

SUPPORTING STATEMENT

FOR THE PAPERWORK REDUCTION ACT SUBMISSION FOR A NEW INFORMATION COLLECTION

“Contract Standard for Contractor Workforce Inclusion”

JUSTIFICATION

1. Legal and Administrative Requirements

Section 342(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) provides for certain agencies, including the Securities and Exchange Commission (the Commission), to establish an Office of Minority and Women Inclusion (OMWI).¹ Section 342(c)(2) of the Dodd-Frank Act requires that the OMWI Director include in the procedures for evaluating contract proposals and hiring service providers a component that gives consideration to the diversity of an applicant, to the extent consistent with applicable laws. In addition, section 342(c)(2) requires that contracting procedures include a written statement, in the form and content prescribed by the OMWI Director, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

Section 342(c)(3)(A) further requires the OMWI Director to establish standards and procedures for determining whether an agency contractor or subcontractor “has failed to make a good faith effort to include minorities and women” in its workforce. If the OMWI Director determines that a contractor has failed to make good faith efforts, section 342(c)(3)(B)(i) provides that the Director shall recommend to the agency administrator that the contract be terminated. Upon receipt of such a recommendation, section 342(c)(3)(B)(ii) provides that the

¹ 12 U.S.C. 5452.

agency administrator may terminate the contract, make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor, or take other appropriate action.

The Commission developed a Contract Standard for Contractor Workforce Inclusion (Contract Standard) to implement the requirements of section 342 (c)(2) of the Dodd-Frank Act. The Contract Standard will be included in the Commission's solicitations and resulting contracts for services valued at \$100,000 or more. The Contract Standard requires the contractor to include the substance of the Contract Standard in all subcontracts for services awarded under the contract with a dollar value of \$100,000 or more. Accordingly, the requirements of the Contract Standard will apply to covered subcontractors, as prescribed in section 342(c)(2) of the Dodd-Frank Act.

The Contract Standard contains a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (PRA).² The Contract Standard requires a contractor to provide specified documentation, upon the request of the Commission's OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities and women in its workforce and, as applicable, to demonstrate that its covered subcontractors have made such good faith efforts.

2. Purpose and Use of the Information Collection

The purpose of the collection of information is to satisfy the requirements of section 342(c)(3)(B) of the Dodd-Frank Act. The collection of information will allow the Commission's OMWI Director to determine whether the contractor has complied with its obligations to make good faith efforts to ensure the fair inclusion of minorities in its workforce, and as applicable, to

² 44 U.S.C. 3501 et seq.

determine whether the contractor's covered subcontractors have similarly complied with their obligations to make such good faith efforts.

3. Consideration Given to Information Technology

Contractors have the option of delivering this collection of information requirement by electronic or paper submissions.

4. Duplication of Information

The collection of information will not duplicate existing information.

5. Reducing the Burden on Small Businesses

The collection of information will affect small as well as larger entities. As described below in Item 12 of this Supporting Statement, we believe the burden of complying with the collection of information will be low for all entities, regardless of size.

6. Consequences of Not Requiring Collection

Without the implementation and use of the collection of information, the Commission would not be able to satisfy the requirement of section 342 (c)(3)(B) that the OMWI Director determine whether the agency contractors have failed to make good faith efforts to ensure the fair inclusion of minorities and women in their workforces.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)

The Contract Standard calls for contractors to provide the specified documentation to demonstrate its good faith efforts to comply with the provisions of the Contract Standard within ten (10) business days of a written request from the Commission's OMWI Director or designee, or such longer time as the OMWI Director or designee determines. The specified documentation should be readily available when the request is received from the OMWI Director. As explained in Item 12 of this Supporting Statement, we estimate that it will take all contractors on average

approximately one hour to retrieve and submit the documentation specified in the Contract Standard. Although shorter than the 30-day guideline in 5 CFR 1320.5(d)(2)(ii), we believe that the ten days provided under the Contract Standard is a reasonable amount of time to respond a request from the OMWI Director to submit the specified documentation. The Commission's Contract Standard is modeled after the contract clause entitled "Minority and Women Inclusion" in the Department of Treasury's Acquisition Regulations, which similarly requests that the contractor provide documentation that demonstrates its good faith efforts within ten business days of a written request from the contracting officer.³

8. Consultations Outside the Agency

On February 13, 2015, the Commission published a notice in the Federal Register (80 FR 8119) soliciting comments on the proposed information collection for 60 days. The Commission received no comments on the information collection.

9. Payment or Gifts

There are no gifts or payments to respondents.

10. Assurance of Confidentiality

The Commission makes no express assurance of confidentiality in relation to this information collection. However, contractors submitting information in response to a request from the OMWI Director that is considered sensitive and confidential will be advised to follow the procedures under the Commission's regulations implementing the Freedom of Information Act (FOIA) for designating information as confidential business information or seeking confidential treatment.⁴

³ See Department of the Treasury final rule amending the Department of the Treasury Acquisition Regulation (DTAR) to include a contract clause on minority and women inclusion, 79 FR 15551(March 20, 2014).

⁴ 17 CFR 200.83.

11. Sensitive Questions

No questions of a sensitive nature are asked.

12. Information Collection Burden Estimate

A. Respondents

The Contract Standard on Contractor Workforce Inclusion will be included in Commission contracts and subcontracts for services valued at \$100,000 or more. Based on the data showing the dollar value of contracts and subcontracts awarded in FY 2012 and FY 2013, we estimate that 170 contractors⁵ would be subject to the collection of information requirement under the Contract Standard.⁶ Approximately 120 of these contractors have 50 or more employees, while about 50 contractors have fewer than 50 employees.

a. Recordkeeping Burden

The documentation requested to demonstrate good faith efforts to ensure the fair inclusion of minorities in the contractor's workforce may include, but is not limited to: 1) the total number of employees in the contractor's workforce, and the number of employees by race, ethnicity, gender, and job title or EEO-1 job category (e.g., EEO-1 Report(s)); 2) a list of covered subcontract awards under the contract that includes the dollar amount of each subcontract, date of award, and the subcontractor's race, ethnicity, and/or gender ownership status; 3) the contractor's plan to ensure the fair inclusion of minorities and women in its workforce, including outreach efforts; and 4) for each covered subcontractor, the information requested in items 1 and 3 above. This collection of information under the Contract Standard would impose no new recordkeeping burdens on the estimated 120 contractors that have 50 or more employees. Such contractors are generally subject to recordkeeping and reporting

⁵ Unless otherwise specified, the term "contractors" refers to contractors and subcontractors.

⁶ Data was obtained from FPDS and usaspending.gov.

requirements under the regulations implementing Title VII of the Civil Rights Act⁷ and Executive Order 11246 (“EO 11246”).⁸ Under the regulations implementing EO 11246, contractors that have 50 or more employees (and a contract or subcontract of \$50,000 or more) are required to maintain records on the race, ethnicity, gender, and EEO-1 job category of each employee.⁹ Such contractors are also required to develop and maintain a written program, which describes the policies, practices, and procedures that the contractor uses to ensure that applicants and employees receive equal opportunities for employment and advancement.¹⁰ In lieu of developing a separate workforce inclusion plan, a contractor would be permitted to submit its existing written program prescribed by the EO 11246 regulations as part of the documentation that demonstrates the contractor’s good faith efforts to ensure the fair inclusion of minorities and women in its workforce. Thus, approximately 120 contractors are already required to maintain the information that may be requested under the Contract Standard.

The estimated 50 contractors that employ fewer than 50 employees are required under the regulations implementing EO 11246 to maintain records showing the race, ethnicity and gender of each employee. We believe that these contractors also keep job title information during the normal course of business. However, contractors that have fewer than 50 employees may not have the written program prescribed by the EO 11246 regulations or similar plan that could be submitted as part of the documentation to demonstrate their good faith efforts to ensure the fair inclusion of minorities and women in their workforces. Accordingly, contractors with fewer than 50 employees may have to create a plan to ensure workforce inclusion of minorities and women.

⁷ 42 U.S.C. 2000e, *et seq.*

⁸ Executive Order 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

⁹ *See* 41 CFR 60-1.7.

¹⁰ *See* 41 CFR part 60-2.

In order to estimate the burden on contractors associated with creating a workforce inclusion plan, we considered the burden estimates for developing the written programs required under the regulations implementing EO 11246.¹¹ As there is no regulatory blueprint for a workforce inclusion plan, and contractors creating a workforce inclusion plan are not required to perform the same types of analyses required for the written programs prescribed by the EO 11246 regulations, we believe that to develop a workforce inclusion plan contractors with fewer than 50 employees would require approximately a third of the hours that contractors of similar size spend on developing the written programs required under the EO 11246 regulations. Accordingly, we estimate that contractors would spend about 24 hours of employee resources to develop a workforce inclusion plan. This would be a one-time recordkeeping burden. After the initial development, we estimate that each contractor with fewer than 50 employees would spend approximately 10 hours each year updating and maintaining its workforce inclusion plan.

The Contract Standard also would require contractors to maintain information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who would have an obligation to keep workforce demographic data and maintain workforce inclusion plans because the substance of the Contract Standard would be included in their subcontracts. Based on data describing recent Commission subcontractor activity, we believe that very few subcontractors will have subcontracts under Commission service contracts with a dollar value of

¹¹ According to the Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply Service, OMB Control No. 1250-003 ("Supporting Statement"), it takes approximately 73 burden hours for contractors with 1-100 employees to develop the initial written program required under the regulations implementing EO 11246. We understand the quantitative analyses prescribed by the Executive Order regulations at 41 CFR part 60-2 are a time-consuming aspect of the written program development. As there is no requirement to perform these types of quantitative analyses in connection with a workforce inclusion plan under the Contract Standard, we believe the workforce inclusion plan will take substantially fewer hours to develop. The Supporting Statement is available at reginfo.gov.

\$100,000 or more.¹² These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, we believe that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

b. Reporting Burden

With respect to the reporting burden, we estimate that it would take all contractors on average approximately one hour to retrieve and submit to the OMWI Director the documentation specified in the Contract Standard. We expect to request documentation from up to 100 contractors each year and therefore the burden estimate for annual reporting is 100 hours.

c. Burden Hours monetization

The estimated annualized cost to contractors associated with the recordkeeping and reporting burden resulting from the collection of information included in the Contract Standard is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (2014), which lists total compensation for management, professional, and related occupations as \$55 per hour and administrative support as \$25.¹³

With respect to the recordkeeping burden for developing and updating the workforce inclusion plan, we estimate that 75 percent of the burden hours would be management, professional, and related occupations and 25 percent would be administrative support.

¹² A search of subcontract awards on the usaspending.gov website showed that four subcontractors in FY 2012 and three subcontractors in FY 2013 had subcontracts of \$100K or more. See data on subcontract awards available at <http://usaspending.gov>.

¹³ For purposes of these calculations, the average salaries of \$54.95 and \$24.76 have been rounded up.

As for the reporting burden, we estimate that 75 percent of the burden hours for retrieving and submitting documentation to the OMWI Director would be administrative support and 25 percent would be professional, management, and related occupations.

The estimated aggregate burden hours and monetary equivalent for the information collection are summarized in the table below:¹⁴

Paperwork Activity	Number of Respondents	Burden Hours Per Respondent	Annual Burden Hours	Cost of Burden Hours Per Respondent	Annualized Burden Hour Monetary Equivalent
Initial Workforce Inclusion Plan One-time Implementation Burden	50	8*	400	\$380	\$19,000
Updating and Maintaining Workforce Inclusion Plan (after first year)	50	7**	350	\$332.50	\$16,625
Retrieving and Submitting Documentation of Good Faith Efforts to OMWI Director	100	1	100	\$32.50	\$3250
Total	—	—	850		\$38,875

*24 hours annualized over 3 years

**After first year; 20 hours (10 each year) annualized over 3 years (rounded to 7 burden hours)

13. Total Annualized Cost Burden

There are no costs associated with this information collection.

14. Cost to Federal Government

The estimated annual cost to the government for this collection of information is \$27,755.

This amount reflects an estimate of the amount of time staff that would be needed to review and analyze documentation submitted by an estimated 100 contractors each year pursuant to the Contract Standard.¹⁵

¹⁴ The burden hour and cost estimates are solely for the purpose of the Paperwork Reduction Act and are not derived from a survey or study of the paperwork burdens resulting from compliance with the Contract Standard.

¹⁵ The time required by staff to review and analyze documentation submitted pursuant to the Contract Standard will vary according to the size of the contractor. Of the 100 contractors expected to submit documentation each year, 71

15. Explanation of Changes in Burden

This is a new collection of information.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Omit the OMB Expiration Date

Not applicable.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

A. STATISTICAL METHODS

Not applicable.

contractors will have 50 or more employees, and 29 contractors will have fewer than 50 employees. We estimate that it would take agency staff approximately one hour to review the documentation submitted by contractors with fewer than 50 employees and approximately six hours to review documentation submitted by contractors with 50 or more employees. Thus, we estimate that it will take approximately 455 hours each year to review and analyze the documentation submitted by contractors. The estimated cost is based on the midpoint of the Washington, DC annual salary for SK-14 employees (\$126,452), divided by the Federal employee year of 2087 hours (rounded to \$61), multiplied by 455 hours.