

SUPPORTING STATEMENT

FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION SUBMISSION

Contract Standard for Contractor Workforce Inclusion OMB Control No. 3235-0725

A. 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 the 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) of the Dodd-Frank Act 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 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.

To implement the acquisition-specific requirements of section 342(c) of the Dodd-Frank Act, the Commission adopted a Contract Standard for Contractor Workforce Inclusion (Contract Standard). The Contract Standard is included in the Commission’s solicitations and

¹ 12 U.S.C. 5452.

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 with a dollar value of \$100,000 or more awarded under the contract. Accordingly, the requirements of the Contract Standard 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 allows the Commission’s OMWI Director to determine whether the contractor has complied with its obligations under the Contract Standard to make good faith efforts to ensure the fair inclusion of minorities in its workforce, and as applicable, to 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 avoids duplication by allowing respondents to fulfill the reporting requirement, where possible, by submitting information that already is available to, or compiled by, respondents for other purposes.

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.

² 44 U.S.C. 3501 et seq.

6. Consequences of Less Frequent Collection

Generally, covered contractors will be required to submit information on their good faith inclusion efforts no more than once during any three-year period. To require less frequent submissions, the Commission would not be able to satisfy the requirement of section 342(c)(3)(B) of the Dodd-Frank Act 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.

Section 342(c) and the Contract Standard require contractors to engage in good faith efforts at all times during the term of a contract and not merely in the 30 days preceding the OMWI Director's review. Because each covered contractor should have a workforce inclusion plan in place at all times during the term of the contract, 10 days should normally be sufficient time to submit a copy of the plan to the OMWI Director. The other data that may be required to be submitted under the Contract Standard are factual in nature, and it is reasonable for contractors to be prepared to provide them. Moreover, the Contractor Standard requires that information be provided within 10 business days of a written request or such longer time as the OMWI Director or designee determines. In addition, because most respondents may fulfill the reporting requirement by submitting information that has already been prepared for other purposes, the specified documentation should in most cases be readily available when the request is received. As explained in Item #12 of this Supporting Statement, we estimate that it will take contractors on average approximately one hour to retrieve and submit the documentation specified in the Contract Standard.

8. Consultations Outside the Agency

On July 8, 2021, the Commission published a notice in the Federal Register (86 FR 36167) soliciting comments on its intention to request an extension of this currently approved information collection, and allowed the public 60 days to submit comments. The Commission received no comments.

9. Payment or Gift to Respondents

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 are 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.³

11. Sensitive Questions

No questions of a sensitive nature are asked.

12. Estimate of Information Collection Burden

a. Respondents

SEC data on the dollar value of contracts awarded by the SEC for fiscal years 2019 and 2020 shows that approximately 175 contractors would be subject to the collection of information requirement under the Contract Standard.⁴ Approximately 102 of these contractors have 50 or more employees, while about 73 contractors have fewer than 50 employees. Since the last approval of this information collection, we adjusted the estimated number of contractors from 190 contractors to 175 contractors. In addition, we adjusted the number of contractors that have 50 or more employees and the number that have fewer than 50 employees to reflect the percentages of contractors meeting these workforce size thresholds among all contractors reviewed by OMWI for compliance with the Contract Standard during the last two years.

b. 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

³ 17 CFR 200.83.

⁴ Unless otherwise specified, the term "contractors" refers to contractors and subcontractors.

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 imposes no new recordkeeping burden on the estimated 102 contractors that have 50 or more employees. Such contractors are generally subject to recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act⁵ and Executive Order 11246 ("EO 11246").⁶ 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.⁷ 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.⁸

In lieu of developing a separate workforce inclusion plan, a contractor may 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 102 contractors are already required to maintain the information that may be requested under the Contract Standard.

The estimated 73 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

⁵ 42 U.S.C. 2000e, *et seq.*

⁶ Executive Order 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

⁷ *See* 41 CFR 60-1.7.

⁸ *See* 41 CFR part 60-2.

women in their workforces. Accordingly, contractors with fewer than 50 employees may have to develop a plan to ensure workforce inclusion of minorities and women.

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 11246.⁹ Based on OMWI's review of the plans and other documentation submitted by contractors with fewer than 50 employees to demonstrate compliance with the Contract Standard, we believe such contractors would require approximately 25 percent 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 18 hours, or 6 hours annualized, of employee resources to develop a plan for workforce inclusion of minorities and women. This one-time implementation burden annualized would be 438 hours.

After the initial development, we estimate that each contractor with fewer than 50 employees would spend approximately 8 hours each year updating and maintaining its plan for workforce inclusion of minorities and women, or approximately 5 hours annualized $((8+8)/3)$. The Commission estimates that the annualized recurring burden associated with the information collection would be 365 hours annualized. Thus, the Commission estimates the annual recordkeeping burden for such contractors would total 803 hours annualized.

The Contract Standard requires 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 is included in their subcontracts. Based on data describing recent Commission subcontractor activity, we believe that very few subcontractors will have subcontracts with a dollar value of \$100,000 or more under Commission service contracts.¹⁰ These subcontractors

⁹ 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.

¹⁰ A search of subcontract awards on the usaspending.gov website showed that fourteen subcontractors in FY 2019 and thirty subcontractors in FY 2020 had subcontracts of \$100K or more (Data as of June 29, 2021. [See data on subcontract awards available at http://usaspending.gov](http://usaspending.gov)).

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.

c. 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 50 contractors each year and therefore we estimate the total annual reporting burden to be 50 hours.¹¹

d. Burden hour monetization

The estimated annualized cost to contractors associated with the recordkeeping and reporting burden resulting from this collection of information is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (March 2021), which lists total compensation for management, professional, and related occupations as \$63 per hour and administrative support as \$30.¹²

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. 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. For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar.¹³

¹¹The estimated burden hours are solely for the purpose of the Paperwork Reduction Act. They are not derived from a survey or study of cost of compliance with the Contract Standard

¹² For purposes of these calculations, the average salaries of \$62.80 and \$29.29 have been rounded up.

¹³ 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.

Paperwork Activity	Number of Respondents	Burden Hours Per Respondent	Annual Burden Hours	Cost of Burden Hours Per Respondent	Annualized Burden Hour Monetary
Initial Workforce Inclusion Plan One-time Implementation Burden	73	6*	438	\$329	\$24,017
Updating and Maintaining Workforce Inclusion Plan (after first year)	73	5**	365	\$274	\$20,002
Retrieving and Submitting Documentation of Good Faith Efforts to OMWI Director	50	1	50	\$38	\$1,900
Total	_____	_____	853		\$45,919

* 18 hours annualized over 3 years

** After first year; 16 hours (8 each year) annualized over 3 years

13. Estimate of Total Annualized Cost Burden

There are no costs associated with this information collection.

14. Estimate of Cost to Federal Government

The estimated annual cost to the government for this collection of information is approximately \$39,000. This amount reflects an estimate of the amount of time staff that would be needed to review and analyze documentation submitted by an estimated 50 contractors each year pursuant to the Contract Standard.¹⁴

15. Explanation of Changes in Burden

The changes in the estimated annual burden hours from 925 to 853 are due to a decrease in the estimated number of contractors that would be subject to recordkeeping burden as a result of this collection of information, from 75 contractors to 73 contractors. In addition, the changes reflect a decrease in the burden hours associated with retrieving and submitting documentation of good faith efforts from 100 to 50.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Display of OMB Expiration Date

¹⁴ We estimate that it would take OMWI staff approximately six hours to review documentation submitted.. Thus, we estimate that it will take approximately 300 hours each year to review and analyze the documentation submitted by contractors at an average OMWI rate of \$130 per hour. The estimated annual cost is based on the estimated average value of staff time devoted this activity and related overhead.

Not applicable.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. STATISTICAL METHODS

Not applicable.