

Conciliation Agreement
Between the United States Department of Labor
Office of Federal Contract Compliance Programs
And
McLendon Enterprises, Inc.
2365 Aimwell Road
Vidalia, Georgia 30474

PART I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter, OFCCP) and McLendon Enterprises, Inc. (hereinafter, McLendon).
2. The violations identified in this Agreement were found during a compliance evaluation of McLendon at its construction worksites in the Liberty County, Georgia Economic Area, which began on October 27, 2011 and they were specified in a Notice of Violation issued July 24, 2012. OFCCP alleges that McLendon has violated Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212); and their 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 McLendon of any violations of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212); and their implementing regulations.
4. The provisions of this Agreement will become part of McLendon's Affirmative Action Programs (AAPs). Subject to the performance by McLendon of all promises and representations contained herein and in its AAPs, all named violations in regard to the compliance of McLendon with all OFCCP programs will be deemed resolved. However, McLendon 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. McLendon 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 McLendon's compliance. McLendon shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve McLendon from the obligation to comply with the requirements of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212); and their implementing regulations or any other equal employment statute or executive order or its implementing regulations.
7. McLendon 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; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

**McLendon Enterprises, Inc.
Conciliation Agreement**

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, OFCCP 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 McLendon has violated any portion of this Agreement during the term of this Agreement, McLendon 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 McLendon 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.

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 McLendon 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 McLendon to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66, and 41 CFR 60-741.66 and/or other appropriate relief.

PART II: Specific Provisions

1. **VIOLATION:** Compensation data provided by McLendon as of October 26, 2011, revealed that McLendon provided lower compensation to four minority employees than to similarly situated non-minority employees working in the (b) (7) (c) trades. Time employed by McLendon, time worked in each trade, experience, and performance did not explain the disparity in compensation. Accordingly, OFCCP finds that McLendon discriminated against four minority employees (the "Class Members") by paying them less, because of their race, than their non-minority comparators violating 41 CFR 60-1.4(a)(1).

REMEDY: On April 1, 2012, McLendon made the following adjustments to the pay rates of the Class Members: (b) (7) (c) from (b) (7) (c) per hour; (b) (7) (c) from (b) (7) (c) to (b) (7) (c) per hour; (b) (7) (c) from (b) (7) (c) per hour; and (b) (7) (c) from (b) (7) (c) to (b) (7) (c) per hour. In addition, McLendon will:

- disburse back pay to (b) (7) (c) in the amount of \$2,977.83, which includes \$65.83 in interest;
- disburse back pay to (b) (7) (c) in the amount of \$3,312.39, which includes \$101.61 in interest;
- disburse back pay to (b) (7) (c) in the amount of \$3,522.62, which includes \$50.78 in interest;
- disburse back pay to (b) (7) (c) in the amount of \$1,897.09, which includes \$69.86 in interest;
- prevent retaliation, harassment, and any other form of reprisal or other adverse action against the Class Members in connection with the terms of this Remedy;
- review McLendon's compensation system and eliminate those policies or practices that led to the discrimination;

**McLendon Enterprises, Inc.
Conciliation Agreement**

- g. update the compensation review at least annually to prevent any further compensation discrimination;
 - h. provide training on its equal opportunity programs for persons involved in determining compensation rates to employees within 90 days of the District Director's signature on this Agreement at an estimated cost of \$1,500. McLendon has also hired a Human Resources Manager at an annual salary of (b) (7) (c) to develop training, conduct compensation analyses and develop the Affirmative Action Programs; and
 - i. take action to ensure this violation ceases and does not recur.
2. **VIOLATION:** McLendon failed to provide written notification to female recruitment sources and to community organizations when McLendon had employment opportunities available and to maintain a record of the organizations' responses to its notifications. 41 CFR 60-4.3(a)7b.

REMEDY: McLendon will provide written notification to female recruitment sources and to community organizations when McLendon has employment opportunities available and maintain a record of the organizations' responses to its notifications.

3. **VIOLATION:** McLendon failed to establish, update and maintain a current file of names, addresses, and telephone numbers of all female off-the-street applicants and of female referrals from a recruitment source or community organization, indicating what action taken with respect to all such individuals. 41 CFR 60-4.3(a)7c.

REMEDY: McLendon will establish, update and maintain a current file of the names, addresses, and telephone numbers of all female off-the-street applicants and of minority or female referrals from a recruitment source or community organization, indicating what action taken with respect to all such individuals.

4. **VIOLATION:** McLendon failed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving its recruitment area and employment needs. 41 CFR 60-4.3(a)7i.

REMEDY: McLendon will direct its recruitment efforts, both oral and written, to female community organizations, to schools with female students, and to female recruitment and training organizations serving its recruitment area and employment needs. Efforts will include, but are not limited to, contact with the following organization to seek their aid in identifying and referring qualified female applicants for McLendon's vacancies in construction trade positions:

Brunswick Job Corps, 4401 Glynnco Parkway, Brunswick, Georgia 31525

Phone: (b) (7) (c) Email: (b) (7) (c)

5. **VIOLATION:** McLendon failed to review, at least annually, its EEO policy and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoffs, terminations and other employment decisions, including specific review of these items with onsite supervisory personnel prior to the initiation of work at any job site. 41 CFR 60-4.3(a)7g.

REMEDY: McLendon will review, at least annually, its EEO policy and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoffs, terminations and other employment decisions, including specific review of these items with

**McLendon Enterprises, Inc.
Conciliation Agreement**

onsite supervisory personnel prior to the initiation of work at any job site.

6. **VIOLATION:** McLendon failed to disseminate its EEO policy externally in its advertisement for employment, to subcontractors, and/or suppliers with whom it does business. 41 CFR 60-4.3(a)7h.

REMEDY: McLendon will disseminate its EEO policy externally in its advertisement for employment, to subcontractors, and/or suppliers with whom it does business.

7. **VIOLATION:** McLendon failed to conduct a review, at least annually, of its supervisors' adherence to and performance under McLendon's EEO policies and affirmative action obligations. 41 CFR 60-4.3(a)7p.

REMEDY: McLendon will conduct a review, at least annually, of its supervisors' adherence to and performance under McLendon's EEO policies and affirmative action obligations.

8. **VIOLATION:** McLendon failed to ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that McLendon's EEO policy and obligations under the standard Federal EEO contract specifications are being carried out. 41 CFR 60-4.3(a)7m.

REMEDY: McLendon will ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that McLendon's EEO policy and its obligations under the standard Federal EEO contract specifications are being carried out.

9. **VIOLATION:** McLendon failed to document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. 41 CFR 60-4.3(a)7o.

REMEDY: McLendon will document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

10. **VIOLATION:** McLendon failed to preserve all personnel and employment records for a period of not less than one year from the date of a) the making of the record or b) the personnel action involved, whichever occurred later. 41 CFR 60-1.12(a).

REMEDY: McLendon will preserve all personnel or employment records it makes or keeps in either electronic or hard copy format for a period of not less than one year from a) the date of the making of the record or b) the personnel action involved, whichever occurs later. Where a compliance evaluation has been initiated by OFCCP, McLendon will preserve all employment and personnel records beyond the one-year period, if applicable, until OFCCP makes a final disposition in the matter.

11. **VIOLATION:** McLendon failed to identify in the personnel and employment records it makes or keeps the gender, race and ethnicity of each employee and, where possible, the gender and race or ethnicity of each applicant. 41 CFR 60-1.12 (c)(1).

McLendon Enterprises, Inc.
Conciliation Agreement

REMEDY: McLendon will identify in the personnel and employment records it makes or keeps the gender and race or ethnicity of each employee and, where possible, the gender, race and ethnicity of each applicant.

12. **VIOLATION:** McLendon failed to maintain and have available for inspection records showing the number of applicants for hire and the number of hires by gender and race or ethnicity. 41 CFR 60-3.15A(1).

REMEDY: McLendon will maintain and have available for inspection records showing the number of applicants for hire and the number of hires by gender and race or ethnicity.

13. **VIOLATION:** McLendon failed to list, on an ongoing basis, all employment openings, as defined by 41 CFR 60-300.5(a)2 and 6, with the state workforce agency job bank or with the local employment service delivery system serving the location where the openings occur. Additionally, McLendon failed to undertake outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified disabled veterans, recently separated veterans, other protected veterans and Armed Forces Service Medal Veterans. 41 CFR 60-300.5(a)2-6 and 41 CFR 60-300.44(f).

REMEDY: McLendon will list, on an ongoing basis, all employment openings, as defined by 41 CFR 60-300.5(a)2 and 6, with the Georgia State Job Bank or with the local Georgia Department of Labor Employment Service office serving the location where the openings occur. McLendon will contact the resource identified below as part of its outreach and positive recruitment activities to recruit and employ qualified disabled veterans, recently separated veterans, other protected veterans and Armed Forces Service Medal veterans.

Georgia Department of Labor – Hinesville Career Center
740 General Stewart Way, Suite 202, Hinesville, Georgia 31313
(b) (7) (c) Disabled Veterans' Outreach Program Specialist
Phone: (b) (7) (c) Facsimile: (912) 370-2598
Email: (b) (7) (c)

State and local workforce services and resource link: <http://www.dol.state.ga.us/>

14. **VIOLATION:** McLendon failed, after making an offer of employment and before the applicant began employment duties, to invite each applicant to inform McLendon whether he or she believes that he or she is a disabled veteran or an individual with a disability and wishes to benefit under McLendon's affirmative action programs for veterans and individuals with disabilities. 41 CFR 60-300.42(a) and 41 CFR 60-741.42(a).

REMEDY: McLendon will, after making an offer of employment and before the applicant begins employment duties, invite each applicant to inform McLendon whether he or she believes that he or she is a disabled veteran or an individual with a disability and wishes to benefit under McLendon's affirmative action programs for disabled veterans and individuals with disabilities. McLendon will offer this invitation in compliance with the requirements set forth in 41 CFR 60-300.42(c) and 41 CFR 60-741.42(b). The invitation will state that the information is voluntarily provided, that it must be kept confidential, that refusal to provide it must not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974 or Section 503 of the Rehabilitation Act of 1973. McLendon may use or adapt the sample invitations set forth in Appendix B to 41 CFR 60-300 and

McLendon Enterprises, Inc.
Conciliation Agreement

in Appendix B to 41 CFR 60-741.

15. **VIOLATION:** McLendon failed to invite applicants to inform McLendon, at any time before the applicant begins his or her employment duties, whether he or she believes that he or she is a recently separated veteran, other protected veteran or Armed Forces Service Medal veteran and wishes to benefit under McLendon's affirmative action program for covered veterans. 41 CFR 60-300.42(b).

REMEDY: McLendon will, at any time before the applicant begins his or her employment duties, invite each applicant to inform McLendon whether he or she believes that he or she is a recently separated veteran, other protected veteran or Armed Forces Service Medal veteran and wishes to benefit under McLendon's affirmative action program for covered veterans. McLendon will offer this invitation in compliance with the requirements set forth in CFR 60-300.42(c). The invitation will state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Vietnam Era Veteran's Readjustment Assistance Act of 1974. McLendon may use or adapt the sample invitations set forth in Appendix B to 41 CFR 60-300.

16. **VIOLATION:** McLendon failed to file its *Federal Contractor Veterans' Employment Report VETS 100A*, as required by the reporting clause at 41 CFR 61-300.10, which is an addition to the equal opportunity action clause required by 41 CFR 60-300.5(a)7.

REMEDY: McLendon will obtain its company number and pre-printed 2012 *VETS 100A* form by emailing a request to VETS100-customersupport@dol.gov or by telephoning 1-866-237-0275. Then McLendon will complete its 2012 *VETS 100A* and send it by email to VETS100-customersupport@dol.gov or by mail to Veterans Employment and Training Service, in care of Department of Labor National Contact Center, Suite 200, 14120 Newbrook Drive, Chantilly, Virginia 21051. Thereafter, McLendon will update and submit its VETS 100A Reports annually. McLendon will provide OFCCP with evidence that it has filed its 2012 VETS 100A Report, as indicated in Part III of this Agreement.

In compliance with 41 CFR 60-300.60(c), OFCCP will inform VETS of McLendon's violation. VETS will inform McLendon of the remedies that VETS will require and/or the sanctions that VETS will impose upon McLendon.

FUTURE CONDUCT: McLendon will not repeat the above violations.

PART III: Reporting

McLendon shall submit **two reports**, as stated below, to Assistant District Director—Jacksonville, United States Department of Labor, Office of Federal Contract Compliance Programs, Charles, E. Bennett Federal Building, 400 West Bay Street, Room 939, Jacksonville, Florida 32202.

The **first report** shall be due 120 days after the date this Agreement is signed by the District Director, OFCCP. The first report shall consist of the following:

1. Copies of personnel forms confirming salary adjustments made to the Class Members;
2. Evidence of back pay and interest monies disbursed to the Class Members, including copies of the cancelled checks and pay slips showing the gross amount and legal deductions;

McLendon Enterprises, Inc.
Conciliation Agreement

3. Results of McLendon's modification of its compensation system, to include findings, additional equity adjustments and back pay, if any; and
4. Documentation of training that McLendon provided on its equal employment opportunity programs for all persons involved in determining compensation amounts paid to McLendon's employees including the dates(s) of training, names and titles of recipients, and invoices demonstrating costs of the training.

The **second report** shall be due August 30, 2013 and shall cover the period August 1, 2012 through July 31, 2013. The report shall contain the following:

1. Pursuant to Remedy 2: Copies of a) McLendon's current list of female recruitment sources, b) McLendon's written notification of opportunities McLendon had available within the report period to female recruitment sources and community organizations and c) the organizations' responses;
2. Pursuant to Remedy 3: McLendon's current file of the names, addresses, and telephone numbers of all female off-the-street applicants and of female referrals from recruitment sources or community organizations, indicating what action taken with respect to all such individuals during the reporting period;
3. Pursuant to Remedy 4: Documentation of McLendon's efforts to recruit qualified females for construction trade vacancies, including contacts with and responses from the recruitment resources identified in Part II above and from all other recruitment sources McLendon used, along with a report on the number of applicants referred, itemized by trade, race, gender, recruitment source and the number of applicants hired, broken out by trade, race, gender and recruitment source;
4. Pursuant to Remedy 5: Documentation that McLendon reviewed its EEO policy and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoffs, terminations, and other employment decisions, including specific review of these items with onsite supervisory personnel prior to the initiation of work at any job site;
5. Pursuant to Remedy 6: Documentation that McLendon disseminated its EEO policy externally in its advertisement for employment, to subcontractors, and/or suppliers with whom it does business;
6. Pursuant to Remedy 7: Documentation that McLendon reviewed its supervisors' adherence to and performance under McLendon's EEO policies and affirmative action obligations, with description of any corrective action taken;
7. Pursuant to Remedy 8: Documentation of McLendon's audit to date to ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect and that McLendon carried out its EEO policies and obligations under its standard Federal EEO contract specifications;
8. Pursuant to Remedy 9: Copies of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations;
9. Pursuant to Remedies 11 and 12: a) The numbers of applicants for each construction trade broken out by gender and race or ethnicity; b) the numbers of hires for each construction trade

**McLendon Enterprises, Inc.
Conciliation Agreement**

broken out by gender and race or ethnicity;

10. Pursuant to Remedy 13: Documentation that McLendon a) listed all employment openings, as defined by 41 CFR 60-300.5(a)2 and 6, with the Georgia State Job Bank or with the local Georgia Department of Labor Employment Service office serving the location where the openings occur and b) contacted the resource identified in Remedy 13 or Part II above, along with c) a report on the number of referrals and the number of hires from those listings and from McLendon's other positive outreach and recruitment activities, providing for the hires, to the extent known, the number of disabled veterans, recently separated veterans, other protected veterans and Armed Forces Service Medal veterans;
11. Pursuant to Remedies 14 and 15: Documentation of invitations extended by McLendon to applicants, after an offer of employment, to self-identify as a disabled veteran, and individual with a disability, or a recently separated or other protected veteran, pursuant to the provisions of 41 CFR 60-300.42 and 41 CFR 60-741.42; and
12. Pursuant to Remedy 16: Copy of VETS-100A report that McLendon filed in 2012.

TERMINATION DATE: This Agreement will expire 90 calendar days after OFCCP receives the second and final report required in Part III above or on the date that the District Director gives notice to McLendon that McLendon has satisfied its reporting requirements, whichever occurs earlier, unless OFCCP notifies McLendon in writing prior to the end of the 90-day period that McLendon has not satisfied its reporting requirements pursuant to this Agreement.

INTEGRATION CLAUSE: This Agreement represents the full Agreement between McLendon and the OFCCP. This Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither McLendon nor the OFCCP relies upon any promise, representation of fact or law, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of the Parties affected and may not be modified by any oral agreement.

**McLendon Enterprises, Inc.
Conciliation Agreement**

PART IV: Signatures

The person signing this Conciliation Agreement on behalf of McLendon Enterprises, Inc. personally warrants that he is fully authorized to do so, that McLendon Enterprises, Inc. has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on McLendon Enterprises, Inc. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and McLendon Enterprises, Inc.

DATE: 7/26/12

(b) (7) (c)

Benny McLendon
President
McLendon Enterprises, Inc.
2365 Aimwell Road
Vidalia, Georgia 30474

DATE: 8/6/2012

(b) (7) (c)

Benjamin Mathews
Assistant District Director—Jacksonville
Office of Federal Contract Compliance
Programs

DATE: 8/6/2012

(b) (7) (e)

Compliance Officer—Jacksonville
Office of Federal Contract Compliance
Programs

DATE: 8/13/2012

(b) (7) (c)

Sybil Shy-Demmons
District Director—Atlanta
Office of Federal Contract Compliance
Programs