

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
And  
II-VI Incorporated

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the II-VI Incorporated (Contractor) establishment located at 375 Saxonburg Blvd., Saxonburg, PA 16056-9430, beginning on March 22, 2019. OFCCP found that Contractor 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 CFR Parts 1, 300, and 741.

OFCCP notified Contractor of the specific violations and the corrective actions required in a Notice of Violation issued on August 12, 2020 (NOV).

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 Contractor enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

**II. General Terms and Conditions**

1. In exchange for Contractor's 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 Contractor 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 Contractor'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. Contractor 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 Contractor 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. Contractor 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. Contractor 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 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 Director of Regional Operations (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 Contractor submits its final progress report required in Section IV, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor 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 Contractor has met all of its obligations under the Agreement.
11. If Contractor violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300. 63 (2014) and/or 41 C.F.R. 60-741.63 (2014) will govern:
    - i. OFCCP will send Contractor a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. The Contractor 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 Contractor 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 the contractor, 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. Contractor 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. Contractor 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 September 1, 2017 through March 21, 2019, Contractor failed to include the equal opportunity clause for E.O. 11246 in its subcontracts and/or purchase orders, either directly or by reference, in violation of 41 CFR 60-1.4(a), (c) and (d).  
  
**REMEDY:** Contractor will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-1.4(a), (c) and (d).
2. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e). Specifically, Contractor failed to keep accurate applicant to hire records records for a period of not less than two years from the date of the making of the record or the personnel action, which ever occurred later.  
  
**REMEDY:** Contractor 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 Contractor 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).

3. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to include the equal opportunity clause for VEVRAA in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-300.5(a)-(d).

**REMEDY:** Contractor will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-300.5(a)-(d). If Contractor incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it must incorporate the clause in the manner prescribed by 41 CFR 60-300.5(d).

4. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to include (or ensure the inclusion of), in all solicitations and advertisements for employees, a statement that all qualified applicants will be considered for employment and will not be discriminated against based on their protected veteran status, in violation of 41 CFR 60-300.5(a)(12).

**REMEDY:** Contractor will include (or ensure the inclusion of), in all solicitations and advertisements for employees, a statement that all qualified applicants will be considered for employment and will not be discriminated against on the basis of their protected veteran status, in accordance with 41 CFR 60-300.5(a)12.

5. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to make available its VEVRAA AAP to all employees and applicants for employment for inspection upon request or post the location and hours during which the AAP could be obtained, as required by 41 CFR 60-300.41.

**REMEDY:** Contractor will make available its VEVRAA AAP, absent the data metrics required by 41 CFR 60-300.44(k), to all employees and applicants for employment for inspection upon request; and post the location and hours during which the AAP can be obtained, as required by 41 CFR 60-300.41.

6. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA in violation of 41 CFR 60-300.42.

**REMEDY:** Contractor shall invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA, as required by 41 CFR 60-300.42. More specifically, Contractor shall invite applicants for employment, prior to an offer of employment, to voluntarily identify as a protected veteran. Additionally, Contractor shall invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he or she is a protected veteran. Contractor may invite the applicant to also indicate if he or she belongs to one or more of the specific categories of protected veterans, as defined by 41

CFR 60-300.2(q). All invitations to self-identify as a protected veteran must comply with the requirements of 41 CFR 60-300.42(c). Contractor must keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-300.42(e).

7. **VIOLATION:** Contractor's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Contractor's AAP failed to include the review of personnel processes element described in 41 CFR 60-300.44(b).

**REMEDY:** Contractor will include the review of personnel process element described in 41 CFR 60-300.44(b) in its VEVRAA AAP, as required by 41 CFR 60-300.44.

8. **VIOLATION:** Contractor's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Contractor's AAP failed to provide a schedule for the review of all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-300.44(c)(1).

**REMEDY:** Contractor will include in its VEVRAA AAP a schedule for the review of all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-300.44(c)(1).

9. **VIOLATION:** Contractor's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Contractor's AAP failed to include the external EEO policy dissemination, outreach and positive recruitment element described in 41 CFR 60-300.44(f).

**REMEDY:** Contractor will include the internal EEO policy dissemination, outreach and positive recruitment element described in 41 CFR 60-300.44(f) in its VEVRAA AAP, as required by 41 CFR 60-300.44.

10. **VIOLATION:** Contractor's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Contractor's AAP failed to include the data collection analysis element described in 41 CFR 60-300.44(k).

**REMEDY:** Contractor will include the data collection analysis element described in 41 CFR 60-300.44(k) in its VEVRAA AAP, as required by 41 CFR 60-300.44.

11. **VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to include the equal opportunity clause for Section 503 in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-741.5(a)-(d).

**REMEDY:** Contractor will include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-741.5(a)-(d). If

Contractor incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it must incorporate the clause in the manner prescribed by 41 CFR 60-741.5(d).

- 12. VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to state in all solicitations and advertisements for employees placed on behalf of Contractor that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability, as required by 41 CFR 60-741.5(a)7.

**REMEDY:** Contractor will state in all solicitations and advertisements for employees placed on behalf of Contractor that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability, as required by 41 CFR 60-741.5(a)7.

- 13. VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to make available its Section 503 AAP to all employees and applicants for employment for inspection upon request and post the location and hours during which the AAP could be obtained, as required by 41 CFR 60-741.41.

**REMEDY:** Contractor will make available its Section 503 AAP, absent the data metrics required by 41 CFR 60-741.44(k), to all employees and/or applicants for employment for inspection upon request and post the location and hours during which the AAP can be obtained, as required by 41 CFR 60-741.41.

- 14. VIOLATION:** During the period September 1, 2017 through March 21, 2019, Contractor failed to invite its employees and applicants for employment to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60-741.42. Specifically, the contractor failed to invite self-id post-offer and failed to use approved form.

**REMEDY:** Contractor shall invite both its applicants for employment, and its employees, to voluntarily self-identify as an individual with a disability, in accordance with 41 CFR 60-741.42. All invitations to self-identify must be made using the OMB-approved form for this purpose (available on the OFCCP website). More specifically, Contractor shall invite each of its applicants for employment, prior to an offer of employment, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60-741.2(g)(1)(i) or (ii). Contractor shall also invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability. In addition, during the first year it is subject to this requirement, Contractor shall invite each of its employees to voluntarily self-identify as an individual with a disability, and then extend this invitation again at five year intervals, thereafter. At least once during each interval, Contractor shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. Contractor must keep all self-

identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

- 15. VIOLATION:** Contractor's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Contractor's AAP failed to provide a schedule for the review of all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-741.44(c)(1).

**REMEDY:** Contractor will include in its Section 503 AAP a schedule for the review of all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-741.44(c)(1).

- 16. VIOLATION:** Contractor's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Contractor's AAP failed to include the external EEO policy dissemination, outreach, and positive recruitment element described in 41 CFR 60-741.44(f).

**REMEDY:** Contractor will include the internal EEO policy dissemination, outreach, and positive recruitment element described in 41 CFR 60-741.44(f) in its Section 503 AAP, as required by 41 CFR 60-741.44.

- 17. VIOLATION:** Contractor's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Contractor's AAP failed to include the data collection analysis element described in 41 CFR 60-741.44(k).

**REMEDY:** Contractor will include the data collection analysis described in 41 CFR 60-741.44(k) in its Section 503 AAP, as required by 41 CFR 60-741.44.

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

1. **Recordkeeping.** Contractor 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. Contractor 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.** Contractor agrees to furnish OFCCP with the following report covering the period January 1, 2021 to December 31, 2021 by March 1, 2022:

- i. A copy of at least three subcontracts or purchase orders demonstrating the inclusion of the equal opportunity clauses required by E.O. 11246, Section 503, and VEVRAA;
- ii. For each job group or job title at its Saxonburg establishment, the number of applicants identified by gender and by race/ethnicity during the period January 1, 2021 to December 31, 2021;
- iii. For each job group or job title at its Saxonburg establishment, the total number of hires identified by gender and race ethnicity during the period January 1, 2021 to December 31, 2021;
- iv. Copies of advertisements and solicitations stating that the contractor will consider all qualified applicants regardless of disability or status as protected veteran, as required by Section 503 and VEVRAA;
- v. A photograph demonstrating Contractor has posted a notice, available to both employees and applicants for employment, stating that the Section 503 AAP is available to any employee or applicant for employment to inspect, upon request;
- vi. A sample of completed self-identification invitations along with any memoranda, emails, or other form of communication that Contractor uses to invite employees and applicants to self-identify;
- vii. A copy of Contractor's most recent assessment of its personnel processes, as required by 41 CFR 60-300.44(b) and 60-741.44(b), including a description of the assessment and any actions taken or changes made as a result of the assessment;
- viii. A copy of Contractor's most recent assessment of physical and mental qualifications, as required by 41 CFR 60-300.44(c) and 60-741.44(c), including the schedule of the assessment and any actions taken or changes made as a result of the assessment;
- ix. Results of the evaluation of the effectiveness of outreach and recruitment efforts intended to identify and recruit qualified protected veterans as described in 41 CFR 60-300.44(f) and individuals with disabilities as described in 41 CFR 60-741.44(f); and
- x. Documentation of the computations or comparisons described in 41 CFR 60-300.44(k) and 60-741.44(k) for the period January 1, 2021 to December 31, 2021.

Contractor will submit reports to **Ex b (6), Ex 7(E)** at **(b) (6), (b) (7)(C)** [@dol.gov](mailto:_____@dol.gov). Contractor 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 Contractor provides in accordance with this agreement are customarily kept private or closely-held, and the Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor 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 Contractor’s final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor 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 Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

## V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and II-VI Incorporated, Saxonburg, PA 16056-9430.

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

Walter R. Bashaw II  
President  
II-VI Incorporated  
Saxonburg, PA

DATE: September 10, 2020

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

Evan D. Szarenski  
Director of Regional Operations  
Mid-Atlantic Region

DATE: 09/14/2020

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

**(b) (6), (b) (7)(E)**  
Compliance Officer  
Mid-Atlantic Regional Office

DATE: 09/14/2020