

Conciliation Agreement
Between the
U.S. Department of Labor
Office of Federal Contract Compliance Programs
and
ARC IMPERIAL VALLEY

I. Preliminary Statement

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated the ARC Imperial Valley ("ARC") establishment located at 298 E Ross Avenue, El Centro, CA 92243-9303, beginning on September 20, 2018. OFCCP found that ARC 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 implementing regulations at 41 Code of Federal Regulations ("C.F.R.") Chapter 60.

OFCCP notified ARC of the specific violations and the corrective actions required in a Notice of Violation ("NOV") issued on January 2, 2020, and in a Show Cause Notice ("SCN") issued on March 6, 2019.

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 ARC enter into this Conciliation Agreement ("Agreement"), and the parties agree to all the terms therein.

II. General Terms and Conditions

- A. In exchange for ARC's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, or VEVRAA based on the violations alleged in the NOV and SCN. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if ARC violates any provision of this Agreement, as set forth in paragraph J below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
- B. OFCCP may review ARC'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. ARC 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.
- C. Nothing in this Agreement relieves ARC of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring non-discrimination or equal employment opportunity through affirmative action.
- D. ARC 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.

- E. The parties understand the terms of this Agreement and enter into it voluntarily.
- F. 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.
- G. This Agreement becomes effective on the day it is signed by the District Director (the "In Effect Date").
- H. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
- I. This Agreement will expire sixty (60) days after ARC submits its final progress report required in Part V below, unless OFCCP notifies ARC in writing before the expiration date that ARC 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 ARC has met all of its obligations under the Agreement.
- J. If ARC violates this Agreement:
 - 1. 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 ARC a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. ARC 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 ARC 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.
 - 2. ARC 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. § 60-300.66 (2014), 41 C.F.R. § 60-741.66 (2014), and/or other appropriate relief for violating this Agreement.
- K. ARC 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.
- L. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- M. 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.
- N. Each party shall bear its own fees and expenses with respect to this matter.

- O. 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.
- P. 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. Violation(s)

1. **VIOLATION:** ARC failed to submit an acceptable organizational profile as described in 41 C.F.R. § 60-2.11, which states that ARC must use either the organizational display or the workforce analysis as its organizational profile. ARC included approximations of both an organizational display and a workforce analysis. Neither, however, satisfies the specific requirements of 41 C.F.R. § 60-2.11. Specifically, the organizational display provided by ARC is labelled as a "Workforce Analysis." Aside from mislabelling, it is missing some of the necessary elements of an organizational display. According to 41 C.F.R. § 60-2.11(b)(3), an organizational display must include, for each organizational unit, (i) the name of the unit, (ii) the job title, gender, race, and ethnicity of the unit supervisor, (iii) the total number of male and female employees in the unit, and (iv) the total number of male and female employees in each of the following racial groups: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. ARC also presented an employee list by department in a way that approximates a workforce analysis, but which lacks the necessary elements outlined in 41 C.F.R. § 60-2.11(c). The department lists do not contain job titles, identification of sex/gender, or wage rates. It also appears that some employees are listed more than once within the same department. Further, ARC did not adequately rank employees according to the lowest paid to the highest paid. In both the proximate organizational display and workforce analysis, ARC omitted its employee consumers from the analysis.
2. **VIOLATION:** ARC's Executive Order AAP failed to include a compliant job group analysis. According to 41 C.F.R. § 60-2.12, a job group analysis must combine jobs with similar content, opportunities, and wage rates into groups, listing the job titles within each group. ARC provided only "examples" of job titles that fall within its job groups. In addition, ARC failed to separately state the percentage of minorities and the percentage of women it employs in each job group established pursuant to 41 C.F.R. § 60-2.12, as required by 41 C.F.R. §§ 60-2.10(b)(1)(iii) and 60-2.13.
3. **VIOLATION:** ARC failed to determine minority and female availability in accordance with 41 C.F.R. § 60-2.14. Specifically, ARC did not determine the availability of minorities or women in any job group in a meaningful or verifiable manner. Without a proper determination of availability, ARC cannot compare incumbency to availability and thus cannot create placement goals.
4. **VIOLATION:** ARC failed to compare the percentage of minorities and women in each job group with the minority and female availability for those job groups, as required by 41 C.F.R. § 60-2.15. Although ARC included a page in the Executive Order AAP titled

“Comparing Incumbency to Availability and Establishing Placement Goals,” the page includes a table that is primarily blank; except for the word “No” in bold and highlighted in each row on the “Establish Goal? Yes/No” column. There are no percentages and there is no actual comparison or analysis. Moreover, the job groups do not match those identified in ARC’s document labelled “Method of Job Group.” Without proper incumbency and availability analyses, as identified in the violations above, ARC cannot possibly complete a proper comparison of incumbency to availability.

5. **VIOLATION:** ARC failed to establish minority and/or female placement goals, as required by 41 C.F.R. § 60-2.16. Specifically, as a result of not having a proper incumbency-to-availability analysis, ARC failed to establish a percentage annual placement goal at least equal to the availability figure derived for minorities and women in any job group, as required by 41 C.F.R. § 60-2.16(c).
6. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, ARC failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by 41 C.F.R. § 60-2.17(b). Specifically, ARC did not, and could not, identify any problem areas. ARC included a section in the Executive Order AAP titled “Identification of Problem Areas” and, under a section called “Areas of Concern,” explained that it “has no concerns of underutilization for minorities and women as [it is] well beyond the 8% in all levels of the organization.” This analysis, however, is unsupported by any analysis and does not include or mention those items, at minimum, which ARC must evaluate. Namely, the Identification of Problem Areas section is not apparently based on ARC’s evaluation of its workforce by organizational unit and job group, its personnel activity, its compensation systems, its selection process, or other identifiable areas as required by 41 C.F.R. § 60-2.17(b)(1)-(5).
7. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, ARC failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 C.F.R. §§ 60-1.12(a) and (e). Specifically, ARC was unable to produce any documentation of its good faith efforts, as required by 41 C.F.R. § 60-1.12(b); records showing the gender, race, and ethnicity of each employee, and where possible, records showing the gender, race, and ethnicity of each applicant or Internet Applicant, as required by 41 C.F.R. § 60-1.12(c); and similar demographical information in its compensation, promotion, and termination records. ARC failed to keep the records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurred later,
8. **VIOLATION:** ARC’s equal employment opportunity policy statement failed to include all of the required elements described in 41 C.F.R. § 60-300.44(a). Specifically, ARC’s VEVRAA AAP policy statement does not assign overall responsibility for the implementation of affirmative action activities, does not state that ARC will recruit, hire, train and promote persons in all job titles without regard to protected veteran status, and does not indicate that all employment decisions are based only on valid job requirements. In addition, the policy statement does not state that applicants and employees shall not be subjected to harassment, intimidation, coercion or discrimination for engaging in any of the protected activities covered under 41 C.F.R. § 60-300.44(a)(1)-(4).

9. **VIOLATION:** ARC's equal employment opportunity policy statement failed to include all of the required elements described in 41 C.F.R. § 60-741.44(a). Specifically, ARC's Section 503 AAP policy statement does not assign overall responsibility for the implementation of affirmative action activities; and, although the policy statement contains general anti-discrimination verbiage, it does not protect applicants and employees against threats or coercion for engaging in any of the protected activities covered under 41 C.F.R. § 60-741.44(a)(1)-(4).
10. **VIOLATION:** ARC's Section 503 AAP failed to include all the required contents, as required by 41 C.F.R. § 60-741.44. Specifically, ARC's AAP failed to include the data collection analysis element described in 41 C.F.R. § 60-741.44(k). Although ARC included a general note that it "employed close to 250 individuals with disabilities during the October 2016 to December 2018 period" and included a "Breakdown per department of Disabled Employees in ARC – Imperial Valley" which lists the number of disabled employees in certain units of a specified department, ARC did not provide the required data listed in 41 C.F.R. § 60-741.44k(1)-(5). Namely, ARC's Section 503 Data Collection Analysis did not maintain or provide, for its entire workforce: the number of applicants who self-identified as or were otherwise known to be a person with a disability, the total number of job openings, the total number of jobs filled, the total number of applicants for all jobs, the total number of applicants with disabilities hired, and the total number of applicants hired.
11. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, ARC failed to evaluate its utilization of individuals with disabilities using the goal established by OFCCP, in violation of 41 C.F.R. § 60-741.45. Specifically, ARC conducted no utilization analysis.
12. **VIOLATION:** During the period January 1, 2017 through December 31, 2017, ARC failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 C.F.R. § 60-741.80. Specifically, although it is apparent that ARC maintains at least partial data for an extended period (based on a note that it "employed close to 250 individuals with disabilities during the October 2016 to December 2018 period"), ARC did not provide the requisite data collection analysis numbers, as required by 41 C.F.R. § 60-741.44(k)(1)-(5), for the period under review.

IV. Modifications to Employment Practices and Other Non-Monetary Relief

1. **REMEDY:** ARC will develop and include in the Executive Order AAP an organizational profile that depicts the staffing patterns within its establishment, as required by 41 C.F.R. §§ 60-2.10(b)(1)(i) and 60-2.11.
2. **REMEDY:** ARC will place each of the job titles in its establishment within job groups as required by 41 C.F.R. § 60-2.12, and will include in the Executive Order AAP the percentage of minorities and the percentage of women it employs in each job group as required by 41 C.F.R. §§ 60-2.10(b)(1)(iii) and 60-2.13.
3. **REMEDY:** ARC will determine minority and female availability in accordance with 41 C.F.R. § 60-2.14. Specifically, ARC will separately determine the availability of minorities and women for each job group, and will consider at least the following factors when determining availability: the percentage of minorities or women with requisite skills in the reasonable recruitment area; the percentage of minorities or women among those promotable, transferable, and trainable within ARC's workforce;

use the most current and discrete statistical information available to derive availability figures; draw its reasonable recruitment area(s) in such a way as to not exclude minorities and women; identify the reasonable recruitment area for each job group, with a brief explanation of the rationale for selection of that recruitment area; define the pool of promotable, transferrable, and trainable employees in such a way as to not exclude minorities or women; identify the pool of promotable, transferable, and trainable employees for each job group, with a brief explanation of the rationale for selection of that pool; and calculate a composite availability figure for each job group composed of job titles with different availability figures.

4. **REMEDY:** ARC will include in the Executive Order AAP the comparison of minority and female incumbency in each job group with the minority and female availability for those job groups, as required by 41 C.F.R. §§ 60-2.10(b)(1)(v) and 60-2.15.
5. **REMEDY:** ARC will establish and include in the Executive Order AAP minority and female placement goals, as required by 41 C.F.R. §§ 60-2.10(b)(1)(vi) and 60-2.16.
6. **REMEDY:** ARC will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by 41 C.F.R. § 60-2.17(b). Specifically, ARC will place incumbents into job groups and evaluate the workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (i.e., employment in the unit or group), or of minority or female distribution (i.e., placement in the different jobs within the unit or group); will evaluate its personnel activity (applicant flow, hires, promotions, terminations, and other personnel actions) to determine whether there are selection disparities; will evaluate its compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities; will evaluate its selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and will evaluate any other areas that might impact the success of its affirmative action program.
7. **REMEDY:** ARC will keep and preserve complete and accurate personnel and employment records, in accordance with 41 C.F.R. §§ 60-1.12(a) and (e); 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; will maintain documentation of its good faith efforts, as required by 41 CFR 60-1.12(b); will maintain and/or have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 C.F.R. §§ 60-1.3, as required by 41 C.F.R. § 60-1.12(c).
8. **REMEDY:** ARC will include an equal employment opportunity policy statement in its affirmative program which contains all the required elements specified in 41 C.F.R. § 60-300.44(a); will post the policy statement on company bulletin boards; and will ensure that applicants and employees who are disabled veterans are provided the statement in a form that is accessible and understandable, as required by 41 CFR § 60-300.44(a).
9. **REMEDY:** ARC will include an equal employment opportunity policy statement in its affirmative program which contains all the required elements specified in 41 C.F.R. § 60-741.44(a); will post the policy statement on company bulletin boards; and will ensure that applicants and employees with disabilities are provided the statement in a form that is accessible and understandable, as required by 41 CFR § 60-741.44(a).

10. **REMEDY:** ARC will include in the Section 503 AAP the data collection analysis described in 41 C.F.R. § 60-741.44(k) and specifically provide those items listed in paragraphs (1)-(5). ARC will also separate the data by year, rather than providing an overall number across multiple years.
11. **REMEDY:** ARC will annually evaluate its utilization of individuals with disabilities using the 7 percent goal established by OFCCP, as required by 41 C.F.R. § 60-741.45. When conducting this utilization analysis, ARC must use the job groups established for utilization analyses required by Executive Order 11246, as required by 41 C.F.R. § 60-741.45(d)(2). Should the percentage of individuals with disabilities in one or more job groups be less than the utilization goal, ARC will take steps, as required by 41 C.F.R. § 60-741.45(e), to determine whether and where impediments to equal employment opportunity exist, and will develop and execute action-oriented programs to correct any identified problems, as required by 41 C.F.R. § 60-741.45(f).
12. **REMEDY:** ARC will keep and preserve complete and accurate personnel and employment records, in accordance with 41 C.F.R. § 60-741.80, and will keep and preserve those records specified in 41 C.F.R. § 60-741.80(b) for a period of three years from the date of the making of the record.

V. OFCCP Monitoring Period

A. **Recordkeeping.** ARC agrees to retain all records relevant to the violations cited in Part III above and the reports submitted in compliance with Part V, Paragraph B, 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. ARC will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

B. Contractor Reports.

In order for OFCCP to monitor ARC's progress toward fulfilling the provisions of this Agreement, ARC will submit three (3) reports.

ARC will submit all reports to OFCCP District Director Sean Ratliff, 550 West C Street, Suite 900, San Diego, CA 92101, or by email at **(b) (7)(C)**@dol.gov.

1. **Schedule and Instructions.** ARC agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

- **Progress Report 1** shall be due within 60 calendar days from the In Effect Date of this Agreement:
 - 1) Submit acceptable E.O. 11246, Section 503, and VEVRAA Affirmative Action Plans ("AAPs") for the period of January 1, 2020 through December 31, 2020, correcting all errors found in the AAPs previously submitted in this compliance review (R00208968), as outlined in the violations cited in Part III above.
 - 2) To the extent ARC is able, it will submit prior year support data for the immediately preceding AAP year, including the following:

- a. Summary data showing ARC's employment activity for the period of January 1, 2019 through December 31, 2019. Specifically, the total number of applicants, hires, promotions, and terminations identified by gender and race/ethnicity for each job group established pursuant to 41 C.F.R. § 60-2.12 ("AAP job group").
- b. Employee-level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem, or day labor, and temporary workers) as of the date of the organizational display or workforce analysis created pursuant to 41 C.F.R. § 60-2.11. Provide separate data columns for gender, race/ethnicity, hire date, job title, EEO-1 category, AAP job group, annualized base salary or hourly wage rate (if applicable), hours worked in a typical workweek, and any other compensation or adjustments to salary or wage rate (such as bonuses, incentives, commissions, merit increases, locality pay, shift differential, or overtime), in a useable, single electronic Excel file.

The term "race/ethnicity" as used throughout this Agreement includes these racial and ethnic groups: African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White.

If ARC is unable to produce the prior year support data listed above, it will provide evidence that it is now maintaining such data to be used to support future AAP analyses.

- **Progress Report 2 shall be due on February 15, 2021, about 45 calendar days after the start of ARC's next AAP cycle:**
 - 1) Submit acceptable E.O. 11246, Section 503, and VEVRAA AAPs for the period of January 1, 2021 through December 31, 2021.
 - 2) Submit prior year support data for the immediately preceding AAP year, including the following:
 - a. Summary data showing ARC's employment activity for the period of January 1, 2020 through December 31, 2020. Specifically, the total number of applicants, hires, promotions, and terminations identified by gender and race/ethnicity for each AAP job group.
 - b. Employee-level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem, or day labor, and temporary workers) as of the date of the organizational display or workforce analysis created pursuant to 41 C.F.R. § 60-2.11. Provide separate data columns for gender, race/ethnicity, hire date, job title, EEO-1 category, AAP job group, annualized base salary or hourly wage rate (if applicable), hours worked in a typical workweek, and any other compensation or adjustments to salary or wage rate (such as bonuses, incentives, commissions, merit increases, locality pay, shift differential, or overtime), in a useable, single electronic Excel file.

- **Final Progress Report** shall be due on February 15, 2022, about 45 calendar days after the start of ARC's next AAP cycle:
 - 1) Submit acceptable E.O. 11246, Section 503, and VEVRAA AAPs for the period of January 1, 2022 through December 31, 2022.
 - 2) Submit prior year support data for the immediately preceding AAP year, including the following:
 - a. Summary data showing ARC's employment activity for the period of January 1, 2021 through December 31, 2021. Specifically, the total number of applicants, hires, promotions, and terminations identified by gender and race/ethnicity for each AAP job group.
 - b. Employee-level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem, or day labor, and temporary workers) as of the date of the organizational display or workforce analysis created pursuant to 41 C.F.R. § 60-2.11. Provide separate data columns for gender, race/ethnicity, hire date, job title, EEO-1 category, AAP job group, annualized base salary or hourly wage rate (if applicable), hours worked in a typical workweek, and any other compensation or adjustments to salary or wage rate (such as bonuses, incentives, commissions, merit increases, locality pay, shift differential, or overtime), in a useable, single electronic Excel file.

C. 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 ARC's final progress report as set forth in Part V above. If OFCCP fails to notify ARC in writing within sixty (60) days of the date of the final progress report that ARC 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 ARC within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines ARC has met all of its obligations under the Agreement.

VI. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and ARC Imperial Valley, El Centro, CA 92243-9303.

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

(Signature – ARC's Top Establishment Official)
Arturo Santos
Chief Executive Officer
ARC Imperial Valley
El Centro, CA 92243-9303

DATE: 1/16/2020

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

(Signature – OECCP Compliance Officer)
(b) (7)(C), (b) (7)(E)
Compliance Officer
San Diego District Office
Pacific Region

DATE: 1/16/2020

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

(Signature – OFCCP District Director)
Sean Ratliff
District Director
San Diego District Office
Pacific Region

IN EFFECT DATE: 1/16/2020