

## CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE  
PROGRAMS

and

ALERE SAN DIEGO INC,  
9975 SUMMERS RIDGE ROAD  
SAN DIEGO, CALIFORNIA 92121-2997

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Alere San Diego Inc., located at 9975 Summers Ridge Road ("Alere") and found that Alere was not in compliance with Executive Order 11246, as amended ("E.O. 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 implementing regulations at 41 C.F.R. Sections 60-1, 60-2, 60-300, and 60-741. OFCCP notified Alere of the alleged violations found and the proposed corrective actions in a Notice of Violations issued on May 31, 2019 ("NOV"). In the interest of resolving the violations cited in the NOV without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Alere enter this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below. This Agreement shall govern OFCCP's determinations of Alere's compliance with E.O. 11246 and OFCCP regulations cited in the NOV.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Alere's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III below if Alere violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Alere agrees that OFCCP may review its compliance with this Agreement. As part of such review with respect to matters addressed in Part III below, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Upon reasonable notice, Alere will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. At all times relevant to this matter, Alere was not owned or operated by Abbott. Abbott acquired the Alere facility after the alleged violations occurred and agreed to cooperate with OFCCP in accordance with principles of successor liability. This Agreement does not constitute an admission by Alere of any violation of or noncompliance with any laws or of any other wrongdoing whatsoever, including but not limited to any violation of E.O. 11246, Section 503, VEVRAA and their implementing regulations at 41 CFR Chapter 60, or other laws, nor has there been an adjudicated finding that Alere violated any laws.
4. Alere understands that nothing in this Agreement relieves Alere 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"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"), their implementing regulations, and other applicable equal employment laws. Alere further acknowledges OFCCP's right to open a new review if it has reason to believe that Alere is not in compliance with E.O. 11246, Section 503, or VEVRAA.
5. Alere promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
8. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement becomes effective on the day it is signed by the District Director of the San Diego District (the "Effective Date") unless the Regional Director or the Director of OFCCP indicates otherwise within 45 calendar days of the date the District Director signs the Agreement.
10. This Agreement will expire ninety (90) days after Alere submits the report required in Part IV below, unless OFCCP notifies Alere in writing prior to the expiration date that Alere has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date OFCCP determines Alere has met all of its obligations under the Agreement.
11. If Alere violates this Conciliation Agreement,

A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:

- 1) If OFCCP believes that Alere violated any term of the Agreement while it was in effect, OFCCP will send Alere a written notice stating the alleged violations and summarizing any supporting evidence.
- 2) Alere will have fifteen (15) days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants. If Alere 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.
- 3) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

B. Alere may be subject to the sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief for violation of this Agreement.

### **PART III. VIOLATIONS**

OFCCP alleges, and Alere expressly denies, the following:

1. From January 1, 2017 to December 31, 2017, under the policies and procedures of its prior ownership, Alere's contract workers constituted employees for purposes of their affirmative action programming. Under prior ownership, Alere violated its affirmative action obligations by omitting its contract workforce from its affirmative action plans and analyses, in violation of 41 C.F.R. §60-2.1(d).
2. Under prior ownership, Alere maintained a practice of pay secrecy in violation of pay transparency regulations set forth at 41 C.F.R. § 60-1.4(a)(3) and 1.35.

### **PART IV. REMEDIES AND REPORTS REQUIRED**

1. Alere agrees that it will include all workers who are required to be included within its affirmative action programs and analyses under E.O. 11246, VEVRAA, and Section 503.
2. Alere agrees that within 60 days of the Effective Date of this Agreement, it will provide literature and training, informing employees and managers of the right to discuss pay and of the prohibition against pay secrecy policies. Alere will also modify and bring into compliance any compensation forms or templates which suggest that discussion of ones pay is not permitted.

3. Alere agrees that within 60 days of the Effective Date of this Agreement, it will notify all of the entities who employ Alere's contract workers (those entities are hereinafter referred to as "subcontractors") about their affirmative action and equal employment obligations under E.O. 11246, VEVRAA, Section 503, and their implementing regulations at 41 C.F.R. Sections 60-1, 60-2, 60-300, and 60-741.
4. In order to demonstrate compliance with this Agreement, Alere must submit the documents and reports described below to: Sean Ratliff, District Director, San Diego District Office, 550 West C Street, Suite 900, San Diego, CA 92101. Within 60 days of the effective date of this Agreement, Alere will provide:
  - i. A list of all people working at the 9975 Summers Ridge Road location by employee or contractor ID and job title. For any contract worker not deemed an employee of Alere for AAP purposes, Alere will provide the specific reasons using applicable Federal laws and standards.
  - ii. Alere will provide documents demonstrating that Alere notified its subcontractors of their obligations to comply with E.O. 11246, VEVRAA, Section 503, and their implementing regulations at 41 C.F.R. Sections 60-1, 60-2, 60-300, and 60-741, as set forth in Paragraph IV(3) of this Agreement.
  - iii. An affirmation that forms used to convey pay adjustments are free from any language that might dissuade an employee from exercising the right to discuss pay with his or her colleagues
  - iv. A copy of the pay transparency literature and training provided to management, staff, and employees, and evidence of attendance.
  - v. A copy of its E.O. 11246 AAP, including all elements and analyses required by 41 C.F.R. §§ 60-2.10 through 60-2.17, for this establishment.
  - vi. A copy of its Section 503 and VEVRAA AAPs, including data collection analyses, benchmarks, and utilization goals under 41 C.F.R. §§ 60-300.44(k), 300.45, 741.44(k), and 741.45.
5. Alere will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later. For the duration of this Agreement, Alere will provide copies of such records to OFCCP within a reasonable period of time upon request.

**PART V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and Alere. The person signing this Agreement on behalf of Alere personally warrants that she is fully authorized to do so, that Alere has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Alere.

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

Ann Johnston  
Divisional Vice President, Human Resources  
Alere San Diego, Inc.  
San Diego, CA

DATE: 9/30/2020

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

SEAN RATLIFF  
District Director  
Pacific Region  
Office of Federal Contract Compliance Programs  
San Diego District Office

DATE: 9/30/2020