

U.S. Department of Labor

Office of Federal Contract
Compliance Programs
200 Sheffield Street, Room 102
Mountainside, New Jersey 07092-2314



Reply to the Attention of:

CONCILIATION AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND
PRAXAIR DISTRIBUTION MID-ATLANTIC
(D/B/A GTS WELCO-CGI GAS TECHNOLOGIES, LLC)
425 AVENUE P
NEWARK NJ 07105
OFCCP CASE NO. R00163091

PART I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Praxair Distribution Mid-Atlantic (D/B/A GTS WELCO-CGI Gas Technologies, LLC, 425 Avenue P, Newark, NJ 07105 (hereinafter GTS-WELCO).
2. The violations identified in this Agreement were found during a compliance review of GTS-WELCO which began on February 18, 2011, and were specified in a Notice of Violations issued May 24, 2011. OFCCP alleges that GTS-WELCO 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 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 GTS-WELCO of any violation of the 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 implementing regulations.
4. The provisions of this Agreement will become part of GTS-WELCO's Affirmative Action Program. Subject to the performance by GTS-WELCO of all promises and representations contained herein and its AAP, all named violations in regard to the compliance of GTS-WELCO with all OFCCP programs will be deemed resolved. However, GTS-WELCO 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. GTS-WELCO 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 GTS-WELCO's compliance. GTS-WELCO shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve GTS-WELCO from the obligation to comply with the requirements of the 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. GTS-WELCO 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/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 Regional Director for OFCCP, unless the Director, OFCCP indicates otherwise within 45 days of the Regional Director's signature of this Agreement.
9. If at any time in the future, OFCCP believes that GTS-WELCO has violated any portion of this Agreement during the term of this Agreement; GTS-WELCO will be promptly notified of that fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide GTS-WELCO 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 issuance of Show Cause Notice.

Where OFCCP believes that GTS-WELCO 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 GTS-WELCO to sanctions set forth in Section 209 of the Executive Order 11246, 41 CFR 60-300.66, and 41 CFR 60-741.66 and/or other appropriate relief.

PART II: Specific Provisions

1. **VIOLATION:** GTS-WELCO failed to take affirmative action and provide equal employment opportunity to an African American female in compensation. Specifically, GTS-WELCO did not provide equitable pay adjustments to the African American female in the (b) (7)(C) position. GTS-WELCO's failure to equally compensate the African American female employee is in violation of 41 CFR 60-1.4 (a) (1).

REMEDY: GTS-WELCO will immediately adjust the salary of the African American female in the (b) (7)(C) position and adjust her future salary accordingly. GTS-WELCO will immediately modify its compensation system in order to eliminate the pay disparity in the (b) (7)(C) positions. Within thirty (30) days from the Effective Date of this Conciliation Agreement (the Effective Date being the date of the Regional Director's signature), GTS-WELCO will remit back wages plus interest and salary adjustments in the amount of \$7,800.99, less deductions, to the African American female incumbent in the (b) (7)(C) position as described below:

- a. Pay (b) (7)(C) back wages in the amount of \$6,640.59, interest in the amount of \$341.66, and a salary adjustment in the amount of \$818.74, less deductions. Interest rates were calculated using the Internal Revenue Service's underpayment formula.
- b. Provide OFCCP with documentation of the cancelled check issued to (b) (7)(C). GTS-WELCO will also provide verification of the wage adjustments for (b) (7)(C).

Additionally, GTS-WELCO commits an amount of \$2,500.00 to provide training to managers and supervisors responsible for making compensation determinations.

2. **VIOLATION:** During the prior year AAP review period of January 1, 2010 through December 31, 2010, GTS-WELCO failed to implement an applicant tracking system for hires in accordance with the requirements of 41 CFR 60-3.4 and 41 CFR 60-3.15. Specifically, GTS-WELCO failed to collect race and gender on all applicants for available positions.

REMEDY: Effective immediately, GTS-WELCO will begin to implement an updated and refined applicant tracking system for hires that permits GTS-WELCO to analyze its pool of applicants for: a) Affirmative action purposes to monitor whether the process is yielding an adequate pool of qualified minority and female applicants; and b) Nondiscrimination purposes to monitor for disparate treatment or unlawful adverse impact in the selection process.

3. **VIOLATION:** GTS-WELCO failed to collect and maintain personnel records in accordance with the requirements of 41 CFR 60-1.12(a) and 41 CFR 60-3. Specifically, for the prior year AAP review period of January 1, 2010 through December 31, 2010, GTS-WELCO did not maintain applications or resumes on applicants not hired.

REMEDY: Effective immediately, GTS-WELCO will begin to ensure that its records are collected and maintained in accordance with the requirements of 41 CFR 60-1 and 41 CFR 60-3.

4. **VIOLATION:** During the prior year AAP review period of January 1, 2010 through December 31, 2010, GTS-WELCO failed to list five (5) employment openings that were not executive and top management, were not filled from within GTS-WELCO's organization and were not positions lasting three days or less. GTS-WELCO failed to list any of these five (5) openings with the local employment service office of the state employment security agency. This is a violation of 41 CFR 60-300.5(a) 2 through 6.

REMEDY: Effective immediately, GTS-WELCO will begin to list all appropriate employment openings with the local office of the state employment security agency, which is the Essex – Newark One-Stop Career Center, located at 990 Broad Street, Newark, New Jersey 07102. GTS-WELCO will list employment openings with the New Jersey State Employment One-Stop Career Center at least concurrently with the use of any other recruitment source or effort, in accordance with the requirements contained in the regulations.

5. **VIOLATION:** During the prior year AAP review period of January 1, 2010 through December 31, 2010, GTS-WELCO failed to undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified disabled veterans, protected veterans and qualified individuals with disabilities as required by 41 CFR 60-300.44(f) and 41 CFR 60-741.44(f). Specifically, GTS-WELCO did not provide documentation that it sent job vacancy announcements to recruitment sources for qualified disabled veterans, covered veterans or qualified individuals with disabilities. In addition, GTS-WELCO did not provide documentation that it sent written notification of its affirmative action policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

REMEDY: Effective immediately, GTS-WELCO will begin to undertake appropriate outreach and positive recruitment activities designed to recruit covered veterans, qualified disabled veterans and qualified individuals with disabilities. GTS-WELCO will solicit the assistance and support of the following organizations by sending their job vacancy announcements to:

STATE OF NJ VOCATIONAL REHABILITATION SERVICES

ATTN: (b) (7)(C)

990 Broad Street, 2nd Floor

Newark, NJ 07102

Telephone: 973-648-3494

PROJECT HIRE / THE ARC OF NEW JERSEY

ATTN: (b) (7)(C)

985 Livingston Ave.

North Brunswick, NJ 08902

Telephone: 732-246-2525 x (b) (7)(C)

(b) (7)(C)

ESSEX – NEWARK ONE-STOP CAREER CENTER

ATTN: (b) (7)(C)

990 Broad Street

Newark, New Jersey 07102

Telephone: (b) (7)(C)

Further, GTS-WELCO will send written notification of its affirmative action policy to all subcontractors, vendors and suppliers, requesting appropriate action, in accordance with the requirements contained in the regulations.

FUTURE CONDUCT: GTS-WELCO commits that the above violations will not recur.

PART III: Reporting

In order for OFCCP to monitor GTS-WELCO's progress toward fulfilling the provisions of this Agreement, GTS-WELCO shall submit the five (5) specific reports identified below.

GTS-WELCO shall send each report to:

Acting District Director Toxi Roane
U. S. Department of Labor
Office of Federal Contract Compliance Programs
Mountainside District Office
Diamond Head Building
200 Sheffield Street, Room 102
Mountainside, New Jersey 07092
Attn: Assistant District Director Regina G. Jones

Report 1 is due thirty (30) days from the Effective Date of this Agreement and will include:

- a. Documentation of back payment provided to the African American female in the (b) (7)(C) position as specified in subparagraph a. of the Remedy to Violation 1. The documentation must include a copy of the check disbursed by GTS-WELCO to (b) (7)(C) or other equivalent documentation verifying that (b) (7)(C) was paid.
- b. A summary of how GTS-WELCO has modified its compensation system in order to eliminate the disparity between the employees in the (b) (7)(C) position.

Report 2 is due July 31, 2012 and will cover the period beginning January 1, 2012 through June 30, 2012 to include the following:

Documentation that GTS-WELCO provided training to its human resource managers and other employees who participate in compensation decision-making. This documentation must identify the following:

- a. Time and place of the training;
- b. Name and job title of the trainers and personnel attending the training;
- c. Subject matter discussed relative to the company's compensation administration system; and
- d. Amount of training provided to include hours all expenses incurred.

Report 3 is due January 31, 2013 and will cover the period beginning July 1, 2012 through December 31, 2012;

Report 4 is due July 31, 2013 and will cover the period beginning January 31, 2013 through June 30, 2013; and

Report 5 is due January 31, 2014 and will cover the period beginning July 1, 2013 through December 31, 2013.

Reports 2 through 5 will contain the following:

- a. The total number of applicants and hires for each job or job group during the reporting period;
- b. For each job or job group, the breakdown by applicable race, gender and ethnic group of applicants and hires;
- c. For each job or job group, the results of GTS-WELCO's analysis as to whether its total selection process has adverse impact as defined in 41 CFR 60-3.4D on those members of groups set forth in subparagraph b., above;

- d. For each job or job group, the qualifications that GTS-WELCO used, if any, and the stage at which GTS-WELCO used the qualification(s), as a screening device;
- e. For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of GTS-WELCO's evaluation of the individual components of the selection process for adverse impact;
- f. The actions taken by GTS-WELCO, where action is appropriate, after determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraph b., above; and
- g. Documentation of GTS-WELCO's outreach and positive recruitment activities designed to recruit persons with disabilities, disabled veterans, and other protected veterans; along with a report on the number of referrals/responses and the number of hires, providing for the hires, to the extent known, the number of persons with disabilities, disabled veterans, and other protected veterans covered under OFCCP's regulations.

GTS-WELCO shall retain all records pertinent to the violations resolved by this Conciliation Agreement and the reports submitted under it (including the underlying data/information upon which the reports are based) until the expiration date of this Conciliation Agreement or consistent with regulatory timeframes, whichever is later.

Termination Date:

The termination date of this Agreement will expire sixty (60) days after receipt of the final progress report or if compliance is not accomplished by that date, then this Agreement shall remain in full force and effect until compliance is achieved.

PART IV: Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Praxair Distribution Mid Atlantic (d/b/a GIS WELCO-CGI Gas Technologies) Newark, New Jersey.

(b) (7) (c)

JAMES ANDERSON
Vice President and General Counsel
GTS WELCO-CGI Gas Technologies
1800 North 11th Street
Reading PA 19604

DATE: June 6, 2011

(b) (7) (c)

REGINA G. JONES
Assistant District Director
Mountainside District Office
OFCCP - Northeast Region

DATE: June 6, 2011

(b) (7) (c)

MICHELE HODGE
Acting Regional Director
OFCCP - Northeast Region

DATE: June 10, 2011

(b) (7) (c)

TOXI ROANE
Acting District Director
Mountainside District Office
OFCCP - Northeast Region

DATE: June 6, 2011