training, transfers, promotions, pay, mobility, and other career enhancement opportunities offered by the jobs within the job group. Additionally, if, pursuant to 41 C.F.R. § 60-2.1(d) and (e) the job group analysis contains jobs that are located at another establishment, the job group analysis will be annotated to identify the actual location of those jobs. If the establishment at which the jobs actually are located maintains an AAP, the job group analysis of that program will be annotated to identify the program in which the jobs are included.

5. VIOLATION: During the AAP period of January 1, 2018 through December 31, 2018, InGenesis failed to prepare and maintain an AAP for protected veterans at each establishment, in violation of 41 C.F.R. § 60-300.40(b). Specifically, InGenesis combined and reported information and data for three separate establishments² in its 2018 AAP for VEVRAA.

REMEDY: InGenesis will prepare and maintain an AAP for protected veterans at each establishment. The AAP shall set forth InGenesis’ policies and procedures in accordance with 41 C.F.R. § 60-300.40-45. This AAP may be integrated into or kept separate from other AAPs. InGenesis shall review and update annually its AAP pursuant to 41 C.F.R. § 60-300.40(c), and will comply with all obligations set forth in Subpart C of the regulations, 41 C.F.R. § 60-300.40-45.

¹ InGenesis submitted its 2018 E.O. 11246 AAP and its 2018 AAP for VEVRAA and Section 503 which contained combined data for InGenesis, Inc., InGenesis Payroll, LLC, and InGenesis Healthcare Network, LLC. The contractor submitted articles of incorporation for each entity.

² Reference footnote #1.

6. VIOLATION: During the period of January 24, 2016 through present, InGenesis failed to invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA pursuant to 41 C.F.R. § 60-300.42(c). Specifically, InGenesis did not state that it is a Federal contractor required to take affirmative action to employ and advance in employment protected veterans pursuant to VEVRAA, did not summarize the relevant portions of VEVRAA and the contractor's AAP and did not state that the information is being requested on a voluntary basis, will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the act.

REMEDY: InGenesis 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(c).

Specifically, when inviting applicants for employment to voluntarily identify as a protected veteran, InGenesis will state that it is a Federal contractor required to take affirmative action to employ and advance in employment protected veterans pursuant to VEVRAA. The invitations will also summarize the relevant portions of VEVRAA and InGenesis' AAP. Furthermore, the invitations will state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with VEVRAA, as required by 41 C.F.R. § 60-300.42(c). An acceptable form for such an invitation is set forth in Appendix B to 41 C.F.R. § 60-300.

7. VIOLATION: During the AAP period of January 1, 2018 through December 31, 2018, InGenesis failed to prepare and maintain an AAP for qualified individuals with disabilities at each establishment, in violation of 41 C.F.R. § 60-741.40(b). Specifically, InGenesis combined and reported information and data for three separate establishments³ in its 2018 AAP for Section 503.

REMEDY: InGenesis will prepare and maintain an AAP for qualified individuals with disabilities at each establishment. The AAP shall set forth InGenesis' policies and procedures in accordance with 41 C.F.R. § 60-741.40-45. This AAP may be integrated into or kept separate from other AAPs. InGenesis shall review and update annually its AAP pursuant to 41 C.F.R. § 60-741.40(c), and will comply with all obligations set forth in Subpart C of the regulations, 41 C.F.R. § 60-741.40-45.

8. VIOLATION: During the period of January 24, 2016 through present, InGenesis 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.

REMEDY: InGenesis 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).

³ Reference footnote #1.

Specifically, InGenesis 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). InGenesis 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, InGenesis 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, InGenesis shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. InGenesis will keep all self-id 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).

9. VIOLATION: During the period of January 24, 2016 through present, InGenesis failed to provide necessary reasonable accommodation for employment opportunities to an otherwise qualified job applicant with a disability on its online application system as required by 41 C.F.R. § 60-741.21(6). Specifically, InGenesis' online application system has no information/instructions regarding how a job applicant with a disability who is not able to fully utilize that system is nonetheless provided with equal opportunity to apply and be considered for all jobs.

REMEDY: InGenesis will provide necessary reasonable accommodation to ensure that an otherwise qualified individual with a disability who is not able to fully utilize that system is nonetheless provided with equal opportunity to apply and be considered for all jobs in accordance with 41 C.F.R. § 60-741.21(6). Though not required by this regulation, it is a best practice for contractors to make its online job application system accessible and compatible with assistive technologies used by individuals with disabilities.

PART IV. REPORTS REQUIRED

1. InGenesis (excluding InGenesis Payroll and/or InGenesis Healthcare Network) 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

- A. Within 60 calendar days of the Effective Date of this Agreement InGenesis must submit the following:

- 1) Pursuant to Violations 3, and 4 in Part III of the Agreement, a copy of InGenesis' revised job group analysis in accordance with 41 C.F.R. § 60-2.1(d) and (e), and § 60-2.12.
- B. InGenesis will submit two semi-annual progress reports. The first progress report shall be due on April 30, 2020 (seven months after the Effective Date of this Agreement) and must cover the period of October 1, 2019 through March 31, 2020 (the six-month period beginning with the Effective Date). The second progress report shall cover the successive six-month period of April 1, 2020 through September 30, 2020, and must be submitted within 30 calendar days after the close of that six-month period, November 2, 2020. InGenesis will submit the following in each progress report as outlined below:

First Progress Report

- 1) Pursuant to Violation 1 in Part III of the Agreement, InGenesis will provide copies of reported Standard Form 100 (EEO-1) as required by 41 C.F.R. § 60-1.7;
- 2) Pursuant to Violations 2, 6, and 8 in Part III of the Agreement, a tracking log of all persons who expressed an interest in employment, including all full-time, temporary, part time, seasonal, contract employees and employees acquired through contract procurement during the reporting period. For every expression of interest, the tracking log shall include the job group, job title, requisition (if a requisition was used), disposition of the expression of interest, the person's race, gender, ethnic group, veteran status, disability status and whether a person was a rehire, as required by 41 C.F.R. § 60-1.12, § 60-3.4, § 60-3.15, § 60-300.42(c) and § 60-741.42;
- 3) Pursuant to Violations 2, 6 and 8 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 41 C.F.R. § 60-1.12, § 60-3.4, § 60-3.15, § 60-300.42(c) and § 60-741.42;
- 4) Pursuant to Violation 9 in Part III of the Agreement, evidence of the actions taken by InGenesis to provide notice of the availability of reasonable accommodation to ensure access to online application system as required by 41 C.F.R. § 60-741.21, § 60-300.44(d) and § 60-741.44(d) (i.e. copies of online screen shots on application page).

Second Progress Report

5) Pursuant to Violations 2, 6, and 8 in Part III of the Agreement, a tracking log of all persons who expressed an interest in employment, including all full-time, temporary, part time, seasonal, contract employees and employees acquired through contract procurement during the reporting period. For every expression of interest, the tracking log shall include the job group, job title, requisition (if a requisition was used), disposition of the expression of interest, the person's race, gender, ethnic group, veteran status, disability status and whether a person was a rehire as required by 41 C.F.R. § 60-1.12, § 60-3.4, § 60-3.15, § 60-300.42(c) and § 60-741.42;

2. InGenesis 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 InGenesis.

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

Dr. Veronica Muzquiz Edwards
Chief Executive Officer
InGenesis, Inc.

Date: September 27, 2019

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

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

Date: 9/30/2019

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

Dinorah S. Boykin
District Director
OFCCP

Date: 09/30/2019