

# **EARLY RESOLUTION CONCILIATION AGREEMENT**

**Between**

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

**And**

**NEWPORT NEWS SHIPBUILDING**

## **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs (“OFCCP”) is currently evaluating the Newport News Shipbuilding establishment located at 4101 Washington Avenue, Newport News, VA 23607 (“Reviewed Establishment”) and is alleging that, during the 2011-2012 audit year, NNS was not in compliance with Executive Order 11246 as amended (“E.O. 11246” or “Executive Order”), and its implementing regulations at 41 Code of Federal Regulations (C.F.R.) Parts 60-1 through 60-3. In the interest of resolving the alleged violations without engaging in enforcement proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and NNS enter into this Early Resolution Conciliation Agreement (“Agreement”), and the parties agree to all the terms therein. OFCCP recognizes NNS’s commitment to prospective improvements in workplace equity, opportunity, and diversity in crafting this forward-looking resolution that will foster enhanced oversight of more workers for at least the next five years. The attachments to this Agreement are deemed incorporated into this Agreement.

## **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for NNS’s fulfillment of all obligations of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, based on the alleged violations described in more detail in Part IV 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 IV if NNS violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating future enforcement proceedings, including during the 5-year exemption period for compliance evaluations based on complaint investigations or to enforce compliance if OFCCP deems that NNS is in breach of the Agreement. In exchange for NNS’s fulfillment of all obligations of the Agreement, OFCCP further agrees not to initiate any new audits at the Reviewed Establishment or the multiple establishments of the Newport News Shipbuilding Division of Huntington Ingalls Incorporated, including Kesselring, NY, until at least 60 days after NNS submits the final progress report described in Part VIII of this Agreement and the OFCCP confirms to NNS that it has fully complied with the terms of this Agreement, and the exemption period available in the selection methodology in place five years henceforth has expired.

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2. This Agreement does not constitute an admission by NNS of any violation of or noncompliance with EO 11246, Section 503 of the Rehabilitation Act of 1973, as amended (“Section 503”), the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”) and their implementing regulations at 41 C.F.R. Chapter 60, or other laws, nor has there been an adjudication on the merits regarding any such violation.
3. NNS understands that nothing in this Agreement relieves NNS of its obligation to fully comply with the requirements of EO 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment opportunity laws.
4. NNS will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint under EO 11246, Section 503 of the Rehabilitation Act, or VEVRAA, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. OFCCP and NNS (“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. 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 Lead Regional Director, Enforcement Director, or OFCCP career Deputy Director (the “Effective Date”).
9. This Agreement will expire and the audit will close sixty (60) days after NNS submits the final progress report required in Part VIII below, unless OFCCP notifies NNS in writing prior to the expiration date that NNS has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date OFCCP determines NNS has met all of its obligations under the Agreement, or for at least five years, whichever is later (referred to herein as the “scheduling exemption period”). Furthermore, after the expiration of the scheduling exemption period, any NNS establishment selected for a compliance evaluation will be selected in accordance with the scheduling methodology in place at that time.
10. Each party shall bear its own fees and expenses with respect to this matter.
11. If NNS violates this Conciliation Agreement,

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- a. The procedures set forth at 41 C.F.R. 60-1.34 will govern:
  - i. OFCCP will send NNS a written notice stating the alleged violations and summarizing any supporting evidence.
  - ii. NNS will have 15 days from receipt of such notice to demonstrate in writing that it has not so violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
  - iii. If NNS 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 for those establishments with an open review at the time of this Agreement and seek a full make-whole remedy for violations.
12. NNS may be subject to the sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief for violation of this Agreement (if that violation is not resolved pursuant to Paragraph 11 above).
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, and cannot be used as evidence that NNS is not in compliance with any applicable federal, state, or local laws, including but not limited to E.O. 11246, Section 503, and VEVRAA. NNS and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
14. 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 either party's policies, practices, or positions 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.
15. 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.
16. This Agreement is between OFCCP and NNS (as collectively defined above) and does not confer any rights or benefits to any other parties, other than any successor to, parent of, or subsidiary of NNS.

### **PART III. SPECIAL TERMS AND CONDITIONS**

1. NNS agrees to the enhanced compliance obligations outlined in Part VII of this Agreement. These additional commitments are not limited to the NNS location in Newport News, Virginia. The enhanced compliance obligations will instead have an enterprise-wide impact within the entire Newport News Shipbuilding Division.
2. The five-year scheduling exemption is limited to regularly scheduled compliance evaluations and OFCCP retains the right to investigate complaints of discrimination at establishments covered by the Agreement under E.O. 11246, Section 503, and VEVRAA. This exemption applies to the locations listed on Attachment A.
3. If NNS violates the terms of the Agreement, OFCCP reserves the right to bring an enforcement action seeking enforcement of the Agreement itself and shall not be required to present proof of the underlying violations resolved by the Agreement per 41 C.F.R. 60-1.34 and, subject to Part II Paragraph 11, the five-year scheduling exemption will be void.
4. This Agreement will not relieve NNS from its annual ongoing OFCCP requirements of equal employment opportunity through affirmative action and non-discrimination across its entire workforce, including the monitoring of an up-to-date AAP and internal pay equity.
5. This Agreement between NNS and OFCCP does not provide NNS with any grant of immunity or protection from its requirement to comply with Executive Order 11246.
6. This Agreement between NNS and OFCCP may be modified upon the written consent of the parties, and such consent will not be unreasonably withheld.
7. In case of a disagreement over the implementation of this Agreement, the parties agree to negotiate in good faith prior to OFCCP instituting any enforcement proceedings.

### **PART IV. PRELIMINARY FINDINGS**

#### **Selection Disparities.**

Based on the compliance evaluation at the Reviewed Establishment listed in Part I, OFCCP alleges that NNS is not in compliance with the nondiscrimination requirements of the equal opportunity clause of E.O. 11246 § 202 and 41 C.F.R. 60-1.4(a) (1) as follows. NNS has denied OFCCP's findings and allegations.

1. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Deck Electrician positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria

uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Deck Electrician positions, and that this difference resulted in a shortfall in hiring of 32 Black applicants in violation of 41 C.F.R. § 60-1.4(a)(1).

As part of NNS' selection process for the Deck Electrician position, applicants with fewer than three years of work-related experience were required to pass two (b)(7)(E) tests. OFCCP contends that the administration of the (b)(7)(E) tests resulted in a statistically significant disparity in the rates that Black applicants passed the test, and that the disparity resulted in a shortfall in passing of 11 Black applicants. OFCCP alleges that NNS could not produce an acceptable validity study for this test or any other evidence demonstrating its validity in accordance with the Uniform Guidelines on Employee Selection Procedures (UGESP), in violation of 41 C.F.R. § 60-3.3.

2. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Fitter positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Fitter positions, and that this difference resulted in a shortfall in hiring of 24 Black applicants in violation of 41 C.F.R. § 60-1.4(a)(1).
3. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Machine Hand positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Machine Hand positions, and that this difference resulted in a shortfall in hiring of two (2) Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).
4. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Outside Machinist positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Outside Machinist positions, and this difference resulted in a shortfall in hiring of 27 Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).
5. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Maintenance Electrician

positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Maintenance Electrician positions, and that this difference resulted in a shortfall in hiring of three (3) Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).

6. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Molder positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Molder positions, and that this difference resulted in a shortfall in hiring of two (2) Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).
7. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Pipefitter positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Pipefitter positions, and this difference resulted in a shortfall in hiring of 20 Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).

As part of NNS's selection process for the pipefitter position, applicants with fewer than three years of work-related experience were required to pass two (b)(7)(E) tests. OFCCP contends that the administration of the (b)(7)(E) tests resulted in a statistically significant disparity in the rates that Black applicants passed the test, and that the disparity resulted in a shortfall in passing of nine (9) Black applicants. OFCCP alleges that NNS could not produce an acceptable validity study for this test or any other evidence demonstrating its validity in accordance with the UGESP, in violation of 41 C.F.R. § 60-3.3.

8. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Refueler positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Refueler positions, and that this difference resulted in a shortfall in hiring of three (3) Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).
9. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Sheet Metal Worker

positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Sheet Metal Worker positions, and that this difference resulted in a shortfall in hiring of 15 Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).

10. OFCCP alleges that at least as of November 1, 2011, NNS discriminated against Black applicants on the basis of their race in hiring for Structural Welder positions. Specifically, OFCCP contends that NNS' failure to apply its selection criteria uniformly for all applicants during the review period of November 1, 2011 to October 31, 2012 resulted in a statistically significant difference in the rates at which White and Black applicants were hired into Structural Welder positions, and that this difference resulted in a shortfall in hiring of 13 Black applicants, in violation of 41 C.F.R. § 60-1.4(a)(1).

## **PART V. FINANCIAL and NONFINANCIAL REMEDY**

### **1. Settlement Fund**

- a. **Settlement Fund Account.** Within fifteen (15) days after the Effective Date, NNS will deposit a total of \$3,500,000.00 in an FDIC-insured interest bearing account maintained by NNS at the prevailing interest rate. By the deadline set forth in the Timeline (Attachment D), NNS will notify OFCCP when this action is complete and provide appropriate confirmation, including the name and address of the FDIC-insured banking institution, the account number for the settlement fund, the date of deposit, the deposit amount, and bank records showing the deposit amount. By the dates set forth in the Timeline, NNS will provide OFCCP with copies of bank records showing the current balance of the account, list of transactions and the amount of accrued interest on the account. The Settlement Fund is a negotiated amount that represents estimated back pay and accrued interest. NNS will be responsible for any banking account fees.
- b. **Specific Settlement Fund Amounts.** The total Settlement Fund amount includes \$2,693,097.28 in back pay and \$806,902.72 interest to resolve specific violations set forth above, as follows:

**Violation 1:** \$772,014.43 in back pay and \$224,341.29 in interest

**Violation 2:** \$569,994.25 in back pay and \$161,579.44 in interest

**Violation 3:** \$27,337.05 in back pay and \$8,642.78 in interest

**Violation 4:** \$429,019.27 in back pay and \$136,724.14 in interest

**Violation 5:** \$77,821.60 in back pay and \$20,294.36 in interest

**Violation 6:** \$35,394.21 in back pay and \$9,372.13 in interest

**Violation 7:** \$253,332.18 in back pay and \$83,845.75 in interest

**Violation 8:** \$77,476.04 in back pay and \$22,619.17 in interest

**Violation 9:** \$296,056.52 in back pay and \$88,252.67 in interest

**Violation 10:** \$154,651.73 in back pay and \$51,231.00 in interest

## 2. Notice Process

- a. **OFCCP and NNS Obligations under the Notice Process.** The notice process set forth in this Agreement is intended to provide Affected Class Members in Attachment B, identified as having been affected by the selection practices at issue, a meaningful opportunity to understand their rights and obligations and act on them in a timely manner. OFCCP and NNS agree not to withhold consent to reasonable modifications proposed by either party.
- b. **Distribution of Mail Notice to Affected Class Members.** By the date(s) set forth in the Timeline, NNS will provide initial, and subsequent, notice by regular first-class mail or other appropriate means. NNS will send copies of all of the notice documents to Affected Class Members consistent with the sample notice documents contained in Attachment C-1, C-2 and C-3, which include a Notice, Information Verification and Employment Interest Form, and Release Form. The notice documents will make clear the information about the settlement. The notice documents will also include a postage-paid return envelope. If envelopes from the initial mail notice are returned with forwarding addresses, NNS will re-mail the notice documents within five days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will meet and confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate. OFCCP may also conduct independent efforts to communicate with Affected Class Members about this Agreement and provide updated information to NNS. A second mail notice will be sent to Affected Class Members with valid addresses who fail to respond to the first mail notice unless the parties agree otherwise.

- c. **Notice Deadline.** The final deadline for any Affected Class Member to respond to the notice documents is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement, and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.



- d. **Exchange of Information Regarding Affected Class Members.** NNS and OFCCP will timely exchange information regarding Affected Class Members, including updated contact information and the results of any technical assistance provided.
- e. **Final List of Eligible Affected Class Members.** The Final List will include all Affected Class Members who timely respond to the Notice by the deadline set forth in the Timeline and whose eligibility is verified by OFCCP (referred to as “Eligible Affected Class Members”). These individuals will be listed on the Final List of Eligible Affected Class Members (“Final List”). The parties will establish the Final List by the date set forth in the Timeline. The parties will meet and confer on any outstanding issues or questions regarding the Final List. Either party may identify potentially eligible affected class members who may have been erroneously excluded from the original or any subsequent list. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. NNS will provide to OFCCP any information necessary to determine the Final List.
- f. **NNS’s Expenses.** NNS will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement Fund.

### 3. Allocation

- a. **Total Amount to be Allocated.** The back pay and interest amounts of the Settlement Fund, plus any additional interest that accrues on these interest-bearing accounts, will be distributed among the eligible class members as explained in this section. Individual shares will include appropriate deductions for each individual’s share of payroll deductions required by law on the portion representing back pay only, such as federal (FICA/FUTA) state/local insurance premiums or taxes).
- b. **Eligible Affected Class Members to Receive Payments.** The Settlement Fund will be distributed equally among all Affected Class Members who timely respond to the notice process (“Eligible Affected Class Members”) as explained below. The process of determining the Final List is explained below under the notice process. OFCCP will determine the final amount for each Eligible Affected Class Member based on the formula or other terms provided in this Agreement. All Eligible Affected Class Members are entitled to their share of the monetary settlement regardless of whether they are currently interested in employment with NNS.
- c. **Payments to Affected Class Members.** OFCCP will provide NNS a list of the payment amount for each Affected Class Member on the Final List by the date set forth on the Timeline. NNS will issue checks or make electronic payments to each Eligible Affected Class Member in the stated amount, along with appropriate tax reporting forms (such as W-2 and IRS Form 1099) by the date set forth on the

Timeline. Any check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Affected Class Members will be void. With respect to any uncashed funds, NNS will make a second distribution to all Eligible Affected Class Members who cashed their first check, with the same proportion of back pay and interest as the first payment.

- e. **Tax Payments, Forms and Reporting.** NNS will pay NNS's share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. NNS shall mail to each Eligible Affected Class Member an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Affected Class Members either at the time of payment, electronically or with the settlement checks, or at the end of the year. No Eligible Affected Class Member will be required to complete a W-4 or W-9 in order to receive payments under this settlement.<sup>1</sup>
- f. **Documentation of Payments.** By the deadline set forth in the Timeline, NNS will provide OFCCP with copies of cancelled checks or electronic documentation of all payments to Eligible Affected Class Members, including the amounts paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks. In the event of a second distribution, NNS will provide a similar documentation on the second distribution.

#### 4. Nonmonetary Relief

##### a. Job Opportunities

As vacancies occur in the ten (10) positions detailed in Part IV above, NNS will consider for employment all qualified Eligible Affected Class Members ("qualified" persons being those who meet the minimum basic qualifications indicated in the respective job listing for each type of position) who have expressed interest in employment, and are not currently employed in the position ("Eligible Applicants"), until 141 Eligible Applicants are hired or the list of Eligible Applicants is exhausted, whichever comes first. NNS shall consider the Eligible Applicants, and make offers to those qualified, in the order in which they submitted their notice documents, or, if the documents were received on the same day, in the order of their original application date.

The Eligible Applicant must report to work on the day designated or provide NNS notice of good cause for their absence on or before that date. The Eligible Applicant must also meet applicable post-offer requirements, such as a criminal background check, drug screen, and reference check. Otherwise, NNS may withdraw the job offer and shall be under no obligation to hire the Eligible Applicant under this

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<sup>1</sup> IRS guidance states that an employer can assume a single deduction in the absence of a W-4 form. *See 26 CFR 31.3402(f)(2)-1(a).*

Agreement. NNS remains obligated to hire until 141 positions are filled or the list of Eligible Applicants is exhausted, whichever comes first.

NNS agrees to pay Eligible Applicants hired under this provision at least the current entry level wage based on applicants' qualifications for the position, and provide all regular and on-the-job training currently provided to employees in that position.

NNS will document the job offers and hires to OFCCP, including job offers made and reasons for rejection, and Eligible Applicants hired and terminated during the monitoring period as set forth below.

#### **PART VI: ALLEGED TECHNICAL VIOLATIONS**

1. **VIOLATION:** During the period November 1, 2011 through October 31, 2012, NNS failed to preserve all personnel or employment records, in violation of 41 C.F.R. § 60-1.12(a). Specifically, NNS failed to preserve documentation made during pre-employment interviews.

**REMEDY:** NNS must preserve all personnel and employment records for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later, in accordance with the requirements of 41 C.F.R. § 60-1.12(a).

2. **VIOLATION:** OFCCP alleges that during the period November 1, 2011 through October 31, 2012, NNS failed to maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection process has an adverse impact, evidence of validity. Specifically, OFCCP contends that the **(b)(7)(E)** tests utilized by NNS for its Deck Electrician, Pipefitter, and Structural Welder applicants had adverse impact against Black applicants and were not properly validated, in violation of 41 C.F.R. § 60-3.15A

**REMEDY:** If NNS determines that a selection process has an adverse impact, it will maintain evidence of validity, as required by 41 C.F.R. § 60-3.15A.

#### **PART VII. ADDITIONAL RELIEF PER EARLY RESOLUTION CONCILIATION AGREEMENT**

The Agreement will be in effect for a five-year period beginning on the Effective Date of the Agreement. The audit will be deemed closed upon acceptance of last report of the Agreement's five-year monitoring period.

To proactively facilitate compliance with Executive Order 11246, NNS will take the steps described below to enhance its compliance with Executive Order 11246 in the selection process of all job titles at its establishments to ensure nondiscriminatory selection practices.

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1. NNS will retain a mutually-agreeable third-party HR Consultant to assess the Company's selection policies and procedures for all Craftworker positions (111 as of the date of this Agreement) in all NNS locations.
2. Within sixty (60) days after the Effective Date of this Agreement, the HR Consultant will submit to NNS and OFCCP a proposal that describes the methodology used in the evaluation. The evaluation and recommendations will cover the following areas:
  - a. The selection and placement of Craftworkers for statistical and practical significance using an impact measure appropriate to NNS (Attachment E).
    - i. If statistical and practical significance is identified, an analysis of the individual components of the selection process will be performed in accordance with the Uniform Guidelines on Employee Selection Procedures (UGESP).
  - b. Procedures to recruit, screen, interview, selection, reject, and hire individuals for relevant job titles, including the initial recruiter-stage review of applicants to achieve a race-neutral process.
  - c. Recordkeeping requirements for all Craftworker selection actions.

In addition, NNS agrees to:

3. Create or maintain a monitored hotline that includes a 10-working day response time by the NNS for reports from employees of hostile work environment complaints.
4. Create or maintain an HR committee that reports to the President of NNS to provide oversight of I&D (Inclusion and Diversity) efforts and initiatives. Results of investigations will be reviewed by an ethics committee comprised of company directors.
5. Include a non-discrimination performance standard for hiring decision-making managers that measures the following:
  - a. Ownership of work and work processes;
  - b. Creation and maintenance of an environment focused on accountability and compliance; and
  - c. Promotion of diverse, open, and inclusive work environment that values a diversity of persons, backgrounds, thoughts and talents.

6. Conduct an anonymous engagement survey of all employees annually to provide feedback regarding the culture of the company's work environment and the inclusivity of the workplace.
7. Discontinue use of the (b)(7)(E) assessment.
8. Strengthen relationships with HBCU's and other universities to increase the diversity of interns.
9. Support any employee request for creation of an ERG focused on Black Craftworkers.
10. Work with community partners on developing high school, trade school, and community college pipeline programs with a particular focus on Black students.
11. Establish pre-apprenticeship and/or high school pipeline programs for skilled Craftworker positions, except Molder.

#### **PART VIII. REPORTS REQUIRED DURING OFCCP MONITORING PERIOD**

1. **Recordkeeping.** NNS agrees to retain all records relevant to the violations cited in Part IV and Part VI above and the reports submitted in compliance with Paragraph B, 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. NNS will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Confidentiality.** NNS will submit reports to Assistant District Director Dianna Adams at 400 N. 8<sup>th</sup> Street, Suite 466, Richmond, VA 23219 and (b) (6), (b) (7)(C) dol.gov. NNS 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 NNS provides in accordance with this Agreement are customarily kept private or closely-held, and NNS believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, NNS 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, in compliance with all FOIA regulations procedures and policies.

3. **NNS Reports.**

- a. **Schedule and Instructions.** NNS agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule (*e.g.*, reports on revised policies, pay adjustments, validity studies):
  - b. **Progress Report 1:** December 1, 2020
  - Progress Report 2:** December 1, 2021
  - Progress Report 3:** December 1, 2022
  - Progress Report 4:** December 1, 2023
  - Progress Report 5:** December 2, 2024
- b. **Reports on Job Offers.** In each Progress Report, NNS will report on all job offers and hires made to date pursuant to the Agreement until all of the job opportunities for the reviewed establishment are filled or the list of Eligible Applicants expressing interest in the positions is exhausted, whichever occurs first. This includes:
  - i. Documentation of all job offers made to Eligible Applicants, including the names of individuals offered jobs, the date of their application, the date of the offer, the date the offer was accepted or rejected, and the starting pay.
  - ii. Documentation of Eligible Applicants who expressed interest in job offers who (i) did not meet the basic minimum requirements for the position or (ii) did not successfully complete the application process, including the names of these individuals, the date of their application, if any, and the reason NNS determined they did not meet the minimum qualifications or successfully complete the application process. This includes individuals who did not receive job offers because all available positions were filled.
  - iii. Documentation of class members who were hired and terminated during the life of this Agreement and the reason for the termination.
  - iv. Documentation of the number of available positions remaining to be filled and the number of Eligible Applicants still on the list.
  - v. Documentation of the start dates for Eligible Applicants who were hired.
- c. **Affirmative Action Programs.** NNS will certify that it has prepared its current year AAP for Executive Order 11246 with the first Progress Report and annually thereafter while the monitoring period is in effect. Each year for five years from the effective date of this Agreement, NNS agrees to certify that it has updated its Affirmative Action Program and to submit to OFCCP, on an annual basis, the job group structure used in NNS' Affirmative Action Program.”

- d. **Reports on Modifications to Personnel Practices.** In each Progress Report NNS will report on all modifications of personnel practices made to date pursuant to the Agreement and provide documentation of its compliance with the remedy provisions of this Agreement. If any of the relevant documents such as job postings or policies have not been modified since being provided during a prior reporting period, a statement to that effect is sufficient. The reports must include:
- i. The number of establishments and employees covered by the monitoring analysis in each Progress Report
  - ii. For each Craft, the number of applicants and hires during the reporting period, and for the collective Craftworker group at each establishment, the number of applicants and hires broken down by race, gender, and ethnic group. The parties will meet and confer after the second annual report to discuss the consultant's report and the progress outlined in this Agreement.
  - iii. Documentation to verify that all analyses and reviews detailed in Part VII. 2, above were completed. This includes but is not limited to: a summary of the results of NNS's statistical analysis including any adverse statistical findings as described in Attachment E, and, if statistical and practical significance is identified at a particular step either: (i) confirmation that the selection criteria are job-related and consistent with business necessity, and that any appropriate action has been taken to ameliorate the adverse impact identified; (ii) validation materials consistent with the Uniform Guidelines on Employee Selection Procedures; or (iii) evidence to confirm the elimination of any such process or criteria.
  - iv. Documentation to confirm the creation and/or maintenance of a monitored complaint hotline.
  - v. Documentation to confirm that creation and/or maintenance of an HR committee that provides oversight on NNS's Inclusion and Diversity efforts and initiatives. This documentation must include but is not limited to a summary of the most recent meeting of the committee with a list of all participants.
  - vi. Documentation of the non-discrimination performance standard for hiring decision makers.
  - vii. Documentation to confirm completion of NNS's most recent employee engagement survey.
  - viii. Summary documentation of efforts taken with community partners, schools, community colleges, pre-apprenticeship programs, or other sources in an effort to recruit qualified Black Craftworkers.

**PART IX. SIGNATURES**

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Newport News Shipbuilding, 4101 Washington Avenue, Newport News, VA 23607.

**Jennifer Boykin** Digitally signed by Jennifer  
Boykin  
Date: 2020.09.30 11:11:44 -04'00'

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JENNIFER BOYKIN  
President  
Newport News Shipbuilding  
Newport News, VA

DATE: \_\_\_\_\_

**MICHELE HODGE** Digitally signed by MICHELE  
HODGE  
Date: 2020.09.30 13:43:59 -04'00'

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MICHELE HODGE  
Regional Director  
Mid-Atlantic Region

DATE: \_\_\_\_\_

**Attachments**

- A. List of Covered Establishments
- B. List of Affected Class Members
- C. Notice Documents
  - C-1 Notice
  - C-2 Information Verification and Employment Interest Form
  - C-3 Release Form
- D. Timeline
- E. Analyzing Statistical and Practical Significance



**Attachment A: Covered Establishments**

**Newport News Shipbuilding**  
4101 Washington Avenue  
Newport News, VA 23607

**Newport News Shipbuilding- Kesselring**  
350 Atomic Project Rd.  
Ballston Spa, NY 12020

**Attachment B: List of Affected Class Members**

**Deck Electrician Affected Class Members**

#	Applicant ID	Class Member Name
1	(b) (6), (b) (7)(C)	
2	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
35	(b) (6), (b) (7)(C)	
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**Deck Electrician Affected Class Members...Continued**

#	Applicant ID	Class Member Name
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**Fitter Affected Class Members**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
37	(b) (6), (b) (7)(C)	
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**Fitter Affected Class Members...Continued**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
1189	(b) (6), (b) (7)(C)	
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**Machine Hand Affected Class Members**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
37	(b) (6), (b) (7)(C)	
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**Machine Hand Affected Class Members...Continued**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
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**Machine Hand Affected Class Members...Continued**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
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**Machine Hand Affected Class Members...Continued**

#	Applicant ID	Class Member Name
217	(b) (6), (b) (7)(C)	
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**Outside Machinist Affected Class Members**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
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**Outside Machinist Affected Class Members...Continued**

#	Applicant ID	Class Member Name
866	(b) (6), (b) (7)(C)	
867		

**Maintenance Electrician Affected Class Members**

#	Applicant ID	Class Member Name
1	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
37	(b) (6), (b) (7)(C)	
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**Maintenance Electrician Affected Class Members...Continued**

#	Applicant ID	Class Member Name
73	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
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**Maintenance Electrician Affected Class Members...Continued**

#	Applicant ID	Class Member Name
145	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
181	(b) (6), (b) (7)(C)	
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**Molder Affected Class Members**

#	Applicant ID	Class Member Name
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#	Applicant ID	Class Member Name
37	(b) (6), (b) (7)(C)	
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**Pipefitter Affected Class Members...Continued**

#	Applicant ID	Class Member Name
937	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
973	(b) (6), (b) (7)(C)	
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**Refueler Affected Class Members**

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#	Applicant ID	Class Member Name
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**Refueler Affected Class Members...Continued**

#	Applicant ID	Class Member Name
361	(b) (6), (b) (7)(C)	
362	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
397	544471	(b) (6), (b) (7)(C)
398	1192816	
399	894864	
400	894046	
401	1060734	
402	566722	
403	1048089	
404	195411	
405	580438	
406	815821	
407	141501	
408	528982	
409	791096	
410	593130	

Sheet Metal Worker Affected Class Members

#	Applicant ID	Class Member Name
1	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
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Sheet Metal Worker Affected Class Members...Continued

#	Applicant ID	Class Member Name
649	(b) (6), (b) (7)(C)	
650	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
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686	(b) (6), (b) (7)(C)	
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**Structural Welder Affected Class Members**

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#	Applicant ID	Class Member Name
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**Structural Welder Affected Class Members...Continued**

#	Applicant ID	Class Member Name
937	(b) (6), (b) (7)(C)	
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#	Applicant ID	Class Member Name
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## Attachment C1 Notice

*You may be eligible to get money because of a legal settlement between NNS and the U.S. Department of Labor*

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Newport News Shipbuilding (“NNS”) that may benefit you. This settlement involves claims of discrimination in selection practices, which NNS denied and continues to deny. Our records show that you may be one of the class members covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and interest from NNS.

### **ARE YOU AFFECTED?**

Black applicants who were not selected and for whom OFCCP alleges a hiring disparity for Deck Electricians, Fitters, Machine Hands, Outside Machinists, Maintenance Electricians, Molders, Pipefitters, Refuelers, Sheet Metal Workers, and Structural Welders at NNS, between November 1, 2011 through October 31, 2012 are covered by this settlement.

### **WHAT IS THIS SETTLEMENT ABOUT?**

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) conducted a review of NNS’s selection practices during the period November 1, 2011 through October 31, 2012. OFCCP is the government agency responsible for enforcing nondiscrimination and equal employment opportunity through affirmative action requirements that apply to federal contractors. OFCCP alleges that NNS discriminated against Black applicants in hiring. NNS denies those claims. Ultimately, OFCCP and NNS have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement between NNS and OFCCP.

As a result, affected class members may be eligible for back pay and job offers.

### **WHAT DOES THIS MEAN FOR YOU?**

Because you applied for employment during the relevant time frame, and were not selected, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$155.44** (before adjustments for taxes and payroll contributions). This amount represents your share of back wages and other payments NNS is making to settle the issues found. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.
- (2) **You may be eligible for a job offer.** NNS will be making job offers to some of the individuals receiving this notification. It is not guaranteed that you will receive a job offer.

To get these benefits, you will need to release and agree to give up certain legal claims, and sign the enclosed Release forms.

## WHAT IS YOUR NEXT STEP?

You should read this Notice and the enclosed Interest and Release forms.

Please do not ignore these forms or throw them away. Otherwise, you could miss an opportunity to receive money from NNS.

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed forms: (1) Information Verification and Employment Interest Form and (2) the Release Form, to:

*[Name and address for return of forms or instructions/email for electronic submission]*

**DEADLINE: The forms must be received by [INSERT specific date for First or Second Notice deadline date in Attachment D]**

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these forms, a final decision will be made about your eligibility.

**If you fail to return both of the required forms by the deadline above, or if your forms do not verify your eligibility, you will not be eligible to receive any money, consideration for job opportunities or any other benefits that are available to you by the settlement.**

## HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact OFCCP at 1 (844) 438-0272. You can also visit the U.S. Department of Labor Web site about this case at [www.dol.gov/ofccp/cml](http://www.dol.gov/ofccp/cml).

**Attachment C-2**

**INFORMATION VERIFICATION AND EMPLOYMENT INTEREST FORM**

**You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Conciliation Agreement (“Agreement”) between NNS and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers:

Home \_\_\_\_\_ Cell \_\_\_\_\_ Work \_\_\_\_\_

Email Address: \_\_\_\_\_

Notify NNS at the address below if your address or phone number changes within the next twelve (12) months.

INSERT  
CLAIMS ADMINISTRATOR  
ADDRESS

Your Social Security Number (to be used for tax purposes only): \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

For purposes of this settlement, it is necessary to verify your gender:

Female  Male

For purposes of this settlement, it is necessary to verify your race:

Caucasian  African American/Black  Hispanic  Asian  American Indian/Alaska Native





**Attachment C-3 Release Form**

**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246**

*PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT*

This Release of Claims under Executive Order 11246 ("Release") is a legal document. The document states that in return for Newport News Shipbuilding ("NNS") paying you money, you agree that you will not file any lawsuit against NNS for alleged hiring discrimination under Executive Order 11246. It also says that NNS does not admit it violated any laws enforced by OCCP. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of payment of \$  (less adjustments required by law) by NNS to me, which I agree is acceptable, I (print name) \_\_\_\_\_ agree to the following:

**I.**

By signing this Release, I agree that I have been made whole for any claim that could have been brought under Executive Order 11246 relating to NNS's hiring practices through the Effective Date of this Release. I hereby release NNS, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its shareholders, owners, directors, officers, employees, agents, and assigns from any claim for additional make whole relief obtained through any action based on or involving NNS's hiring practices through the effective date of this Release that could have been brought under Executive Order 11246. Here, make whole relief is defined as the total earnings lost, and includes: salary or wages, overtime, premium pay and shift differentials, incentive pay, raises, bonuses, lost sales commissions, cost-of-living increases, tips, medical and life insurance, fringe benefits, pensions, stock options, and awards.

**II.**

I understand that NNS does not agree that it treated me unlawfully or unfairly in any way and that NNS entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance reviews initiated by OFCCP related to the facility covered by the Conciliation Agreement. I further agree that the payment of the aforesaid sum by NNS to me is not to be construed as an admission of any liability by NNS.

**III.**

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own freewill to sign this Release.

**IV.**

I understand that if I do not sign this Release and return it to NNS, by the applicable Timeline deadline, I will not be entitled to receive any payment (less deductions required by law).

I have signed this document of my own free will.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Attachment D- Timeline**

ACTIVITY	DUE DATE
NNS provides documentation of establishment of settlement fund	10/05/2020
NNS provides current balance of the account, list of transactions and the amount of accrued interest on settlement fund	10/30/2020
NNS Mails Initial Notice Documents to Potential Class Members (first mailing)	11/14/2020
Deadline for Affected Applicants to reply to Notice	12/14/2020
NNS and OFCCP meet to discuss results of initial mail notice	12/24/2020
OFCCP provides updated contact information to NNS	01/03/2021
NNS Mails Notice Documents (second mailing)	01/13/2021
Deadline for Affected Applicants to reply to second Notice	02/12/2021
NNS provides list of its determination of Eligible Applicants	02/27/2021
OFCCP Reviews and Approves Final List and Distribution Amounts	03/14/2021

Newport News Shipbuilding  
 Conciliation Agreement

ACTIVITY	DUE DATE
NNS mails back pay checks	03/29/2021
NNS notifies OFCCP of any checks returned as undeliverable	04/13/2021
OFCCP provides updated addresses	04/23/2021
NNS mails back pay checks to updated addresses	05/03/2021
Distribution of remaining funds to Eligible Applicants	09/10/2021

**Enhanced Compliance Agreement Timeline**

ACTIVITY	DUE DATE
Consultant submits proposal to NNS and OFCCP	11/29/2020
NNS submits Annual ECA Reports	12/01/2020 12/01/2021 12/01/2022 12/01/2023 12/01/2024

**Attachment E**

In accordance with the Uniform Guidelines of Employee Selection Procedures, NNS will use statistical significance testing.

(b) (7)(E)