

CONCILIATION AGREEMENT

BETWEEN

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

AND

ABLE INDUSTRIES OF THE PACIFIC, INC.
341 S. Marine Corps Drive, Ste. 204
Tamuning, Guam 96913

PART I: GENERAL PROVISIONS

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Able Industries of the Pacific, 341 S. Marine Corps Drive, Ste. 204, Tamuning, Guam 96913.
2. The violations identified in this Agreement were found during a compliance review of Able Industries of the Pacific which began on June 21, 2012, and specified in a Notice of Violation issued on December 21, 2012. OFCCP alleges that Able Industries of the Pacific has violated Executive Order 11246, as amended, and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Able Industries of the Pacific of any violation of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Act of 1974, as amended (38 U.S.C. 4212) and implementing regulations.
4. The provisions of this Agreement will become part of Able Industries of the Pacific's Affirmative Action Program (hereinafter AAP). Subject to the performance by Able Industries of the Pacific of all promises and representations contained herein, and in its AAP, all named violations in regard to the compliance of Able Industries of the Pacific with all OFCCP programs will be deemed resolved. However, Able Industries of the Pacific is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. Able Industries of the Pacific agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents as may be relevant to the matter under investigation and pertinent to Able Industries of the Pacific. Able Industries of the Pacific shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve Able Industries of the Pacific from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing

regulations, or any other equal employment statute or executive order or its implementing regulations.

7. Able Industries of the Pacific agrees that there will be no retaliation of any kind against any beneficiary of this Agreement, or against any person who has provided information or assistance to OFCCP, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).
8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director, unless the Regional Director or the Director of the Office of Federal Contract Compliance Programs indicates otherwise within 45 days of the District Director's signature on this Agreement.
9. If at any time in the future, OFCCP believes that Able Industries of the Pacific has violated any portion of this Agreement during the term of this Agreement, Able Industries of the Pacific will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Able Industries of the Pacific with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

OFCCP may initiate enforcement proceedings for violation of this Agreement at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Able Industries of the Pacific has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject Able Industries of the Pacific to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66 and 41 CFR 741.66 and/or other appropriate relief.

PART II: SPECIFIC PROVISIONS

1. **VIOLATION:** Able Industries of the Pacific failed to ensure that its employees are compensated without regard to their gender as required by 41 CFR 60-1.4(a) and 41 CFR 60-20.3. A review of compensation practices for the (b) (7)(C), (b) (6) position as of January 1, 2012 revealed that a male employee received a lower wage rate than similarly-situated female counterparts.

Specifically, a review of the available records, job descriptions and pay information provided by Able Industries of the Pacific and the results of interviews with managers and employees conducted during the compliance evaluation support the finding that the male employee received a lower wage rate than his similarly-situated female counterparts.

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REMEDY: Able Industries of the Pacific agrees to revise its compensation practices and take steps to ensure that its compensation system provides an equal opportunity to all of its employees, regardless of race or gender. This applies to all aspects of compensation, including, but not limited to, initial salary at time of hire and progression into higher paying categories. In order to resolve this violation, Able Industries of the Pacific agrees to the following:

- a. Raise (b) (7)(C), (b) (6) annual salary from (b) (7)(C), (b) (6), (b) (4) to be in line with comparators;
 - b. Provide back pay in the amount of \$9,689.40 and interest in the amount of \$396.81 to (b) (7)(C), (b) (6) for the period May 1, 2010 to the date that (b) (7)(C), (b) (6) s salary is raised to the rate of his comparators;
 - c. Conduct an analysis of its compensation practices as they impact all employees;
 - d. Develop and implement compensation policies and procedures that will not differentiate compensation on the basis of race and gender of employees;
 - e. Provide training to those managers who participate in the application of any component of the compensation system at Able Industries of the Pacific. The purpose is to familiarize those managers with principles underlying the uniform application of criteria, which are used to establish compensation.
2. **VIOLATION:** Able Industries of the Pacific is not in compliance with the requirements of 41 CFR 60-2.15 which require that Able Industries of the Pacific's AAP contain a comparison of incumbency to availability or utilization analysis. Able Industries of the Pacific's AAP did not contain a utilization analysis identifying job groups with underutilization of females as required by 41 CFR 60-2.15.

REMEDY: Able Industries of the Pacific shall conduct and incorporate into their AAP, a utilization analysis, comparing incumbency to availability for each job group analysis as required by 41CFR 60-2.15. Able Industries of the Pacific's AAP shall identify whether or not females are underutilized in each job group. This analysis shall be incorporated into Able Industries of the Pacific's AAP on January 1st of each year.

3. **VIOLATION:** Able Industries of the Pacific's AAP did not establish placement goals by job groups as required by 41 CFR 60-2.16.

REMEDY: Able Industries of the Pacific shall establish goals and objectives for all underutilized job groups. This required element shall be incorporated into Able Industries of the Pacific's AAP on January 1st of each year and the Action-oriented programs specified at 41 CFR 60-2.17(c). If no goals and objectives are established, Able Industries of the Pacific shall detail its reasons for a lack of a goal. Able Industries of the Pacific will maintain annual reports on the progress obtaining their affirmative action goals.

4. **VIOLATION:** Able Industries of the Pacific failed to perform in-depth analysis of its total employment process to determine whether and where impediments to equal employment

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opportunity existed in accordance with 41 CFR 60-2.17(b)(3). Able Industries of the Pacific failed to identify problem areas in its compensation systems to determine whether there were any gender, race, or ethnicity-based disparities.

REMEDY: Able Industries of the Pacific shall perform in-depth analyses of its compensation system(s) to determine whether there are gender, race, and ethnicity-based disparities.

5. **VIOLATION:** Able Industries of the Pacific's AAP did not contain the internal audit and reporting systems to measure effectiveness of the total program as required by 41 CFR 60-2.17(d).

REMEDY: Able Industries of the Pacific must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. As explained in 41 CFR 60-2.17(d)(1-4), such a system needs to: (1) Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out; (2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained; (3) Review report results with all levels of management; and (4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

Able Industries of the Pacific commits that the above violations will not be repeated.

PART III: REPORTING

Able Industries of the Pacific will submit two (2) progress reports. Able Industries of the Pacific agrees to mail the reports to the U. S. Department of Labor, Office of Federal Contract Compliance Programs, Guam Field Office, 520 West Soledad Ave., Ste. 101, Hagatna, Guam 96910.

<u>REPORT DUE DATE</u>	<u>PERIOD COVERED</u>
July 31, 2013	Effective Date of Agreement to June 30, 2013
January 31, 2014	Covering the period July 1, 2013 through December 31, 2013

Able Industries of the Pacific will include the following information in the reports:

The first progress report will include:

1. Evidence of back pay and interest given to (b) (7)(C), (b) (6) in the amount of \$10,086.21.
2. Evidence of training provided to managers who participate in the application of any component of the compensation process, including the date and the location of the training, names and positions of the trainers, names and positions of the managers who attended and copies of the sign-in sheet and training materials.
3. Evidence that Able Industries of the Pacific completed a January 1, 2013 utilization analysis, comparing incumbency to availability as part of its AAP. This report should include identification of any areas of underutilization and stated recruitment goals for the AAP year and

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an updated goal progress report including any activity during 2013 in job groups with placement goals.

4. If it is determined that Able Industries of the Pacific has placement goals for females, submit evidence that it sent notifications of openings to the Bureau of Women's Affairs.
5. Evidence that Able Industries of the Pacific developed an internal auditing system to measure its total affirmative action program.

The second progress report will include:

1. Evidence that Able Industries of the Pacific completed a January 1, 2014 utilization analysis, comparing incumbency to availability as part of its AAP. This report should include identification of any areas of underutilization, stated recruitment goals for the AAP year and its annual goal progress report including any activity in job groups with placement goals.
2. If it is determined that Able Industries of the Pacific has placement goals for females, submit evidence that it sent notifications of openings to the Bureau of Women's Affairs.
3. Evidence that Able Industries of the Pacific reviewed its compensation policy, including pay increase structure, and conducted an in-depth analysis of its total compensation system, including pay increase structure, to determine whether there were gender, race, or ethnicity-based disparities.
4. Evidence that each of the required elements of the internal audit were completed during the AAP year. These key elements include: (1) Record monitoring of all personnel activity to ensure the nondiscriminatory policy is carried out; (2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained; (3) Review report results with all levels of management; and (4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

This Conciliation Agreement will remain in full force and effect until February 28, 2014 or until OFCCP's written acceptance of the final Progress Report, whichever date is later.

PART IV: SIGNATURES

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Able Industries of the Pacific, located at 341 S. Marine Corps Drive, Ste. 204, Tamuning, Guam 96913.

DATE: 12/26/12

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

[Redacted Signature]

REN LEON GUERRERO
CEO
Able Industries of the Pacific
341 S. Marine Corps Drive, Ste. 204
Tamuning, Guam 96913

DATE: 12/26/12

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

[Redacted Signature]

Compliance Officer
Office of Federal Contract
Compliance Programs
Guam Field Office

DATE: 01/04/2013

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

[Redacted Signature]

BRIAN L. MIKEL
Area Director
Office of Federal Contract
Compliance Programs
Hawaii Area Office

DATE: 1/14/2013

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

[Redacted Signature]

ALICE V. YOUNG
Acting District Director
Office of Federal Contract
Compliance Programs
San Jose District Office