

**CONCILIATION AGREEMENT  
BETWEEN  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
AND  
CANADAY INDUSTRIES, INC.  
311 BELL KING ROAD  
NEWPORT NEWS, VA 23606**

**PART I: GENERAL PROVISIONS**

1. This Conciliation Agreement (hereinafter "Agreement") is between the United States Department of Labor's Office of Federal Contract Compliance Programs (hereinafter "OFCCP") and Canaday Industries, Incorporated, 311 Bell King Road, Newport News, VA 23606 (hereinafter "Canaday").
2. The violations identified in this Agreement were found during the Compliance Evaluation of Canaday's construction worksites in the Norfolk-Portsmouth-Virginia Beach, Virginia, Standard Metropolitan Area, which commenced on May 13, 2010 and they were specified in a Notice of Violations, issued on February 2, 2011. OFCCP alleges that Canaday has violated Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) 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 Canaday of any violation of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212), or and implementing regulations.
4. The provisions of this Agreement will become part of Canaday's Affirmative Action Program (AAP). Subject to the performance by Canaday of all promises and representations contained herein and its Affirmative Action Program, all named violations in regard to the compliance of Canaday with all OFCCP programs will be deemed resolved. However, Canaday 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. Canaday 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 Canaday's compliance. Canaday shall permit access to its premises during normal business hours for these purposes.

6. Nothing herein is intended to relieve Canaday from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and 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. Canaday 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, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and 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 for OFCCP, unless the Regional Director or the Director for OFCCP indicates otherwise within 45 days of the Regional Director's signature of this Agreement.
9. If, at anytime in the future, OFCCP believes that Canaday has violated any portion of this Agreement during the term of this Agreement, Canaday will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming of that belief. In addition, the notification will provide Canaday with 15 days from receipt to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated 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 Canaday has violated this Conciliation Agreement, evidence regarding the entire scope of Canaday's alleged noncompliance which gave rise to the Notice of Violations from which this Conciliation Agreement resulted, in addition to the evidence regarding the Canaday's alleged violation of the Conciliation Agreement, may be introduced at enforcement proceedings.

Liability for violation of this Agreement may subject Canaday to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-250.66 and 41 CFR 60-741.66 or other appropriate relief.

## PART II: SPECIFIC PROVISIONS

1. **VIOLATION:** OFCCP alleges that Canaday failed to provide equal employment opportunity in compensation to a minority employee in the (b) (7)(C) job title who was paid less than similarly situated non-minorities. This is a violation of 41 CFR 60-1.4(a) (1) and 41 CFR 60-4.3(a).

**REMEDY:** Within sixty (60) days of the effective date of the Conciliation Agreement, Canaday must implement the following remedial "make whole actions" to (b) (7)(C):

- A. Pay (b) (7)(C) back pay and interest of \$ 4087.52. In addition, Canaday will adjust (b) (7)(C) hourly wage from (b) (4) to (b) (4). The monetary settlement of \$4087.52 represents back pay in the amount of \$3971.20 and interest in the amount of \$116.32. The interest in the amount of \$116.32 was calculated from August 1, 2009 through December 31, 2010, using the Internal Revenue Service's underpayment formula.
- B. Provide OFCCP with documentation of the cancelled check issued to (b) (7)(C). In addition, Canaday will provide verification of the hourly wage adjustment for (b) (7)(C).
- C. Canaday will restore any loss of fringe benefits experienced by (b) (7)(C) as a result of him being paid less than similarly situated non-minority employees.
- D. Canaday will examine and monitor its compensation policies and practices to eliminate and prevent pay disparities in their workforce.

Canaday agrees that this violation will not recur.

2. **VIOLATION:** Canaday failed to maintain complete employment records for a period of not less than one (1) year from the date of the making of the record or the personnel action involved, whichever occurs later. Specifically, Canaday failed to maintain all records, including but not limited to those pertaining to compensation. This is a violation of 41 CFR 60-1.12(a).

**REMEDY:** Canaday must maintain employment records including those pertaining to compensation for a period of not less than one (1) year from the date of the making of the record or the personnel action involved, whichever occurs later. In addition, Canaday will obtain technical assistance from the Richmond District Office of OFCCP on record retention to ensure that complete employment records are retained as part of its Affirmative Action Programs. Canaday agrees that this violation will not recur.

3. **VIOLATION:** Canaday failed to establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when it had employment opportunities available, and maintain a record of the organizations' responses as required by paragraph 7(b) of the Specifications, as set forth in 41 CFR 60-4.3(a).

**REMEDY:** Canaday must establish and maintain a current list of minority and female recruitment sources, provide written notification to those recruitment sources and to community organizations when Canaday has employment opportunities available, and will maintain a record of the organizations' responses. Canaday agrees that this violation will not recur.

4. **VIOLATION:** Canaday did not direct its recruitment efforts to minority and female community organizations, to schools with minority and female students or to minority and female recruitment and training organizations serving Canaday's recruitment area and employment needs. This is a violation of Paragraph 7(i) of the Specifications, as set forth in 41 CFR 60-4.3(a).

**REMEDY:** Canaday must, no later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process. Canaday agrees that this violation will not recur.

5. **VIOLATION:** Canaday failed to immediately list all employment openings at its Newport News, VA establishment that were not executive and top management, were not filled within Canaday's organization and were not positions lasting three days or less, with the appropriate local employment service office of the state employment security agency. This is a violation of 41 CFR 60-300.5.

**REMEDY:** Canaday must immediately list all employment openings at an appropriate local employment service office of the state employment security agency wherein openings occur, as required by Paragraphs 2 through 6 of the Equal Opportunity Clause at 41 CFR 60-300.5. Specifically, Canaday must list employment openings at its Newport News, Virginia establishment with the following employment service office:

The Virginia Employment Commission's Career Center  
600 Butler Farm Road  
Hampton, Virginia 23606

Canaday agrees that this violation will not recur.

6. **VIOLATION:** During the period of June 1, 2009 and November 30, 2009, Canaday failed to undertake all appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified disabled veterans, recently separated veterans, other protected veterans, Armed Forces service medal veterans, and qualified individuals with disabilities for vacancies that were filled through external hire at its Newport News, Virginia facility, as required by 41 CFR 60-300.44(f) and 41 CFR 60-741.44(f). Specifically, Canaday did not demonstrate that it sent job vacancy announcements to recruitment sources for qualified disabled veterans, recently separated veterans, other protected veterans, Armed Forces service medal veterans, and qualified individuals with disabilities.

**REMEDY:** Canaday must undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified disabled veterans, recently separated veterans, other protected veterans, Armed Forces service medal veterans, and qualified individuals with disabilities, as required by 41 CFR 60-300.44(f) and 41 CFR 60-741.44(f). Among its outreach and recruitment activities, Canaday must solicit the assistance and support of at least the following organizations by sending its' job vacancy announcements for vacancies that will be filled through external hire at its Newport News, Virginia establishment to:

(b) (7)(C)

Department of Rehabilitative Services  
3248 Academy Avenue, Suites 22-26  
Portsmouth, Virginia 23703

(b) (7)(C)

(b) (7)(C)

Virginia Employment Commission  
Peninsula Workforce Development Center  
600 Butler Farm Road-Suite B  
Hampton, Virginia 23666  
(757) 865-5800

Canaday agrees that this violation will not recur.

### **PART III: REPORTING**

In order for OFCCP to monitor Canaday's progress toward the provisions of this Agreement, Canaday agrees to submit three (3) progress reports to the OFCCP, Richmond District Office.

The first Report shall be due within sixty (60) days of the effective date of this Conciliation Agreement. The date of signature by OFCCP's Mid-Atlantic Region's Director shall constitute the effective date of this Agreement. The first report shall include the following:

- a. Provide OFCCP with documentation of the cancelled check issued to (b) (7)(C). In addition, Canaday will provide documentation that verifies the hourly wage adjustment for (b) (7)(C).
- b. Canaday will provide evidence that it has restored any loss of fringe benefits experienced by (b) (7)(C) as a result of him being paid less than similarly situated Non-Minority employees.
- c. Canaday will provide evidence that Canaday has examined and monitored its compensation policies and practices to eliminate and prevent pay disparities.

The second report shall be due within one (1) year after execution of the Conciliation Agreement by all parties. The report must include implementation of the action steps required by 41 CFR 60-4.3(a), including at least the following:

- a. Documentation confirming that outreach has occurred for Canaday's construction craft workforce with the sources listed in Part II of this Agreement. Canaday will further provide a record of each individual referred from any of the noted sources indicating the personnel action taken with regard to each individual referred. OFCCP reserves the right to request further documentation to evaluate the decisions/actions taken with regard to referrals from these sources.
- b. Documentation confirming that Canaday listed all employment openings at the Virginia Employment Commission as required by Paragraphs 2-6 of the Equal Opportunity Clause at 41 CFR 60-300.5, including but not limited to the name(s) of the individual(s) referred; date(s) of referral; final disposition of the referred individual's application; and, when applicable, the reason(s) why a referred individual was not hired by Canaday.
- c. Documentation confirming that Canaday has maintained employment records for a period of not less than one (1) year from the date of making such record or the personnel action involved, whichever occurs later.
- d. Documentation confirming that outreach has occurred for Canaday's construction

craft workforce with the sources listed in Part II of this Agreement, and a record of each individual referred from any of the sources indicating the personnel action taken with regard to each individual referred. OFCCP reserves the right to request further documentation to evaluate the decisions/actions taken with regard to the referrals from these sources.

- e. Documentary evidence that Canaday undertook all appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities for vacancies that were filled through external hire at its Newport News, Virginia facility.
- f. Documentary evidence that Canaday undertook all appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified special disabled veterans, and veterans of the Vietnam Era for vacancies that were filled through external hire at its Newport News, Virginia facility.

Canaday will provide a written explanation and supporting documentation if any of the documentation listed above is missing from the report.

The third report shall be due within one (1) year after the second report has been deemed acceptable by OFCCP. The report must include implementation of the action steps required by 41 CFR 60-4.3(a), including at least the following:

- a. Documentation confirming that outreach has occurred for Canaday's construction craft workforce with the sources listed in Part II of this Agreement, of this Agreement, and a record of each individual referred from any of the sources indicating the action taken with regard to each individual referred. OFCCP reserves the right to request further documentation to evaluate the decisions/actions taken with regard to the referrals from these sources.
- b. Documentation confirming that Canaday listed all employment openings at Virginia Employment Commission as required by Paragraphs 2-6 of the Equal Opportunity Clause at 41 CFR 60-300.5 including but not limited to the name(s) of the individual(s) referred; date(s) of referral; final disposition of the referred individual's application; and, when applicable, the reason(s) why a referred individual was not hired by Canaday.
- c. Documentation confirming that Canaday has maintained employment records for a period of not less than one (1) year from the date of the making such record or the personnel action involved, whichever occurs later.
- d. Documentation confirming that outreach has occurred for Canaday's construction craft workforce with the sources listed in Part II of this Agreement, of this Agreement, and a record of each individual referred from any of the sources indicating the action taken with regard to each individual referred. OFCCP reserves

the right to request further documentation to evaluate the decisions/actions taken with regard to the referrals from these sources.

- e. Documentary evidence that Canaday undertook all appropriate outreach and positive recruitment activities that were designed to effectively recruit qualified individuals with disabilities for vacancies that were filled through external hire at its Newport News, Virginia facility.
- f. Documentary evidence that Canaday undertook all appropriate outreach and positive recruitment activities that were designed to effectively recruit qualified special disabled veterans, and veterans of the Vietnam Era with disabilities for vacancies that were filled through external hire at its Newport News, Virginia facility.

Canaday will provide a written explanation and supporting documentation if any of the documentation listed above is missing from the final report.

**EXPIRATION DATE:**

This Conciliation Agreement will expire sixty (60) days after receipt of the final progress report, or, if compliance is not accomplished by that date, then this Conciliation Agreement shall remain in full force and effect until OFCCP has determined that Canaday Industries, Inc. has met all conditions of this Agreement.

**PART IV: SIGNATURES**

This Agreement is hereby executed by and between the United States Department of Labor/Office of Federal Contract Compliance Programs and Canaday Industries, Inc., in Newport News, Virginia 23606. The parties to this Agreement hereby acknowledge that the persons signing below have the authority to bind each of their respective parties to the terms of this Agreement.

(b) (7) (c)

JOHN DAVID CANADAY  
Vice President  
Canaday Industries, Inc.  
Newport News, Virginia

Date

MARCH 25, 2011

(b) (7) (c)

HEIDI G. LACY  
Assistant District Director  
US Department of Labor/OFCCP  
Richmond District Office

Date

03/25/2011

(b) (7) (c)

WILLIAM GERALD THORPE  
District Director  
U.S. Department of Labor/OFCCP  
Richmond District Office

Date

3/25/2011

(b) (7) (c)

MICHELE HODGE  
Regional Director  
Mid-Atlantic Region  
OFCCP

Date

3/29/2011

**Mid-Atlantic Region  
Conciliation Agreement Financial Settlement**

Contractor: Canaday Industries, Inc.  
Control Number: R00158873

Back pay: Minority Laborer

1. Cohort Totals: 1
2. Victim Totals: 1
3. Factors Used in Back pay Calculations:
  - a. Cohorts: 1
  - b. Liability Period-08/01/09-12/31/10
  - c. Average hours worked-2080 per year
  - d. Backpay for Victim - \$1.33/hour between 09/01/09 and 12/31/09 for a total of \$851.20; plus \$2.25/hour between 01/01/10 and 06/30/10 backpay in the amount of \$2160.00; plus \$1.00/hour between 07/01/10 and 12/10/10 backpay in the amount of \$960.00. These calculations represent the difference between the victim's actual and expected pay; the different hourly wages reflect the fact that raises were paid to the victim's comparators, while his salary remained static.
  - e. Interest:\$116.32
  - f. Salary Adjustments: Salary for Victim will increase from \$13.00/hour to \$14.00/hour
  - g. 

Total Back pay	=	\$3971.20
Total Interest	=	\$116.32
Total Settlement	=	\$4087.52
Total Mitigated Back pay	=	No mitigation
4. Types of Benefits Considered: No other benefits were considered since employees do not receive benefits coverage from this Contractor.

Total Back pay plus interest	=	\$4087.52
Total Annualized salary difference	=	\$2080.00
Total Estimated Settlement	=	\$6167.52