

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
WESTERN BUILDING MAINTENANCE

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Western Building Maintenance (WBM) establishment located at 3275 Brown Street, Boise, ID 83714-6624, beginning on July 26, 2019. OFCCP found that WBM failed to comply with Executive Order 11246, as amended (EO 11246), 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 Chapter 60.

OFCCP notified WBM of the specific violations and the corrective actions required in a Show Cause Notice (SCN) issued on September 18, 2019, and in an Amended Show Cause Notice (ASCN) issued on April 28, 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 WBM 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.

II. General Terms and Conditions

1. In exchange for WBM's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under EO 11246, Section 503, and/or VEVRAA based on the violations alleged in the SCN and ASCN. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if WBM violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review WBM'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. WBM 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 WBM of its obligation to fully comply with the requirements of EO 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. WBM and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under EO 11246, Section 503, and/or VEVRAA.
5. WBM 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 WBM submits its final progress report required in Section IV, below, unless OFCCP notifies WBM in writing before the expiration date that WBM 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 WBM has met all of its obligations under the Agreement.
11. If WBM violates this Agreement:
 - a. The procedures at 41 CFR 60-1.34, 41 CFR 60-300.63, and/or 41 CFR 60-741.63 will govern:
 - i. OFCCP will send WBM a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. WBM 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 WBM 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 WBM, 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. WBM may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-1.27, 41 CFR 60-741.66, or 41 CFR 60-300.66, and/or other appropriate relief for violating this Agreement.
- 12. WBM neither admits nor denies any violation of the Executive Order, 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 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:** During the period January 1, 2018 through June 30, 2019, WBM failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e). Specifically, WBM failed to maintain its current Affirmative Action Plan (AAP) and documentation of its good faith efforts, and failed to preserve its AAP and documentation of good faith efforts for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b). Additionally, WBM failed to maintain and/or have available records showing the race and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as required by 41 CFR 60-1.12(c).

REMEDY: WBM will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), and will keep and preserve those records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurs later. However, if WBM has a total workforce of 150 or fewer employees or does not have a government contract of at

least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60-1.12(a). WBM will also maintain its current AAP and documentation of its good faith efforts, and preserve its AAP and documentation of good faith efforts for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b). Additionally, WBM will maintain and/or have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

2. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, WBM failed to prepare and maintain an EO 11246 AAP in accordance with the requirements of 41 CFR 60-1.40, and 41 CFR 60-2.10-17. On October 25, 2019, WBM submitted its combined EO 11246, VEVRAA, and Section 503 AAP. However, WBM submitted an unreasonable AAP. WBM failed to complete, document, and/or implement several components of the AAP because there was no AAP in place during the review period.

REMEDY: WBM will prepare and maintain an EO 11246 AAP. The AAP shall set forth WBM's policies and procedures in accordance with 41 CFR 60-1.40, and 41 CFR 60-2.10-17. This AAP may be integrated into or kept separate from other AAPs. WBM will review and update annually its AAP pursuant to 41 CFR 60-2.1(c), and will comply with all obligations set forth in Subpart B of the regulations, 41 CFR 60-2.10-17.

3. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, WBM failed to prepare and maintain an AAP for protected veterans, in violation of 41 CFR 60-300.40(b). Accordingly, WBM failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60-300.40-45. On October 25, 2019, WBM submitted its combined EO 11246, VEVRAA, and Section 503 AAP. However, WBM submitted an unreasonable AAP. On February 18, 2020, WBM submitted its revised VEVRAA AAP, but WBM failed to complete, document, and/or implement several components of the AAP because there was no AAP in place during the review period.

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

4. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, WBM failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-300.80(a). Specifically, WBM failed to keep applications during the review period. Additionally, WBM failed to keep the records specified in 60-300.80(b) for three years.

REMEDY: WBM will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-300.80(a), and will keep and

preserve those records specified in 41 CFR 60-300.80(b) for a period of three years from the date of the making of the record.

5. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, WBM failed to prepare and maintain an AAP for qualified individuals with disabilities, in violation of 41 CFR 60-741.40(b). Accordingly, WBM failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60-741.40-45. On October 25, 2019, WBM submitted its combined EO 11246, VEVRAA, and Section 503 AAP. However, WBM submitted an unreasonable AAP. On February 18, 2020, WBM submitted its revised Section 503 AAP, but WBM failed to complete, document, and/or implement several components of the AAP because there was no AAP in place during the review period.

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

6. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, WBM failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-741.80(a). Specifically, WBM failed to keep applications during the review period. Additionally, WBM failed to keep the records specified in 60-741.80(b) for three years.

REMEDY: WBM will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-741.80(a), 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.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** WBM 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. WBM will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.** WBM will submit reports to Brenda Terreault, Area Office Director, Portland Area Office, 620 SW Main Street, Suite 411, Portland, OR 97205, or by email at (b) (7)(C)@dol.gov. WBM 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 WBM provides in accordance with this agreement are customarily kept

private or closely-held, and WBM believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, WBM 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.

WBM agrees to furnish OFCCP with two reports during the Monitoring Period according to the following schedule:

<u>REPORT DUE DATE</u>	<u>REPORTING PERIOD</u>
Report 1: March 1, 2021	July 1, 2020 through January 1, 2021
Report 2: March 1, 2022	January 1, 2021 through January 1, 2022

Report 1:

- a. Pursuant to violation 2: A copy of WBM’s Executive Order 11246 AAP, effective January 1, 2021, prepared in accordance with the requirements of 41 CFR 60-1.40, and 41 CFR 60-2.1-17.
- b. Pursuant to violation 3: A copy of WBM’s VEVRAA AAP, effective January 1, 2021, prepared in accordance with the requirements of 41 CFR 60-300.40-45.
- c. Pursuant to violation 5: A copy of WBM’s Section 503 AAP, effective January 1, 2021, prepared in accordance with the requirements of 41 CFR 60-741.40-45.
- d. Pursuant to violations 1, 4, and 6: Data on WBM’s employment activity (applicants, hires, promotions, and terminations) for the period beginning from July 1, 2020 through December 31, 2020. Specifically:
 - i. For applicants and hires: Provide an applicant flow log, in Microsoft Excel format, to include the applicant’s name or applicant identification number, gender, race/ethnicity, status as a qualified protected veteran, status as a qualified individual with a disability, method of application (e.g. hard copy application/resume, online, fax, etc.), date of application, position applied for by job group and job title, whether the applicant was interviewed, final disposition of the applicant, including the reason for non-selection, hire date, and job title hired into, as applicable.
 - ii. For promotions: For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of “promotion” as used by your company and the basis on which promotions were compiled (e.g. promotions to the job group, from and/or within the job group, etc.). If the definition varies for different segments of your workforce, please define the term used for each segment. If you present promotions by job title, include the department and job group from which the person(s) was promoted.
 - iii. For terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting

terminations by job title, include the department and job group from which the person(s) terminated.

- e. Pursuant to violation 1: Employee level compensation data for all employees (including, but not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees) as of January 1, 2021. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-1 Category and job group in a single file. Provide all requested data in Microsoft Excel format. For all employees, compensation includes base salary and/or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee.
- f. Pursuant to violation 1: Information on WBM's affirmative action goals for the immediately preceding AAP year, as of July 1, 2020. For the immediately preceding AAP year, this report must include information that reflects:
 - i. Job Group representation at the start of the AAP year, as of July 1, 2020 (i.e., total incumbents, total minority incumbents, and total female incumbents);
 - ii. The percentage placement rates (percent goals) established for minorities and women at the start of the AAP year, as of July 1, 2020; and
 - iii. The actual number of placements (hires plus promotions) made during the prior AAP year, as of July 1, 2020 through December 31, 2020, into each job group with goals (i.e., total placements, total minority placements, and total female placements).
 - iv. For goals not attained, describe the specific good faith efforts made to remove identified barriers, expand equal employment opportunity, and produce measurable results.

Report 2:

- g. Pursuant to violation 2: A copy of WBM's Executive Order 11246 AAP, effective January 1, 2022, prepared in accordance with the requirements of 41 CFR 60-1.40, and 41 CFR 60-2.1-17.
- h. Pursuant to violation 3: A copy of WBM's VEVRAA AAP, effective January 1, 2022, prepared in accordance with the requirements of 41 CFR 60-300.40-45.
- i. Pursuant to violation 5: A copy of WBM's Section 503 AAP, effective January 1, 2022, prepared in accordance with the requirements of 41 CFR 60-741.40-45.
- j. Pursuant to violations 1, 4, and 6: Data on WBM's employment activity (applicants, hires, promotions, and terminations) for the period beginning January 1, 2021 through December 31, 2021. Specifically:

- i. For applicants and hires: Provide an applicant flow log, in Microsoft Excel format, to include the applicant's name or applicant identification number, gender, race/ethnicity, status as a qualified protected veteran, status as a qualified individual with a disability, method of application (e.g. hard copy application/resume, online, fax, etc.), date of application, position applied for by job group and job title, whether the applicant was interviewed, final disposition of the applicant, including the reason for non-selection, hire date, and job title hired into, as applicable.
 - ii. For promotions: For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of "promotion" as used by your company and the basis on which promotions were compiled (e.g. promotions to the job group, from and/or within the job group, etc.). If the definition varies for different segments of your workforce, please define the term used for each segment. If you present promotions by job title, include the department and job group from which the person(s) was promoted.
 - iii. For terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, include the department and job group from which the person(s) terminated.
- k. Pursuant to violation 1: Employee level compensation data for all employees (including, but not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees) as of January 1, 2022. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-1 Category and job group in a single file. Provide all requested data in Microsoft Excel format. For all employees, compensation includes base salary and/or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee.
- l. Pursuant to violation 1: Information on WBM's affirmative action goals for the immediately preceding AAP year, as of January 1, 2021. For the immediately preceding AAP year, this report must include information that reflects:
- i. Job Group representation at the start of the AAP year, as of January 1, 2021 (i.e., total incumbents, total minority incumbents, and total female incumbents);
 - ii. The percentage placement rates (percent goals) established for minorities and women at the start of the AAP year, as of January 1, 2021; and
 - iii. The actual number of placements (hires plus promotions) made during the prior AAP year, as of January 1, 2021 through December 31, 2021, into each job group with goals (i.e., total placements, total minority placements, and total female placements).

iv. For goals not attained, describe the specific good faith efforts made to remove identified barriers, expand equal employment opportunity, and produce measurable results.

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 WBM's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify WBM in writing within sixty (60) days of the date of the final progress report that WBM 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 WBM within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines WBM has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Western Building Maintenance.

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

Bret Vaterlaus
Owner/President
Western Building Maintenance
Boise, ID 83714

DATE: 5/28/20

BRENDA TERREAULT Digitally signed by BRENDA TERREAULT
Date: 2020.05.28 13:29:21 -07'00'

Brenda Terreault
Area Office Director
Portland Area Office
Pacific Region

DATE: _____

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

(b) (7)(C), (b) (7)(E)
Compliance Officer
Portland Area Office
Pacific Region

DATE: _____

LEIGH JONES Digitally signed by LEIGH JONES
Date: 2020.05.29 06:56:55 -07'00'

Leigh Jones
District Director
Seattle and Portland Offices
Pacific Region

DATE: _____