

Conciliation Agreement

Between the

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

ACCURAY INC.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the ACCURAY INC establishment located at 1310 CHESAPEAKE TERRACE, SUNNYVALE, CA 94089-1100, beginning on June 28, 2019. OFCCP found that Accuray 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. § 60-741.

OFCCP notified Accuray of the specific violation(s) and the corrective action(s) required in a Notice of Violation issued on 07/23/2020 (NOV).

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Accuray 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 Accuray'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 violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Accuray violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Accuray'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. Accuray 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 it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Accuray of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or

Conciliation Agreement
Accuray Inc.

other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Accuray 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, including its attachments, 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 Director of the San Jose District Office (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 Accuray submits its final progress report required in Section IV, below, unless OFCCP notifies Accuray in writing before the expiration date that Accuray 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 Accuray has met all of its obligations under the Agreement.
10. If Accuray violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34 and/or 41 C.F.R. 60-741.63 (2014) will govern:
 - i. OFCCP will send Accuray a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. The Accuray 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 Accuray is unable to demonstrate that it has not violated the Agreement, or if OFCCP's 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 Accuray, 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 agreed to in the Agreement.

Conciliation Agreement
Accuray Inc.

- b. Accuray may be subject to the sanctions set forth in Section 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. Accuray neither admits nor denies 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.

III. Technical Violations and Remedies

1. **VIOLATION:** During the period July 1, 2017 through June 30, 2019, Accuray failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, in violation of 41 CFR 60-741.44(f)(1)(i). Specifically, Accuray in its AAP submission included an Outreach and Positive Recruitment [41 CFR 60-741.44(f)] report discussing their efforts. The company noted that it relied on the Local Job Network (LJN) with over 600 postings on diversity sites to recruit individuals with disabilities, and that in the prior year it had (b) (6) individuals with disabilities referred to them from the LJN out of total of (b) (6) applicants. The contractor's employment practice was inadequate, and ineffective in reasonably recruiting individuals with disabilities.

REMEDY: Accuray will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2).

2. **VIOLATION:** During the period July 1, 2017 through June 30, 2019, Accuray 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: Accuray will 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 Accuray concludes that the totality of its efforts were not effective in

Conciliation Agreement
Accuray Inc.

identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in 41 CFR 60-741.44(f)(1) or (f)(2).

3. **VIOLATION:** During the period July 1, 2017 through June 30, 2019, Accuray's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Accuray failed to develop and implement an Internal Audit and Reporting system that periodically measures the effectiveness of its Section 503 affirmative action program (AAP) regarding outreach and recruitment of individuals with disabilities in accordance with the requirements of 41 CFR § 60-741.44(h).

REMEDY: Accuray will include the audit and reporting system element described in 41 CFR 60-741.44(h) in its Section 503 AAP, as required by 41 CFR 60-741.44. Accuray will undertake the necessary actions to plan, develop and implement an internal auditing system that periodically measures the effectiveness of its Section 503 affirmative action program (AAP) regarding outreach and recruitment of individuals with disabilities. Accuray will ensure monitoring is conducted on required actions and personnel records, comply with internal reporting objectives and document them, review report results with management on the program effectiveness, and make recommendations to top management to improve unsatisfactory performance.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Accuray agrees to retain all records relevant to the violations 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. Accuray will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Accuray Reports.**
 - a. **Schedule and Instructions.** Accuray agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

REPORT DUE DATE	PERIOD COVERED
March 1, 2021	August 1, 2020 through January 31, 2021
September 1, 2021	February 1, 2021 through July 31, 2021

The reports will include the following information in each progress report:

- 1) Documentation of Accuray's outreach and positive recruitment activities reasonably designed to effectively recruit individuals with disabilities during the reporting period, to include dates that outreach and recruitment activity were accomplished, description of the outreach and recruitment activities undertaken,

Conciliation Agreement
Accuray Inc.

names of organizations with which outreach and recruitment was undertaken, and name of contact persons, titles, and contact information at organizations.

2) Documentation of Accuray's assessment of the individual and overall effectiveness of its outreach and positive recruitment efforts for individuals with disabilities in accordance with 41 C.F.R. § 60-741.44(f)(3).

3) Data Collection: (1) The number of applicants who self-identified as individuals with disabilities pursuant to §60-741.42(a), or who are otherwise known to be individuals with disabilities; (2) The total number of job openings and total number of jobs filled; (3) The total number of applicants for all jobs; (4) The number of applicants with disabilities hired; and (5) The total number of applicants hired.

4) Documentation that Accuray developed and implemented a Section 503 auditing system that monitors the effectiveness of its total affirmative action program to recruit and hire qualified individuals with disabilities (IWD). The reports should prove Accuray undertook the necessary actions to design and implement an appropriate audit and reporting system that:

- a) Measured the effectiveness of Accuray's protected Section 503 AAP;
- b) Indicated any need for remedial action;
- c) Determined the degree to which Accuray's objectives were attained;
- d) Determined whether known protected IWDs have the opportunity to participate in all company sponsored educational, training, recreational and social activities;
- e) Measured Accuray's compliance with the AAP's specific obligations, and;
- f) Documented actions taken to comply with above (a-e) and retained these documents as employment records.

Accuray will submit the reports to Lynda Sakseangvirat, District Director of OFCCP, Suite 410, San Jose, CA 95112, via email at

(b) (7)(C), (b) (6) [dol.gov](mailto:lynda.sakseangvirat@dol.gov). Accuray 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 Accuray provides in accordance with this agreement are customarily kept private or closely-held, and Accuray believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Accuray will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

Conciliation Agreement
Accuray Inc.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and ACCURAY INC SUNNYVALE, CA 94089-1100:

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

For Joshua Levine Patrick Spine
President & CEO SVP, Chief Administrative Officer
ACCURAY INC
SUNNYVALE, CA 94089-1100

8/12/2020

DATE: _____

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

(b) (6), (b) (7)(E)

Compliance Officer
Hawaii Area Office

DATE: 08/13/2020

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

Lynda Sakseangvirat
District Director
San Jose District, Hawaii and Guam Area Offices

DATE: 08/13/2020