

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

MEDIVATORS, INC.

3150 POLLOK DRIVE

CONROE, TX 77303-2104

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Medivators Inc. (Medivators) establishment located at 3150 Pollok Drive, Conroe, TX 77303-2104, beginning on December 12, 2018. OFCCP found that Medivators failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), 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 Code of Federal Regulations ("CFR") Chapter 60.

OFCCP notified Medivators of the specific violations and the corrective actions required in a Notice of Violations (NOV) issued on June 26, 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 Medivators 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 Medivators' fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Medivators 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.
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2. OFCCP may review Medivators' compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Medivators 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 Medivators of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
 4. Medivators and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and VEVRAA.
 5. Medivators 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 corrections.
 8. This Agreement becomes effective on the day it is signed by the Houston 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 Medivators submits its final progress report required in Section IV, below, unless OFCCP notifies Medivators in writing before the expiration date that Medivators 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 Medivators has met all of its obligations under the Agreement.
 11. If Medivators violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300. 63 (2014) and 41 C.F.R. 60-741.63 (2014) will govern:
 - i. OFCCP will send Medivators a written notice stating the alleged violations and summarizing any supporting evidence.
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- ii. Medivators 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 Medivators 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 Medivators, 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. Medivators may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 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. Medivators 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, 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.

III. Technical Violations and Remedies

1. **VIOLATION:** Medivators failed to collect and maintain personnel and employment records in accordance with the requirements of 41 CFR 60-1.12, 60-3.4 and 60-3.15. Specifically, during the period January 1, 2017 through December 31, 2017, Medivators failed to capture the race, gender, and ethnicity of all jobseekers in the Semi-Skilled Workers 7A job group including individuals employed as temporary workers.
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Furthermore, any adverse impact analysis conducted by the contractor for this period was based on inaccurate records.

REMEDY: Medivators will ensure that its records are collected and maintained in accordance with regulatory requirements. For any records made, Medivators will capture the race, gender, and ethnicity of jobseekers including temporary employees who apply for full-time positions; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant. Additionally, Medivators will conduct an adverse impact analysis on at least an annual basis for purposes of determining whether adverse impact exists against applicants and temporary employees based on race, gender, or ethnic group in hiring activities. This analysis will be done by job for each group constituting at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, Medivators 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, Medivators will validate the component(s) in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

2. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, Medivators failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-300.44(f)(3) and CFR 60-300.80(b). Specifically, Medivators failed to review, on an annual basis, the outreach and positive recruitment activity it has taken over the previous twelve months to evaluate its effectiveness in identifying and recruiting qualified veterans. Additionally, Medivators failed to maintain an assessment of the totality of outreach & recruitment efforts for three years in accordance with regulatory requirements.

REMEDY: Effective immediately, Medivators will keep and preserve complete and accurate personnel and employment records for a period of three years from the date of the making of the record.

3. **VIOLATION:** Medivators' VEVRAA AAP failed to include the data collection analysis as required by 41 CFR 60-300.44(k).

REMEDY: Effective immediately, Medivators will include the data collection analysis in its VEVRAA AAPs.

4. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, Medivators failed to keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-741.44(f)(3) and 60-741.80 (b). Specifically, Medivators failed to review, on an annual basis, the outreach and positive recruitment activity it has taken over the previous twelve months to evaluate its effectiveness in identifying and recruiting qualified individuals with disabilities. Additionally, Medivators failed to maintain an assessment of the totality of outreach & recruitment efforts for three years in accordance with regulatory requirements.
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REMEDY: Effective immediately, Medivators will keep and preserve complete and accurate personnel and employment records for a period of three years from the date of the making of the record.

5. **VIOLATION:** Medivators' Section 503 AAP failed to include the data collection analysis as required by 41 CFR 60-741.44(k).

REMEDY: Effective immediately, Medivators will include the data collection analysis in its Section 503 AAPs.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Medivators 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. Medivators will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Medivators Reports.**
 - a. **Schedule and Instructions.** Medivators agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Pursuant to Violation 1, Medivators will submit the following in each semi-annual progress report:

1. The total number of job seekers for all jobs in the Semi-Skilled Workers 7A job group during the respective reporting period, including the total number of temporary workers at the establishment if any are considered for employment or converted to employees.
 2. The total number of applicants and hires and the breakdown by race, gender, and ethnic group for all jobs in the Semi-Skilled Workers 7A job group during the respective reporting period.
 3. The total number of temporary employees by a breakdown by race, gender, and ethnic group for all jobs corresponding with the Semi-Skilled Workers 7A job group during the respective period.
 4. The results of Medivators' analysis as to whether its total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, on those members of the group as 41 CFR 60-3.4B. With respect to the adverse impact analysis, for all progress reports except the first, Medivators shall combine the data for the current report with the data from the previous reports to analyze at least a 12-month period. OFCCP may analyze a period longer than 12 months to determine if adverse impact exists.
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5. For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of Medivators' evaluation of the individual components of the selection process for adverse impact.
6. The actions taken by Medivators upon determining that any component of the selection process has an adverse impact on members of the group set forth in subparagraphs 1-3.

Pursuant to Violations 2 and 4, in the 2nd and 4th semi-annual progress reports, Medivators will submit their assessment of each outreach and positive recruitment activity and an assessment of the totality of outreach and an assessment of the totality of outreach & recruitment efforts as required by 41 CFR 300-80 and 741-80 and specified in 41 CFR 300-80(b) and 741-80(b).

Pursuant to Violations 3 and 5, in the 2nd and 4th semi-annual progress reports, Medivators will submit the following data collection analysis as required by CFR 60-300.44(k) and 60-741.44(k):

VEVRAA

1. The number of applicants who self-identified as protected veterans pursuant to 41 CFR 60-300.42(a), or who are otherwise known as protected veterans;
2. The total number of job openings and total number of jobs filled;
3. The total number of applicants for all jobs;
4. The number of protected veteran applicants hired; and
5. The total number of applicants hired.

Section 503

1. The number of applicants who self-identified as individuals with disabilities pursuant 41 CFR 60-741.42(a), or who are otherwise known to be individuals with disabilities;
2. The total number of job openings and total number of jobs filled;
3. The total number of applicants for all jobs;
4. The number of applicants with disabilities hired; and
5. The total number of applicants hired.

Medivators will submit reports to Compliance Officer (b) (6), (b) (7)(E) at 2320 La Branch St. Suite 1103, Houston, TX 77004 and (b) (6), (b) (7)(E) @dol.gov. Medivators 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 Medivators provides in accordance with this

agreement are customarily kept private or closely-held, and the Medivators believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of an FOIA request, Medivators will provide such reports to OFCCP marked as "Confidential". In the event of an 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 Medivators' final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Medivators in writing within sixty (60) days of the date of the final progress report that Medivators 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 Medivators within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Medivators has met all of its obligations under the Agreement.
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V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and MEDIVATORS CONROE, TX 77303-2104.

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

Jean M. Casner
Sr. Vice President & CHRO
Medivators
Conroe, TX 77303-2104

DATE: July 17, 2020

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

District Director
Houston, TX

DATE: July 21, 2020

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

La Loya Smith
Assistant District Director
Houston, TX

DATE: July 21, 2020

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

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

Compliance Officer
Houston, TX

DATE: July 21, 2020
