

## **CONCILIATION AGREEMENT**

**Between**

**THE U.S. DEPARTMENT OF LABOR**

**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

**And**

**OHMSTEDE INDUSTRIAL SERVICES**

**2450 South Shore Blvd., Suite 120**

**League City, TX 77573**

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

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated Ohmstede Industrial Services’ (“Ohmstede”) facility located at 2450 South Shore Blvd., Suite 120, League City, TX 77573 and found that Ohmstede was not in compliance with the Executive Order 11246, as amended (“E.O. 11246”) and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 USC § 4212 (VEVRAA), and their implementing regulations at 41 C.F.R. Sections 60-1, 60-2, and 60-3, 60-4 and 60-300. OFCCP notified Ohmstede of the specific violations found and the corrective actions required in a Notice of Violations issued on December 13, 2019. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Ohmstede enter this Conciliation Agreement (“Agreement”) and agree to all of the terms stated below.

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

1. In exchange for Ohmstede’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 and VEVRAA 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 if Ohmstede violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.

2. Ohmstede agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Ohmstede will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Ohmstede understands that nothing in this Agreement relieves Ohmstede 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 VEVRAA and their implementing regulations, and other applicable equal employment laws.
4. Ohmstede 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).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. 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.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the date it is signed by the District Director.
9. This Agreement will expire sixty (60) calendar days after Ohmstede submits the final progress report required in Part IV (D), below, unless OFCCP notifies Ohmstede in writing prior to the expiration date that Ohmstede has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Ohmstede has met all of its obligations under the Agreement.
10. If Ohmstede violates this Conciliation Agreement,
  - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
    - 1) If OFCCP believes that Ohmstede violated any term of the Agreement while it was in effect, OFCCP will send Ohmstede a written notice stating the alleged violations and summarizing any supporting evidence. Such notice shall be provided to Ms. Pam Riquelmy, Director of Human Resources, Ohmstede Industrial Services, 2450 South Shore Blvd., Suite 120, League City, TX 77573, or other company designee.

- 2) Ohmstede will have 15 calendar 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.
  - 3) If Ohmstede 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.
  - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. Ohmstede may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. § 60-300.66 and/or other appropriate relief for violation of this Agreement.
11. This Agreement does not constitute an admission by Ohmstede of any violation of E.O. 11246, VEVRAA, or other laws, nor has there been an adjudicated finding that Ohmstede violated any laws.

### **PART III. SPECIFIC VIOLATIONS AND REMEDIES**

1. **VIOLATION**: Ohmstede 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 of December 1, 2017 through November 30, 2018, Ohmstede failed to capture the race, gender, and ethnicity for all of its job seekers, resulting in a high percentage of missing demographic data. Additionally, Ohmstede could not confirm the accuracy of its listing of hires. Furthermore, Ohmstede failed to conduct an adverse impact analysis as required by 41 CFR 60-3.4 and 60-3.15A.

**REMEDY**: Ohmstede will ensure that its records are collected and maintained in accordance with the requirements of 41 CFR 60-1.12, 60-4, and 60-3.15). Ohmstede will implement an adequate system to extend the invitation to self-identify to all individuals who apply for employment. Additionally, for any record made, Ohmstede will accurately capture the race, gender and ethnicity of each employee and, where possible, each job seeker or internet applicant. Ohmstede will maintain records or other information that will disclose the impact the company's selection process has on employment opportunities of persons by identifiable race, gender or ethnic group. Ohmstede will conduct an adverse impact analysis on at least an annual basis for purposes of determining whether adverse impact exists against applicants and employees 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, Ohmstede 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, Ohmstede will validate each such component 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 December 1, 2017 through November 30, 2018, Ohmstede failed to immediately list all employment openings, except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less, with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred which is in violation of 41 CFR 60-300.5(a)2-6.

REMEDY: Ohmstede will list all employment openings, except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less, as they occur with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank 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 Ohmstede, as required by 41 CFR 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, Ohmstede will also advise the employment service delivery system 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, Ohmstede shall provide updated information simultaneously with its next job listing.

#### PART IV. REPORTS REQUIRED

Ohmstede must submit the reports described below to Karen N. Hyman, District Director, OFCCP-Houston District Office, 2320 La Branch Street, Suite 1103, Houston, TX 77004.

- A. Ohmstede must submit two progress reports covering each six-month period this Agreement is in effect. The first progress report will be due seven months after the Effective Date of this Agreement and must cover the six-month period beginning on the Effective Date. The subsequent report must cover the successive six-month period, and must be submitted within 30 calendar days after the close of that six-month period. Ohmstede will submit the following in each semi-annual progress report:
  - 1) The total number of applicants and hires and the breakdown by race, gender and ethnic group for all positions during the respective reporting period, including all temporary, part time, and seasonal workers;
  - 2) The results of Ohmstede's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those members of the group set forth in 41 C.F.R. § 60-3.4B. With respect to the adverse impact analysis, for all progress reports except the first, Ohmstede shall combine the data for the current report with the

data from the previous report(s) to analyze at least a 12-month period. OFCCP may analyze a period longer than 12 months to determine if adverse impact exists;

3) For each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, the results of Ohmstede's evaluation of the individual components of the selection process for adverse impact; and

4) The actions taken by Ohmstede upon determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraphs 1 and/or 2 above.

B. Documentation demonstrating that it listed all employment openings with the state workforce agency job bank or an appropriate employment delivery service system and documentation that Ohmstede advised the employment delivery service system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state.

Ohmstede will retain all records and data pertinent to the violations resolved by this Conciliation Agreement and to the reports submitted under it, including the underlying information on which the reports are based, until the expiration date of this Agreement or consistent with regulatory requirements, whichever is later.

PART V. SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Ohmstede.

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

Norman Thornton  
President OIS  
Ohmstede Industrial Services

Date: 12/19/19

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

(b) (7)(E), (b) (6)  
Compliance Officer  
Houston District Office, OFCCP

Date: 01-09-2020

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

LaToya Smith  
Assistant District Director  
Houston District Office, OFCCP

Date: 01/09/2020

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

Karen N. Hyman  
District Director  
Houston District Office, OFCCP

Date: 01/09/2020

**REPORTING TIMELINE**

Company Name: Ohmstede Industrial Services

Effective Date of Conciliation Agreement:

01/09/2020

Action Required on Each Report	Number of Calendar Days from Effective Date	Due Date
<p>1) The total number of applicants and hires and the breakdown by race, gender and ethnic group for all positions during the respective reporting period, including all temporary, part time, and seasonal workers;</p> <p>2) The results of Ohmstede’s analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those members of the group set forth in 41 C.F.R. § 60-3.4B. With respect to the adverse impact analysis, for all progress reports except the first, Ohmstede shall combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period. OFCCP may analyze a period longer than 12 months to determine if adverse impact exists;</p> <p>3) For each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, the results of Ohmstede’s evaluation of the individual components of the selection process for adverse impact;</p> <p>4) The actions taken by Ohmstede upon determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraphs 1 and/or 2 above.</p> <p>5) Documentation demonstrating that it listed all employment openings with the state workforce agency job bank or an appropriate employment delivery service system and documentation that Ohmstede advised the employment delivery service system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state.</p>	212	08/08/2020

Progress Reports Required	Number of Calendar Days	Due Date	Covered Period	
			Beginning	End
First Progress Report (seven months from Effective Date of Agreement)	212	08/08/2020	01/09/2020	07/08/2020
Second Progress Report (30 days after end of the 6-month period)	396	02/08/2021	07/09/2020	01/08/2021
Expiration date of CA (60 days after receipt of the final progress report or on the date the District Director gives approval of the final report, whichever occurs earlier)	456	04/09/2021		