

CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

JOB OPTIONS, INC.

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Job Options, Inc.'s ("JOI") facility located at 3465 Camino Del Rio South, Suite 300, San Diego, CA and found that JOI was not in compliance with the 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/or 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. §§ 60-1, 60-2, 60-3, 60-300, and/or 60-741. OFCCP notified JOI of the specific violations found and the corrective actions required in a Notice of Violation issued on July 22, 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 JOI enter this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for JOI'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, Section 503, and/or 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 JOI violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. JOI 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. JOI will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. JOI understands that nothing in this Agreement relieves JOI of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws. JOI further acknowledges OFCCP's right to open a new review if it has reason to believe that JOI is not in compliance with E.O. 11246, Section 503, or VEVRAA.
4. JOI 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 day it is signed by the District Director of the San Diego District Office (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 calendar days of the date the Regional Director signs the Agreement.
9. This Agreement will expire ninety (90) days after JOI submits the final progress report required in Part IV.1.C, below, unless OFCCP notifies JOI in writing prior to the expiration date that JOI has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determine JOI has met all of its obligations under the Agreement.
10. If JOI violates this Conciliation Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that JOI violated any term of the Agreement while it was in effect, OFCCP will send JOI a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) JOI will have 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.
 - 3) If JOI 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. JOI may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. § 60-741.66, 41 C.F.R. § 60-300.66 and/or other appropriate relief for violation of this Agreement.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. **VIOLATION - FAILURE TO INVITE SELF-IDENTIFICATION:** During the period 2016 through at least August 2018, JOI failed to invite applicants to provide self-identification of gender, race, ethnicity, and protected-veteran status in violation 41 C.F.R. §§ 60-1.12(c), 60-3.4, 60-3.15, and 60-300.42(a).

OFCCP'S SPECIFIC FINDINGS: JOI provided self-identification opportunities only after hiring an employee or determining that the individual could assist in meeting Ability One contract requirements (i.e. had a qualifying disability).

REMEDY: JOI agrees to provide all applicants an invitation to self-identify gender, race, ethnicity, and a separate invitation to self-identify protected-veteran status. The results of these invitations will be maintained pursuant to record-keeping obligations under 41 C.F.R. §§ 60-1.12, 60-300.42, and 60-300.80. JOI agrees to provide OFCCP with records and reports sufficient to assess compliance.

2. **VIOLATION – MISAPPLICATION OF INTERNET APPLICANT:** During the period 2016 through at least August 2018, JOI misapplied the definition of “internet-applicant” under 41 C.F.R. § 60-1.3.

OFCCP'S SPECIFIC FINDINGS: JOI incorrectly applied the internet applicant rule to all applicants even though it did not take internet or other electronic applications during the relevant time period. Even assuming that JOI maintained positions subject to the internet applicant rule, it misapplied the rule by instating an overly restrictive reading of minimal qualifications. Even though it hired non-disabled applicants, it frequently screened as “unqualified” anyone who was not able to produce evidence of a qualifying disability under its Ability One contracts.

REMEDY: JOI agrees to apply the internet applicant rule only where permitted by regulation and that it will keep records of all expressions of interest, regardless of whether ultimately construed as an internet applicant. JOI agrees to supply OFCCP with records and reports sufficient to assess compliance.

3. **VIOLATION – FAILURE TO CONDUCT ADVERSE IMPACT ANALYSES:** During the period 2016 through at least August 2018, as a result of its failure to invite self-identification and its misapplication of the internet applicant rule, JOI failed to conduct

appropriate adverse impact analyses in accordance with the requirements of 41 C.F.R. §§ 60-2.17(b) and (d), 60-3.4 and 60-3.15A.

OFCCP'S SPECIFIC FINDINGS: JOI was unable to conduct appropriate adverse impact hiring analyses based on gender, race, and ethnicity because it lacked this information for the full pool of candidates. Furthermore, JOI is unable to demonstrate that it fully understands how to conduct a disparate impact analysis of personnel actions, including hiring, promotion, and termination. The analyses JOI presented on April 29, 2019, for example, contained various formulaic errors that led to unreliable results.

REMEDY: JOI agrees to conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on sex, race and ethnic group pursuant to 41 C.F.R. §§ 60-2.17(b) and (d), and 41 C.F.R. § 60.3. These analyses will be done by job for each sex/race/ethnic group constituting more than 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, JOI 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, JOI 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. JOI will also conduct appropriate impact analyses for promotion and terminations pursuant to 41 C.F.R. §§ 60-2.17(b) and (d). JOI will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. § 60-1.12(a) and 60-3. JOI agrees to supply OFCCP with records and reports sufficient to assess compliance.

4. **VIOLATION – E.O. 11246 AFFIRMATIVE ACTION PROGRAM TECHNICAL VIOLATIONS:** JOI failed to comply with the requirements of 41 C.F.R. § 60-2.10(b), which requires that an affirmative action program (AAP) must include the following analyses: Organizational Profile (§ 60-2.11), Job Group Analysis (§ 60-2.12), Placement of Incumbents in Job Groups (§ 60-2.13), Determining Availability (§ 60-2.14), Comparing Incumbency to Availability (§ 60-2.15), and Placement Goals (§ 60-2.16).

OFCCP'S SPECIFIC FINDINGS: JOI's AAP submission of April 27, 2017 lacked certain requirements of an organizational profile and contained improperly formed job groups and availability. These errors, in turn, affected subsequent portions of the plan which were dependent on the initial groupings and availability analyses. Despite compliance assistance, the latest version of JOI's AAP, submitted on April 29, 2019, continues to have problems with the availability and goals analyses.

REMEDY: JOI agrees to create an AAP which fulfills the requirements of 41 C.F.R. § 60-2.10(b) within 60 days. JOI will create and maintain an AAP annually for so long as it is subject to Executive Order 11246. JOI will provide OFCCP a copy of its next Executive Order 11246 AAP in order to verify continued compliance.

5. **VIOLATION – OUTDATED VEVRAA AAP:** During the period of October 1, 2015 through September 30, 2017, JOI continued to operate its VEVRAA Affirmative Action Program under the pre-2014 VEVRAA regulations.

OFCCP'S SPECIFIC FINDINGS: JOI's AAP lacked various components, including data collection analyses in violation of 41 C.F.R. § 60–300.44(k), and hiring benchmarks in violation of 41 C.F.R. § 60-300.45. Despite compliance assistance, JOI submitted a new VEVRAA AAP on April 29, 2019, which continues to show technical deficiencies in personnel calculations, data gathering, internal audit and benchmark analysis.

REMEDY: JOI agrees to create a VEVRAA AAP which fulfills the requirements of 41 C.F.R. § 60–300.40(c) within 60 days. The AAP must comply with all obligations set forth in Subpart C of the regulations, 41 C.F.R. §§ 60–300.40–45. This AAP may be integrated into the Section 503 AAP or kept separate from other AAPs. JOI will document the following computations or comparisons pertaining to applicants and hires, as part of its VEVRAA AAP, and will maintain this data for three (3) years, as required by 41 CFR 60–300.44(k):

- a. The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans;
- b. The total number of job openings and total number of jobs filled;
- c. The total number of applicants for all jobs;
- d. The number of protected veteran applicants hired; and
- e. The total number of applicants hired.

JOI will also establish a hiring benchmark as part of its VEVRAA AAP, using one of the two methods prescribed in 41 C.F.R. § 60–300.45(b). JOI will document its hiring benchmark, and, if JOI sets its benchmark using the five-factor approach described in 41 C.F.R. § 60–300.45(b)(2), it must also document each factor that it considered in establishing its benchmark and the relative significance it accorded to each one. JOI must retain these records for three years, as required by 41 C.F.R. § 60–300.45(c). JOI agrees to provide OFCCP with a copy of its next VEVRAA AAP in order to verify compliance.

6. **VIOLATION – OUTDATED SECTION 503 AAP:** During the period of October 1, 2015 through September 30, 2016, JOI continued to operate its Section 503 Affirmative Action Program under the pre-2014 regulations.

OFCCP'S SPECIFIC FINDINGS: JOI's AAP lacked various components, including data collection analyses in violation of 41 C.F.R. § 60–741.44(k), and utilization goals in violation of 41 C.F.R. § 60-741.45. Despite compliance assistance, JOI submitted a new Section 503 AAP on April 29, 2019, which continues to show technical deficiencies in personnel calculations, data gathering, and internal audit.

REMEDY: JOI agrees to prepare and maintain an affirmative action program (AAP) for qualified individuals with disabilities at each establishment within 60 days. The AAP shall set forth JOI's policies and procedures in accordance with 41 C.F.R. §§ 741.40–45. This AAP may be integrated into the VEVRAA AAP or kept separate from other AAPs. JOI shall review and update annually its AAP pursuant to 41 C.F.R. § 60–741.40(c), and must comply with all obligations set forth in Subpart C of the regulations, 41 C.F.R. §§ 60–741.40–45. JOI agrees to provide OFCCP with a copy of its next Section 503 AAP in order to verify compliance.

Part IV. REPORTS REQUIRED

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

The first report shall be due within **60 calendar days** of the Effective Date of this Agreement. The second report shall be due **October 31, 2019** and will cover the period beginning October 1, 2018 to September 30, 2019. The third and final report shall be due **October 31, 2020** and will cover the period beginning October 1, 2019 to September 30, 2020.

1. JOI must submit the documents and reports described below to: Sean Ratliff, District Director of OFCCP, 550 West C Street, Suite 900, San Diego, CA 92101.
 - A. FIRST REPORT - Within 60 calendar days of the Effective Date of this Agreement:
 - 1) Submit acceptable E.O. 11246, Section 503 and VEVRAA Affirmative Action Plans for FY2019, correcting all errors found in the AAPs submitted on April 29, 2019.
 - 2) Submit copies of proper adverse impact analyses for hiring, promotions, and terminations, based on the prior year support data used for the FY2019 AAPs.
 - 3) Provide evidence of JOI's revised procedures for ensuring that all applicants, including those who later may be disqualified from employment, are provided an invitation to self-identify. The evidence will include copies of the self-identification forms, screening documents, tracking logs and any other documentation that JOI relied upon in its revised procedures.
 - 4) Submit documentation that all managers, supervisors and other personnel involved in recruiting, selecting, or tracking applicants have been trained on the revised hiring process. The documentation must include the dates of the training, the names and job titles of all attendees, an outline of the topics discussed in the training, and the name and job title of each person who conducted the training.

B. SECOND REPORT – Within 30 days after the start of its next AAP cycle, due October 31, 2019, JOI will submit:

- 1) Acceptable E.O. 11246, Section 503 and VEVRAA Affirmative Action Plans for FY 2020,
- 2) The total number of applicants and hires for each job or job group during the reporting period including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at JOI by a staffing firm or employment agency, broken down by applicable gender and race/ethnic group of applicants and hires;
- 3) For each job or job group, the results of JOI's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. §§ 60-3.4 and 60-3.15. In addition, for each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, JOI will provide:
 - a. The results of JOI's evaluation of the individual components of the selection process for adverse impact;
 - b. The actions taken by JOI, where action is appropriate, after determining that any component of the selection process has an adverse impact.

C. THIRD REPORT – due on October 31, 2020:

- 1) Submit acceptable E.O. 11246, Section 503 and VEVRAA Affirmative Action Plans for FY 2021,
- 2) The total number of applicants and hires for each job or job group during the reporting period including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at JOI by a staffing firm or employment agency, broken down by applicable gender and race/ethnic group of applicants and hires;
- 3) For each job or job group, the results of JOI's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. §§ 60-3.4 and 60-3.15. In addition, for each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, JOI will provide:
 - a. The results of JOI's evaluation of the individual components of the selection process for adverse impact;
 - b. The actions taken by JOI, where action is appropriate, after determining that any component of the selection process has an adverse impact.

2. JOI 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 (or "whichever time period is longer").

Part V. SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Job Options, Inc.

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

JEFFREY JOHNSON
Chief Executive Officer
Job Options, Inc.

Date: 7/29/19

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

SEAN RATLIFF
District Director
OFCCP San Diego District Office

Date: 08/01/2019

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

VALERIE SEIDL
VP of Human Resources
Job Options, Inc.

Date: 7/29/19

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

(b) (7)(C), (b) (7)(E)
Compliance Officer
OFCCP San Diego District Office

Date: 2019 07 31