

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

ENERFLEX ENERGY SYSTEMS, INC.

10815 TELGE ROAD

HOUSTON, TX 77095

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Enerflex Energy Systems, Inc. (Enerflex) establishment located at 10815 Telge Rd., Houston, TX 77095, beginning on November 5, 2018. OFCCP found that Enerflex failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and its implementing regulations at 41 Code of Federal Regulations (C.F.R.) Chapter 60.

OFCCP notified Enerflex of the specific violations found and the corrective actions required in a Notice of Violations issued on July 21, 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 Enerflex enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for Enerflex'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 NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Enerflex 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 Enerflex'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. Enerflex 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 Enerflex of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Enerflex 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. Enerflex 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 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 Enerflex submits its final progress report required in Section VIII, below, unless OFCCP notifies Enerflex in writing before the expiration date that Enerflex 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 Enerflex has met all of its obligations under the Agreement.

11. If Enerflex violates this Agreement:

a. The procedures at 41 C.F.R. § 60-1.34 will govern:

- i. OFCCP will send Enerflex a written notice stating the alleged violations and summarizing any supporting evidence.
- ii. Enerflex 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 Enerflex is unable to demonstrate that it has not violated the Agreement, or if OFCCP 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 Enerflex, 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. Enerflex may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, and/or other appropriate relief for violating this Agreement.

12. Enerflex 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: Enerflex failed to preserve personnel or employment records in accordance with the requirements of 41 CFR § 60-1.12, 60-3.4 and 60-3.15. Specifically, during the period November 5, 2016 through July 30, 2018, Enerflex failed to capture the race, gender and ethnicity of all of its job seekers, resulting in a high percentage of missing demographic data. A review of Enerflex's applicant flow log (AFL) revealed that race and gender information was missing for 13,534 or 97.1% of 13,932 job seekers. During the period July 31, 2018 through November 5, 2018, Enerflex failed to capture the race and gender of 14 or 5.4% of its 259 hires.

REMEDY: Enerflex will ensure that records are collected and maintained in accordance with regulatory requirements. For any record made, Enerflex will identify the gender, race and ethnicity for employees, and where possible for each job seeker or Internet Applicant. Enerflex will conduct an accurate adverse impact analysis on at least an annual basis for purposes of determining whether adverse impact exists against applicants based on race, gender, or ethnic group in hiring, promotion, termination, and other personnel activities. These analyses 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, Enerflex 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, Enerflex will validate the component(s) in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures that do not result in adverse impact.

2. VIOLATION: Enerflex failed to include an acceptable Identification of Problem Areas section in its Affirmative Action Program (AAP) as required by 41 CFR § 60-2.17(b). Specifically, Enerflex failed to identify the low representation of black and female employees in its workforce, and the placement of females in primarily administrative jobs as problem areas in its AAP. Enerflex only has 51 or 6.7% blacks and 89 or 11.8% females out of 755 employees in its workforce. Of the 89 female employees, 61 or 68.5% work in administrative jobs. Additionally, there are only two females in Enerflex's blue collar workforce.

REMEDY: Effective immediately, Enerflex will address the low representation of black and female employees in its workforce; and the placement of females in primarily administrative positions in the Identification of Problem Areas section of its AAP.

3. VIOLATION: Enerflex failed to develop and execute action-oriented programs designed to correct problem areas identified and to attain established goals and objectives, as required by 41 CFR § 60-2.17(c). Specifically, Enerflex failed to

develop and execute action-oriented programs designed to increase the low representation of blacks and females in the company's workforce. Additionally, the contractor failed to make good-faith efforts to recruit qualified female candidates in job groups where placement goals were established.

REMEDY: Effective immediately, Enerflex will develop and execute action-oriented programs designed to increase the low representation of black and female employees in its overall workforce. Enerflex will also make a good faith effort to increase the representation of females in jobs where placement goals were established.

IV. OFCCP Monitoring Period

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

Pursuant to Violation 1, Enerflex will submit two semi-annual progress reports to OFCCP. The following information will be included in each semi-annual report:

1. A log of all job seekers during the relevant review period. This log will include name, race, gender and ethnic group; recruitment source; disposition; job group, position applied for; and position hired into, if applicable.
2. The total number of applicants and hires by job group, race, gender, and ethnicity during the reporting period, including part-time workers;
3. For each job group, the results of Enerflex's analysis as to whether its total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, on those members of groups set forth in 41 CFR § 60-3.4B. Enerflex must combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period;
4. For each case where the total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, the results of Enerflex's evaluation of the individual components of the selection process for adverse impact; and/ or

5. The corrective actions Enerflex implemented upon determining that any component of the selection process has an adverse impact on a particular race, gender or ethnic group.

Pursuant to Violations 2 and 3, Enerflex will submit the following documentation by October 31, 2020:

6. Modifications to the Identification of Problem Areas Section of Enerflex's March 1, 2020 Minority and Female Affirmative Action Program addressing the low representation of blacks and females and the placement of females in primarily administrative positions.
7. Modifications to the Action-Oriented Programs Section of Enerflex's March 1, 2020 Minority and Female Affirmative Action Program, specifying the recruitment efforts that will be taken to increase the representation of blacks and females in the workforce and the placement females in positions other than administrative.

Enerflex will submit reports to Karen N. Hyman, District Director, OFCCP Houston District Office, 2320 LaBranch Street, Suite 1103, Houston, TX 77004 and (b) (6), (b) (7)(C)@dol.gov. Enerflex 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 Enerflex provides in accordance with this Agreement are customarily kept private or closely-held, and Enerflex believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of an FOIA request, Enerflex 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 Enerflex's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Enerflex in writing within sixty (60) days of the date of the final progress report that Enerflex 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 Enerflex within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Enerflex has met all of its obligations under the Agreement.

V. SIGNATURES

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

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

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

President, USA
Enerflex Energy Systems, Inc.

Date: 8/21/2020

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

KAREN N.HYMAN
District Director
Houston District Office

Date: _____

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

LATOYA SMITH
Assistant District Director
Houston District Office

Date: _____

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

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

Compliance Officer
Houston District Office

Date: _____