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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From:

U.S. Securities and Exchange Commission
Office of FOIA Services
100 F Street NE
Washington, DC 20549-2736

New Information Collection: Contract Standard for Contractor Workforce Inclusion

SEC File No. S7-02-15, OMB Control No. 3235-XXXX

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the Commission) has submitted to the Office of Management and Budget a request to approve the collection of information discussed below.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) provided that certain agencies, including the Commission, establish an Office of Minority and Women Inclusion (OMWI).¹ Section 342(c)(2) of the Dodd-Frank Act requires the OMWI Director to include in the Commission's procedures for evaluating contract proposals and hiring service providers a written statement that the 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.

¹ 12 U.S.C. 5452.

In addition, section 342(c)(3)(A) 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. Section 342(c)(3)(B)(i) provides that if the OMWI Director determines that a contractor has failed to make good faith efforts, 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.

The Commission developed a Contract Standard for Contractor Workforce Inclusion (Contract Standard) to implement the requirements of section 342(c) of the Dodd-Frank Act. The Contract Standard, which will be included in the Commission’s solicitations and resulting contracts for services with a dollar value of \$100,000 or more, contains a “collection of information” within the meaning of the Paperwork Reduction Act. The Contract Standard requires that a Commission contractor provide documentation, upon request from the OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities in its workforce and, as applicable, to demonstrate its covered subcontractors have made such good faith efforts. The documentation requested 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. The OMWI Director will consider the information submitted in evaluating whether the contractor or subcontractor has complied with its obligations under the Contract Standard.

The information collection would be mandatory. The Commission estimates that 170 contractors² would be subject to the Contract Standard. Approximately 120 of these contractors have 50 or more employees, while about 50 contractors have fewer than 50 employees. For the estimated 120 contractors that have 50 or more employees, the Commission estimates that the information collection under the Contract Standard would impose no new recordkeeping burdens. Such contractors are generally subject to recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act³ and Executive Order 11246 (“EO 11246”).⁴ 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 under Department of Labor regulations implementing EO 11246.⁵ The regulations implementing EO 11246 also require contractors that have 50 or more employees (and a contract or subcontract of \$50,000 or more) 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.⁶ 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

² Unless otherwise specified, the term “contractors” refers to contractors and subcontractors.

³ 42 U.S.C. 2000e, *et seq.*

⁴ Executive Order 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

⁵ *See* 41 CFR 60-1.7.

⁶ *See* 41 CFR part 60-2.

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. The Commission believes 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.

In order to estimate the burden on contractors associated with creating a workforce inclusion plan, the Commission considered the burden estimates for developing the written programs required under the regulations implementing EO 11246.⁷ 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, the Commission believes that to develop a workforce inclusion plan contractors with fewer than 50 employees would require approximately a third of the hours

⁷ 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 proposed Contract Standard, we believe the workforce inclusion plan will take substantially fewer hours to develop. The Supporting Statement is available at reginfo.gov.

that contractors of similar size spend on developing the written programs required under the EO 11246 regulations. Accordingly, the Commission estimates that contractors would spend about 24 hours of employee resources to develop a workforce inclusion plan. The one-time implementation burden annualized would be 400 hours. After the initial development, the Commission estimates that each contractor with fewer than 50 employees would spend approximately 10 hours each year updating and maintaining its workforce inclusion plan. The Commission estimates that the annualized recurring recordkeeping burden associated with the information collection would be 350 hours. Thus, the Commission estimates that the annual recordkeeping burden for such contractors would total 750 hours.

The Contract Standard also 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 would be included in their subcontracts. Based on data describing recent Commission subcontractor activity, the Commission believes that very few subcontractors will have subcontracts under Commission service contracts with a dollar value of \$100,000 or more.⁸ These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, the Commission believes that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

⁸ 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>.

With respect to the reporting burden, the Commission estimates 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. The Commission expects to request documentation from up to 100 contractors each year and therefore the Commission estimates the total annual reporting burden would be 100 hours.

The estimated annualized cost to contractors for the recordkeeping and reporting burden hours resulting from the information collection requirement under 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 \$25.⁹ With respect to the recordkeeping burden for developing, updating, and maintaining the workforce inclusion plan, the Commission estimates that 75 percent of the burden hours would be management, professional, and related occupations and 25 percent would be administrative support. The Commission estimates that the annualized cost related to the burden hours for the initial development of a workforce inclusion plan is \$19,000, and that the annualized cost for the recurring recordkeeping burden is \$16,625. Thus, the Commission estimates that the annualized recordkeeping cost related to compliance with the Contract Standard is \$35,625 (50 contractors x \$712.50 per contractor).

As for the reporting burden, the Commission estimates 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

⁹ For purposes of these calculations, the average salaries of \$54.95 and \$24.76 have been rounded up.

occupations. The Commission estimates that the annual reporting cost related to compliance with the Contract Standard is \$3250 (100 responses each year x \$32.50 per response).¹⁰

On February 13, 2015, the Commission published for public comment a notice of the proposed Contract Standard, which also included the notice required under the Paperwork Reduction Act and allowed the public 60 days to submit comments.¹¹ The Commission received no comments on the proposed information collection.

Written comments continue to be invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Background documentation for this information collection may be viewed at the following Website, www.reginfo.gov. Please direct general comments to the following persons:

¹⁰ The estimates of average burden hours and associated costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a survey or study of the paperwork burdens and costs associated with the proposed information collection.

¹¹ See Contract Standard for Contractor Workforce Inclusion and Request for Public Comment Release No. 34-74239 (February 10, 2015), 80 FR 8119 (February 13, 2015).

(i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE, Washington DC, 20549 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: April 29, 2015.

Brent J. Fields,
Secretary.

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