

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
Comfort Systems USA Mid South

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Comfort Systems USA Mid South (“Comfort Systems”) establishment located at 3100 Richard Arrington Blvd, Birmingham, AL 35203, beginning on March 23, 2020. OFCCP found that Comfort Systems failed to comply with Executive Order 11246, as amended, 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 60-300 and 60-741.

OFCCP notified Comfort Systems of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on July 16, 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 Comfort Systems 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 Comfort Systems’ fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Comfort Systems 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 Comfort Systems’ compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Comfort Systems 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 Comfort Systems 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. Comfort Systems and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Comfort Systems 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, of the Birmingham, Alabama District Office.
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 Comfort Systems submits its final progress report required in Section VIII, below, unless OFCCP notifies Comfort Systems in writing before the expiration date that Comfort Systems 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 Comfort Systems has met all of its obligations under the Agreement.
11. If Comfort Systems 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 Comfort Systems a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. Comfort Systems 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 Comfort Systems 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 COMFORT SYSTEMS, 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. Comfort Systems 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), 41 CFR Sections 60-300 and 60-741, and/or other appropriate relief for violating this Agreement.
12. Comfort Systems 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:** During the period of January 1, 2019 through December 31, 2019, Comfort Systems failed to develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Comfort Systems failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified females.

REMEDY: Comfort Systems must develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Comfort Systems must undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified females. Comfort Systems will use the organizations listed below and/or other resources identified by Comfort Systems to

recruit qualified temporary and permanent job candidates:

Lawson State Community College
1100 9th Ave. SW
Bessemer, Alabama 35022
Akilih Haley, Career Services/ College Transfer Coordinator
Email: Ex (6), Ex (7)(C) [@lawsonstate.edu](mailto:akilih@lawsonstate.edu)
Phone: (205) 929-3514

Hispanic Interest Coalition of Alabama
117 Southcrest Drive
Birmingham, AL 35209
Kristen Smith, Executive Assistant
Email: Ex (6), Ex (7)(C) [@hicaalabama.org](mailto:kristen@hicaalabama.org)
Phone: (205) 942-5505

2. **VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Comfort Systems failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR 60-741.44(f). Specifically, Comfort Systems failed to document all outreach recruitment activities and retain such documentation. Due to this failure, Comfort Systems failed to evaluate each outreach and recruitment activity and come to a reasonable conclusion as to whether each activity is effective in identifying and recruiting qualified individuals with disabilities. Further, Comfort Systems failed to conduct an assessment of its overall outreach and recruitment efforts and reach a conclusion regarding whether its efforts as a whole are effective.

REMEDY: Comfort Systems must undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741(f)(2). Comfort Systems must annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). Comfort Systems must document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-741.44(f)(4). As part of these outreach and recruitment activities, Comfort Systems will use the disability organization listed below and/or other resources identified by Comfort Systems to recruit qualified temporary and permanent job candidates:

Alabama Department of Rehabilitation Services
236 Goodwin Crest Drive
Homewood, AL 35209
Debbie C. Bryant, Business Relations Consultant
E-mail: Ex (6), Ex (7)(C) [@rehab.alabama.gov](mailto:dbryant@rehab.alabama.gov)
Phone: (205) 290-4452

The University of Alabama at Birmingham Disability Services
OB9A Suite 100
1720 2nd Ave S
Birmingham, AL 35203
Allison Solomon, Director, Disability Support Services
Business Services Representative
E-mail: [REDACTED]@uab.edu
Phone: (205) 934-4205

- VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Comfort Systems failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR 60-300.44(f). Specifically, Comfort Systems failed to document all outreach recruitment activities and retain such documentation. Due to this failure, Comfort Systems failed to evaluate each outreach and recruitment activity and come to a reasonable conclusion as to whether each activity is effective in identifying and recruiting qualified protected veterans. Further, Comfort Systems failed to conduct an assessment of its overall outreach and recruitment efforts and reach a conclusion regarding whether its efforts as a whole are effective.

REMEDY: Comfort Systems must undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, such as those described at 41 CFR 60–300.44(f)(2). Comfort Systems must annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). Comfort Systems must document all activities it undertakes to comply with this section, in accordance with 41 CFR 60–300.44(f)(4). As part of these outreach and recruitment activities, Comfort Systems will use the veteran organization listed below and/or other resources identified by Comfort Systems to recruit qualified temporary and permanent job candidates:

Still Serving Veterans
135 Gemini Circle Suite 204
Birmingham, AL 35209
Kim Carwell, Veterans Career & Transitions Services Manager
E-mail [REDACTED]@ssv.org
Phone: (205) 670-1955

- VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Comfort Systems failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 CFR 60-300.5(a) 2-6.

CORRECTIVE ACTION: Comfort Systems will list all employment openings with the appropriate employment service delivery system (ESDS) (either the state workforce agency or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to Contractor, as required by 41 CFR 60-300.5(a) 2-6, revised as of March 24, 2014 (78 Fed. Reg. 58614) (Sep. 24, 2013, also online at <http://www.ecfr.gov>).

Whenever Comfort Systems makes its initial listing with an appropriate ESDS, it will advise that entity that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Comfort Systems shall provide updated information simultaneously with its next job listing:

Alabama Career Center System- Birmingham
Yvette Fields, Office Manager
3216 4th Ave S.
Birmingham, AL. 35222
205-582-5200

IV. OFCCP Monitoring Period

1. Contractor Reports.

- a. Comfort Systems will submit two reports to OFCCP, Birmingham District Office, 950 22nd Street North, Suite 660, Birmingham, Alabama 35203, Ex (6), Ex (7)(C) [@dol.gov](mailto:). Comfort Systems 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 Comfort Systems provides in accordance with this agreement are customarily kept private or closely-held, and the Comfort Systems believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Comfort Systems 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.
- b. The first progress report shall be due on February 28, 2021 and shall cover the period of August 1, 2020 through January 31, 2021.
- c. The second progress report shall be due on May 31, 2021 and shall cover the period of February 1, 2021 through July 31, 2021.

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

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Comfort Systems USA Mid South, Birmingham, Alabama 35203.

DATE: 8/11/20
Ex (6), Ex (7)(C)
~~Tim Head~~
President
Comfort Systems USA Mid South
3100 Richard Arrington Blvd
Birmingham, Alabama 35203

DATE: 8/11/20
Ex (6), Ex (7)(C)
(b) (6), (b) (7)(E)
Compliance Officer - Birmingham
Office of Federal Contract Compliance
Programs

08/11/20
DATE: _____
Ex (6), Ex (7)(C)
Christopher Williams
Assistant District Director - Birmingham
Office of Federal Contract Compliance
Programs

DATE: ALVIN MITCHELL
Digitally signed by
ALVIN MITCHELL
Date: 2020.08.11
14:10:10 -04'00'
Alvin Mitchell
District Director - Birmingham
Office of Federal Contract Compliance
Programs