

## CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY  
801 LEROY PLACE  
SOCORRO, NM 87801

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the New Mexico Institute of Mining and Technology (Contractor) establishment located at 801 Leroy Place, Socorro, New Mexico, 87801, beginning on October 24, 2019. OFCCP found that the Contractor failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503) and 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 Sections 60-741 and 60-300.

OFCCP notified Contractor of the specific violation(s) and the corrective action(s) required in a Notice of Results of Investigation (NORI) issued on February 20, 2020.

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 Contractor enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Contractor's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under Section 503 or VEVRAA based on the violations alleged in the NORI. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Contractor violates any provision of this Agreement, as set forth in Paragraph I, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Contractor'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. Contractor 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 Contractor of its obligation to fully comply with the requirements of Executive Order 11246, as amended (E.O. 11246 or the Executive Order), Section 503 or VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Contractor and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under Section 503 or VEVRAA.
5. Contractor 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, including its attachments, 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 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 Contractor submits its final progress report required in Section VIII, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor 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 Contractor has met all of its obligations under the Agreement.
11. If Contractor violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-300. 63 (2014) and 41 C.F.R. 60-741.63 (2014) will govern:

- i. OFCCP will send Contractor a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. The Contractor 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 Contractor 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 contractor, 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. Contractor may be subject to the sanctions set forth in Section 209 of 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. Contractor neither admits nor denies any violation of 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, and in the Timeline included as Attachment B, 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.

### **PART III. TECHNICAL VIOLATIONS AND REMEDIES**

1. **VIOLATION:** OFCCP found that during the Affirmative Action Plan (AAP) period of January 1, 2019 to December 31, 2019, Contractor failed to include in its VEVRAA AAP an assessment of external outreach and recruitment efforts in accordance with 41 CFR 60-300.44(f).

**REMEDY:** The Contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. Contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and Contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of 41 CFR 60-300.44 for the current year and the two most recent previous years. Contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If Contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of 41 CFR 60-300.44(f) in order to fulfill its obligations. Lastly, Contractor shall document all activities it undertakes to comply with the obligations of 41 CFR 60-300.44(f), and retain these documents for a period of three (3) years.

2. **VIOLATION:** OFCCP found that during the AAP period of January 1, 2019 to December 31, 2019, Contractor failed to include in its Section 503 AAP an assessment of external outreach and recruitment efforts in accordance with 41 CFR 60-741.44(f).

**REMEDY:** Contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. Contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and Contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of 41 CFR 60-741.44 for the current year and the two most recent previous years. Contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If Contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of 41 CFR 60-741.44(f) in order to fulfill its obligations. Lastly, Contractor shall document all activities it undertakes to comply with the obligations of 41 CFR 60-741.44(f), and retain these documents for a period of three (3) years.

3. **VIOLATION:** OFCCP found that during the AAP period of January 1, 2019 to December 31, 2019, Contractor failed to include in its Section 503 AAP the utilization goals in accordance with 41 CFR 60-741.45.

**REMEDY:** Contractor will develop and maintain OFCCP's established utilization goal of 7% for employment of qualified individuals with disabilities for each job group in the Contractor's workforce or for the Contractor's entire workforce. Contractor will also implement and maintain a periodic review of the goal, utilization analysis, identification of problem areas, action-oriented programs, and comply with the requirements of 41 CFR 60-741.45.

#### **Part IV. OFCCP MONITORING PERIOD**

1. **Recordkeeping.** Contractor agrees to retain all records relevant to the violations cited in Sections 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. Contractor 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.** Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Contractor will submit one progress report due on September 30, 2020 and will cover the period of March 1, 2020 through August 31, 2020.

- i. Pursuant to Violations 1 and 2 in Part III of the Agreement, Contractor will submit with its progress report its assessment of external outreach and recruitment efforts in accordance with 41 CFR 60-300.44(f) and 41 CFR 60-741.44(f) as described in Remedies 1 and 2.
- ii. Pursuant to Violation 3 in Part III of the Agreement, Contractor will submit with its progress report its Section 503 utilization goal AAP component in accordance with 41 CFR 60-741.45 as described in Remedy 3.

Contractor will submit reports to Dinorah S. Boykin, District Director, U.S. Department of Labor/OFCCP, 615 East Houston Street, Suite 340, San Antonio, Texas 78205, (b) (6), (b) (7)(C)@dol.gov. Contractor 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 Contractor provides in accordance with this agreement are customarily kept private or closely-held, and the Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor 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 Contractor's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor 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 Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

**Part V. SIGNATURES**

The person signing this Agreement on behalf of Contractor personally warrants that he or she is fully authorized to do so, that Contractor has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Contractor. This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and New Mexico Institute of Mining and Technology, 801 Leroy Place Socorro, NM 87801.

**(b) (6), (b) (7)(C)**  
\_\_\_\_\_  
Dr. Stephen Wells  
President  
New Mexico Institute of Mining and Technology

Date: 2-28-20

**(b) (7)(C), (b) (6)**  
**(b) (7)(C), (b) (7)(E)**  
\_\_\_\_\_  
Compliance Officer  
OFCCP

Date: 02/28/2020

**(b) (6), (b) (7)(C)**  
\_\_\_\_\_  
Dinorah S. Boykin  
District Director  
OFCCP

Date: 02/28/2020

Attachment:

- A. Timeline

**Timeline**

<b>Action</b>	<b>Due Date</b>
<p>Progress Report Submission.</p> <p>Pursuant to Violations 1 and 2 in Part III of the Agreement, Contractor will submit with its progress report its assessment of external outreach and recruitment efforts in accordance with 41 CFR 60-300.44(f) and 41 CFR 60-741.44(f) as described in Remedies 1 and 2.</p> <p>Pursuant to Violation 3 in Part III of the Agreement, Contractor will submit with its progress report its Section 503 utilization goal AAP component in accordance with 41 CFR 60-741.45 as described in Remedy 3.</p>	September 30, 2020