

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
Powerex Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Powerex Inc (Contractor) 173 Pavilion Lane, Youngwood, PA, beginning on May 8, 2024. OFCCP found that Contractor failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), 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 respective implementing regulations at 41 C.F.R. 60-1, 41 C.F.R. 60-2, 41 C.F.R. 60-741, and 41 C.F.R. 60-300.

OFCCP notified Contractor of the specific violation(s) and the corrective action(s) required in a Notice of Violation (NOV) issued on September 12, 2024.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and Contractor enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for Contractor's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Contractor violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Contractor's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Contractor will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Contractor of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Contractor agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Contractor submits its final progress report required in Section IV, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Contractor has met all of its obligations under the Agreement.
10. If Contractor violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300.63, and/or 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send Contractor a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The Contractor shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If Contractor 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.
 - iv. In the event of a breach of this Agreement by the Contractor, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.

- b. Contractor may be subject to the sanctions set forth in 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. Contractor does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to “days” in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Technical Violations and Remedies

1. **Violation 1:** During the period January 1, 2023 through December 31, 2023, Powerex failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60–1.12(a) and (e); maintain its current AAP and documentation of its good faith effort, as required by 41 CFR 60-1.12(b); preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b); maintain and/or have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as required by 41 CFR 60-1.12(c). Specifically, Powerex failed to keep applicant, testing, interview, hiring or other general personnel or employment records; and failed to keep the records for a period of not less than two years from the date of the making of the record or the personnel action.

Remedy 1: Powerex agrees to keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60–1.12(a) and (e), and will keep and preserve those records for a period of not less than two years from the date of the making

of the record or the personnel action, whichever occurs later. However, if Powerex has a total workforce of 150 or fewer employees or does not have a government contract of at least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60-1.12(a); maintain its current AAP and documentation of its good faith efforts, as required by 41 CFR 60-1.12(b); preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b); maintain and/or have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

- 2. Violation 2:** During the period January 1, 2023 through December 31, 2023, Powerex failed to invite applicants, prior to an offer of employment, to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA in violation of 41 CFR 60-300.42(a).

Remedy 2: Prior to an offer of employment, Powerex agrees to invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA, as required by 41 CFR 60-300.42(a).

- 3. Violation 3:** During the period January 1, 2023 through December 31, 2023, Powerex failed to invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he or she is a protected veteran in violation of 41 CFR 60-300.42(b).

Remedy 3: Powerex agrees to invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he or she is a protected veteran, as required by 41 CFR 60-300.42(b).

- 4. Violation 4:** During the period January 1, 2023 through December 31, 2023, Powerex failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified protected veterans, as required by 41 CFR 60-300.44(f)(3).

Remedy 4: Powerex agrees to annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). If Powerex concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it agrees to identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2).

To assist Powerex in this effort, OFCCP has identified the following resource to be used congruently with other resources:

PA Department of Veterans Affairs

Al Gonzalez

Liaison – LVER(Local Veterans Employment Rep)/DVOP(Disabled Veterans Outreach Program Specialist)

(267)580- [REDACTED]

If emailing, send to both emails below

[REDACTED] (b) (6), (b) (7)(C)@buckscounty.org

[REDACTED] (b) (6), (b) (7)(C)@pa.gov

Veterans Multi Center (VMC)

(215)923-2600

Vmcenter.org

- 5. Violation 5:** During the period January 1, 2023 through December 31, 2023, Powerex failed to invite its applicants for employment, prior to an offer of employment, to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60–741.42(a).

Remedy 5: Pursuant to 41 CFR 60–741.42(a), Powerex agrees to invite each of its applicants for employment, prior to an offer of employment, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60–741.2(g)(1)(i) or (ii). All invitations to self-identify must be made using the OMB-approved form for this purpose (available on the OFCCP website). Furthermore, Powerex agrees to keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60–741.42(e).

- 6. Violation 6:** During the period January 1, 2023 through December 31, 2023, Powerex failed to invite its applicants for employment, after an offer of employment had been made and before the applicant began work, to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60–741.42(b).

Remedy 6: Pursuant to 41 CFR 60–741.42(b), Powerex agrees to invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60–741.2(g)(1)(i) or

(ii). All invitations to self-identify must be made using the OMB-approved form for this purpose (available on the OFCCP website). Furthermore, Powerex agrees to keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

7. **Violation 7:** During the period January 1, 2023 through December 31, 2023, Powerex failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified individuals with disabilities as required by 41 CFR 60-741.44(f)(3).

Remedy 7: Powerex agrees to annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). If Powerex concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it agrees to identify and implement alternative efforts listed in 41 CFR 60-741.44(f)(1) or (f)(2).

To assist Powerex in this effort, OFCCP has identified the following resource to be used congruently with other resources:

Johnstown Vocational Rehabilitation Services

Justine Sinclair

(b) (6), (b) (7)(C) [@pa.gov](mailto:justine.s@pa.gov)

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

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Contractor agrees to retain all records relevant to the violation(s) cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Contractor will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:

Progress Report 1: Will be due seven (7) months after the Effective Date of the Agreement and will cover the timeframe from the Effective Date of this agreement through six (6) months after the Effective Date.

Progress Report 2: Will be due six (6) months after the first report covering the period of the 7th month through the 12th month following the Effective Date.

Both Progress Reports shall contain the following unless indicated otherwise:

1. **Pursuant to Violation 1:** Copies of complete and accurate personnel and employment records, in accordance with 41 CFR 60–1.12(a) and (e), showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c). Specifically:

A. Data on your employment activity (applicants, hires, promotions, terminations, and incumbency) for the immediately preceding AAP year. You should present this data by job group (as defined in your AAP) or by job title.

1. Applicants: For each job group or job title, this analysis must consist of the total number of applicants identified by gender and by race/ethnicity.¹ For each job group or job title, applicants for whom race and/or gender is not known should be included in the data submitted. However, if some of your job groups or job titles (most commonly, entry-level) are filled from the same applicant pool, you may consolidate your applicant data for those job groups or titles. For example, where applicants expressly apply for or would qualify for a broad spectrum of jobs (such as “Production,” “Office,” *etc.*) that includes several job groups, you may consolidate applicant data.
2. Hires: For each job group or job title, this analysis must consist of the total number of hires identified by gender and race/ethnicity.
3. Promotions: Provide documentation that includes established policies and describes practices related to promotions.

Additionally, for each job group or job title, provide the total number of promotions by gender and race/ethnicity. Where the contractor maintains data on whether the promotion is competitive or non-competitive, it may also provide this information in its submission.

¹ The term “race/ethnicity” as used throughout the Itemized Listing includes these racial and ethnic groups: African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White. You also have the option of submitting the requested data using the race and ethnic categories on the EEO-1 Report.

4. Terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, also include the department and job group from which the person(s) were terminated.

For each job title or job group, provide the total number of employees, by gender and race/ethnicity, as of the start of the immediately preceding AAP year.

- B. (First Report only) Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, and temporary employees) as of the date of the organizational display or workforce analysis as of January 1, 2025. Provide a single file that contains for each employee, at a minimum, employee name or numerical ID, gender, race/ethnicity, hire date, job title, EEO-1 Category and job group.² If the requested data is maintained in an accessible electronic format, please provide it electronically.

Additionally, for each employee, provide the following information, as applicable. If the contractor does not maintain any of these items, please notate that in your submission:

1. Base salary and/or wage rate, annualized base compensation, and hours worked in a typical workweek. Other compensation or adjustments to salary such as, but not limited to, bonuses, incentives, commissions, merit increases, locality pay or overtime shall also be identified separately for each employee.
2. Provide relevant data on the factors used to determine employee compensation such as education, experience, time in current position, duty location, geographical differentials, performance ratings, department or function, job families and/or subfamilies, and salary level/band/range/grade.
3. Provide documentation and policies related to the contractor's compensation practices, including those that explain the factors and reasoning used to determine compensation (*e.g.*, policies, guidance, or trainings regarding initial compensation decisions, compensation adjustments, the use of salary history in setting pay, job architecture, salary calibration, salary benchmarking, compensation review and approval, *etc.*).

² 41 CFR § 60-2.17(b)(3) and (d).

- ii. **Pursuant to Violation 2 and 3:** Evidence that the Contractor has invited all applicants to inform the contractor whether the applicant believes that he or she is a protected veteran who may be covered by the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. Specifically, this would include self-identification mechanism as well as applicant counts for veteran applicants.
- iii. **Pursuant to Violations 4:** Documentation of appropriate outreach and positive recruitment activities undertaken, including contacting the organizations listed in the in this Agreement and all other appropriate referral sources that are reasonably designed to effectively recruit protected veterans in the Youngwood, PA reasonable recruitment area.
 - a. Copies of all responses or other related correspondence received from each of the organizations used during the reporting period in efforts to recruit qualified protected veterans.
 - b. A list containing the following information for each individual referred for employment by the organizations listed in the Attachment to this Agreement and any other appropriate referral source:
 - 1. First and Last Name;
 - 2. Veteran status;
 - 3. Name of Referral Source;
 - 4. Result of referral;
 - 5. Last known home address;
 - 6. Last known personal email address; and
 - 7. Last known personal cellular phone and home phone number.
 - c. A list containing the following information for each individual hired under the agreement:
 - 1. First and Last Name;
 - 2. Veteran Status;
 - 3. Date of hire;
 - 4. Position title;
 - 5. Starting salary;
 - 6. Recruitment source;
 - 7. Last known home address;
 - 8. Last known personal email address; and
 - 9. Last known personal cellular phone and home phone number.
 - d. (Second report only) A copy of Contractor's annual assessment or the totality of its outreach activities, when applicable as required by 41 CFR 60-300.44(f)(3).

- iv. **Pursuant to Violation 5 and 6:** Data analysis file that the Contractor has invited applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii). Specifically, this would include OMB approved self-identification mechanism as well as applicant counts for individuals with disabilities.

- v. **Pursuant to Violations 7:** Documentation of appropriate outreach and positive recruitment activities undertaken, including contacting the organizations listed in the in this Agreement and all other appropriate referral sources that are reasonably designed to effectively recruit individuals with disabilities in the Youngwood, PA reasonable recruitment area.
 - a. Copies of all responses or other related correspondence received from each of the organizations used during the reporting period in efforts to recruit qualified individuals with disabilities.

 - b. A list containing the following information for each individual referred for employment by the organizations listed in the Attachment to this Agreement and any other appropriate referral source:
 - 1. First and Last Name;
 - 2. Disability status;
 - 3. Name of Referral Source;
 - 4. Result of referral;
 - 5. Last known home address;
 - 6. Last known personal email address; and
 - 7. Last known personal cellular phone and home phone number.

 - c. A list containing the following information for each individual hired under the agreement:
 - 1. First and Last Name;
 - 2. Disability Status;
 - 3. Date or hire;
 - 4. Position title;
 - 5. Starting salary;
 - 6. Recruitment source;
 - 7. Last known home address;
 - 8. Last known personal email address; and
 - 9. Last known personal cellular phone and home phone number.

 - d. (Second report only) A copy of Contractor's annual assessment or the totality of its outreach activities, when applicable as required by 41 CFR 60-741.44(f)(3).

Contractor will submit reports to (b)(6),(b)(7)(c) at (b) (6), (b) (7)(C)@dol.gov. Contractor and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Contractor provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor will provide such reports to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will promptly notify Contractor of the FOIA request and provide Contractor an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Contractor’s final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

V. SIGNATURES

The person signing this Agreement on behalf of Contractor personally warrants that he or she is fully authorized to do so, that Contractor has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Contractor.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Powerex Inc, Youngwood, PA.

(b)(6), (b)(7)(c)

Kim Paul
Human Resources Manager
Powerex Inc
Youngwood, PA

DATE: 10/8/2024

(b)(6), (b)(7)(c)

David A Smith
District Director
Omaha

DATE: 10/22/2024