

CONCILIATION AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
AND  
AMERICAN EAGLE PROTECTIVE SERVICES  
902 CRYSTAL FALLS PARKWAY  
LEANDER, TX 78641

OFCCP COMPLAINT NO. I00203979  
OFCCP COMPLAINT NO. I00206595

**I. Preliminary Statement**

On May 22, 2017, the Office of Federal Contract Compliance Programs ("OFCCP") initiated an investigation of the allegations of discrimination based on veteran status made in the complaint of (b) (6), (b) (7)(C) (complaint No. I00203979) filed on April 24, 2017. (b) (6), (b) (7)(C)'s complaint was filed under the Vietnam Era Veterans Readjustment Assistant Act of 1974, as amended.

On March 12, 2018, OFCCP initiated an investigation of the allegations of discrimination based on veteran status and disability in the complaint of (b) (6), (b) (7)(C) (complaint No. I00206595). (b) (6), (b) (7)(C)'s complaint was dually filed under Rehabilitation Act of 1974, as amended and the Americans with Disabilities Act of 1990 (ADA), as amended and processed under 41CFR Part 60-742.

OFCCP investigated American Eagle Protective Services previously operating at 30 Christy's Drive, Brockton, MA (complaint No. I00203979) and 300 Jefferson Blvd, Warwick, RI (complaint No. I00206595) and found that American Protective Services (herein AEPS) was not in compliance with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"); its implementing regulations at 41 CFR Chapter 60-741; and the Vietnam Era Veterans Readjustment Assistant Act of 1974, as amended (VEVRAA). OFCCP notified AEPS of the violations found and the corrective actions required in a Notification of Results of Investigation issued on January 10, 2020. 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 AEPS enter this Conciliation Agreement ("Agreement") and agree to all the terms stated below.

**II. General Terms and Conditions**

1. In exchange for AEPS's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations alleged in the Notice of Report of Investigation (NORI). However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if AEPS 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 AEPS'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. AEPS 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 AEPS of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring non-discrimination or equal employment opportunity through affirmative action.
4. AEPS 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.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement 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.
7. This Agreement becomes effective on the day it is signed by the Regional Director (the "In Effect Date").
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after AEPS submits its final progress report required in Part VIII, below, unless OFCCP notifies AEPS in writing before the expiration date that AEPS 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 AEPS has met all of its obligations under the Agreement.
10. If AEPS violates this Agreement:
  - a. 41 C.F.R. § 60-1.34 will govern:
    - i. OFCCP will send AEPS a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. AEPS shall have 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 AEPS 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 AEPS, 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. AEPS may be subject to the sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief for violating this Agreement.
11. AEPS denies any violation of the Executive Order, Section 503, or VEVRAA, but in the spirit of cooperation, agrees to enter this agreement the terms set forth below. There also has been no adjudication on the merits regarding any such violation.
  12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
  13. 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.
  14. Each party shall bear its own fees and expenses with respect to this matter.
  15. 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.
  16. All references to "days" in this Agreement 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.

### **III. Technical Violations and Remedies**

1. **Violation:** OFCCP determined that AEPS failed to provide a reasonable accommodation to an employee. Specifically, AEPS denied (b) (6), (b) (7)(C) a disabled veteran and an individual with a disability, time off to attend his medical appointments, including a denial that occurred within 300 days of the complaint. This is in violation of VEVRAA - 41 CFR 60-300.21(f), Section 503 - 41 CFR 60-741.21(a)(6), and the ADA.

**Remedy:** AEPS will disburse a lump sum payment of \$1,500 in compensatory damages to (b) (6), (b) (7)(C) the employee identified as being denied a reasonable accommodation. Within ten business days of the execution of this Agreement, AEPS will notify (b) (6), (b) (7)(C) of the

terms of this Agreement and distribute the lump sum. AEPS will supply a FORM 1099-MISC reporting the settlement payment to (b) (6), (b) (7)(C). AEPS will in no way retaliate, harass or engage in any form of reprisal or other adverse action against any employee in retaliation to the term of provisions of this remedy. Furthermore, AEPS will provide reasonable accommodation training, including training on leave as a form of reasonable accommodation, to HR personnel, managers, and all personnel who handle reasonable accommodations.

2. **Violation:** AEPS failed to establish a hiring benchmark in its 2017 VEVRAA AAP to measure its progress toward achieving equal employment opportunity for protected veterans, in violation of 41 CFR 60–300.45. Specifically, in its 2017 VEVRAA AAP, AEPS stated that, “For 2017, AEPS employs (b) (7)(E) veterans for the contract in Massachusetts and Rhode Island; we strive to increase that amount each year.” AEPS did not utilize a VEVRAA benchmark using one of the two methods prescribed in 41 CFR 60-300.45.

**Remedy:** AEPS will establish a hiring benchmark for each of its implemented VEVRAA AAPs on an annual basis, using one of the two methods prescribed in 41 CFR 60–300.45(b). AEPS will document its hiring benchmark, and, if AEPS sets its benchmark using the five–factor approach described in 41 CFR 60–300.45(b)(2), it will also document each factor that it considered in establishing its benchmark and the relative significance it accorded to each one. AEPS will retain these records for three years, as required by 41 CFR 60–300.45(c).

3. **Violation:** AEPS failed to document and maintain the required data pertaining to applicants and hires in its 2017 VEVRAA AAP, in violation of 41 CFR 60–300.44(k). Specifically, AEPS failed to provide in its 2017 VEVRAA AAP the number of applicants who identified as veterans and the total number of job openings as required under 41 CFR 60-300.44 (k).

**Remedy:** AEPS will document the following computations or comparisons pertaining to applicants and hires, on an annual basis, for each of its implemented VEVRAA AAPs and will maintain this data for three (3) years, as required by 41 CFR 60–300.44(k):

- a. The number of applicants who self–identified as protected veterans, or who are otherwise known to be protected veterans;
- b. The total number of job openings and total number of jobs filled;
- c. The total number of applicants for all jobs;
- d. The number of protected veteran applicants hired; and
- e. The total number of applicants hired.

4. **Violation:** AEPS failed to evaluate its utilization of individuals with disabilities using the goal established by OFCCP in its 2017 Section 503 AAP, in violation of 41 CFR 60–

741.45. Specifically, AEPS did not include its utilization goals or analysis in its Section 503 AAP for 2017.

**Remedy:** AEPS will annually evaluate its utilization of individuals with disabilities using the 7 percent goal established by OFCCP for each of its Section 503 AAPs, as required by 41 CFR 60–741.45. When conducting this utilization analysis, AEPS will 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 AEPS 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 AEPS workforce be less than the utilization goal, AEPS will take steps, as required by 41 CFR 60–741.45(e), to determine whether and where impediments to equal employment exist, and will develop and execute action-oriented programs to correct any identified problems, as required by 41 CFR 60–741.45(f).

5. **Violation:** AEPS failed to document and maintain the required data pertaining to applicants and hires in its 2017 Section 503 AAP, in violation of 41 CFR 60–741.44(k). Specifically, AEPS failed to document the number of applicants who self-identified as individuals with disabilities; the total number of job openings and the total numbers of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total of applicants hired.

**Remedy:** AEPS will document the following computations or comparisons pertaining to applicants and hires in each of its Section 503 AAPs, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60–741.44(k):

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

#### **IV. OFCCP Monitoring Period**

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

i. **Progress Report 1:** The first progress report shall be due on (insert date 30 days following the Effective Date) and shall contain the documentation of the payment made to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The documentation must include, but not be limited to: 1) a copy of the check (s) sent to (b) (6), (b) (7)(C) and 2) dates the check (s) cleared the bank, or a copy of the canceled checks

ii. **Progress Report 2:** The second progress report shall be due on (insert date 6 months days following the Effective Date) and shall contain the following:

1. A narrative detailing the reasonable accommodation training provided by AEPS to its managers and other HR personnel, nation-wide, who handle reasonable accommodations. This narrative shall include the date of the training, name and title of person providing the training, agenda and materials provided, cost, and a sign-up sheet of individuals attending the training to include the person's name and title.
2. A narrative detailing anti-harassment training under VEVRAA provided to managers, supervisors and all personnel, nation-wide, handling recruitment, hiring, promotions and terminations. This narrative shall include the date of the training, name and title of person providing the training, agenda and materials provided, cost, and a sign-up sheet of individuals attending the training to include the person's name and title.

iii. **Progress Report 3:** The third progress report shall be due on March 31, 2021 and it shall contain:

1. The following data collected as required under 41 CFR 60-300.44(k) for AEPS's current 2021 consolidated VEVRAA AAP:
  - a. The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans;
  - b. The total number of job openings and total number of jobs filled;
  - c. The total number of applicants for all jobs;
  - d. The number of protected veteran applicants hired; and
  - e. The total number of applicants hired.
2. The following data collected as required under 41 CFR 60-741.44(k) for AEPS's current 2021 consolidated Section 503 AAP:

- a. The number of applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities;
  - b. The total number of job openings and total number of jobs filled;
  - c. The total number of applicants for all jobs;
  - d. The number of applicants with disabilities hired; and
  - e. The total number of applicants hired.
3. A copy of AEPS's current utilization analysis included in its consolidated 2021 Section 503 AAP, as required by 41 CFR 60-741.45.
  4. Documentation showing that AEPS has established a hiring benchmark in its consolidated 2021 AAP as required under 41 CFR 60-300.45(b)(2).

AEPS will submit reports to:

Rhonda Aubin-Smith  
District Director  
OFCCP Boston District Office  
JFK Federal Building  
15 New Sudbury Street, Room E-235  
Boston, MA 02203

AEPS 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 AEPS provides in accordance with this agreement are customarily kept private or closely held, and AEPS believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, AEPS 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 AEPS's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify AEPS in writing within sixty (60) days of the date of the final progress report that AEPS 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 AEPS within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines AEPS has met all of its obligations under the Agreement.

**V. SIGNATURES**

The person signing this Agreement on behalf of AEPS personally warrants that he or she is fully authorized to do so, that AEPS has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on AEPS.

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and American Eagle Protective Services.

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

Dan Walker  
President and CEO  
American Eagle Protective Services

4/9/2020

Date

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

Adriana Lopez  
Assistant District Director  
Boston District Office  
OFCCP-Northeast Region

04/09/2020

Date

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

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

Boston District Office  
OFCCP-Northeast Region

04/09/2020

Date

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

Diana Sen  
Regional Director  
OFCCP-Northeast Region

4/9/2020

Date

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

Rhonda Aubin-Smith  
District Director  
Boston District Office  
OFCCP-Northeast Region

04/09/2020

Date