



November 3, 2014

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Ms. Debra A. Carr
Director
Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Extension of the Approval of Information Collection Requirement for Executive Order 11246 ó Construction Contracts (RIN 1250-0001)

Dear Ms. Carr:

the opportunity to submit the following comments on the Office of Federal Contract Compliance information collection requirements

ublished in the *Federal Register* on

September 2, 2014.

AGC óu Ipvgtguy kp v jg Ptqrqugf ICR

AGC is the leading association for the construction industry. AGC represents more than 25,000 firms, firms. More than 10,400 service providers and suppliers are associated with AGC through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for

Unique Aspects of the Construction Industry

When issuing the regulations implementing Executive Order 11246, OFCCP recognized that it did not make sense to require construction contractors to meet the same affirmative action requirements of other contractors, since work in the construction industry is typically project-based, transitory, and seasonal. The need for the number of people in each job category varies from day to day, not to mention from project to project. During construction projects, union hiring halls that assign construction workers to various job sites may replace workers as often as daily. Workers directly employed by the contractor often relocate to another project for the same or a different employer, depending on labor needs, once a project is complete. This alone would make it extremely difficult for construction contractors to track statistical data and ensure the accuracy of such data. In short, construction contractors would not be able to provide valid and reliable data without undue burden, if at all.

As a result of this fluid and temporary nature of the construction workforce, OFCCP currently does not requ

Exclusions from Cost Burden Calculations

entering the federal market for the first time. Because of such statements, many contractors enter the federal market unaware of the additional costs associated with becoming a federal contractor or subcontractor and end up with the unintended consequences of non-compliance. Moreover, the time and cost of compliance with this EO is cumulative with the time and cost of compliance with several other labor and employment mandates particular to federal contractors, such as other OFCCP-administered equal employment opportunity laws, the Davis-Bacon Act,

Necessity of the Proposed Collection of Information

In the ICR, OFCCP asks whether or not the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have

to carry out its responsibility to enforce the anti-discrimination and affirmative-action provisions of the responsibility of protecting the rights of individuals in protected classes who work for federal contractors. However, AGC does not believe the collection of such information is necessary from federal construction contractors at this time because construction companies are desperate to hire qualified workers due to a construction industry labor shortage and because the data, in general, do not support the need for the information collection.

Construction Industry Labor Shortage

Worker Shortage Survey of construction contractors, 83% of contractors report having trouble finding qualified craft workers to meet the growing demand for construction. As a result, there have been numerous reports of contractors that have been forced to turn down work due to the lack of qualified skilled labor available in the region. This means a loss of revenue for the firm and, in some cases, could

When the large number of charges for which no industry was identified is deducted from the total, the percentage of charges in construction is still below 2%. The percentage of sex-based claims and of race-based claims in construction are each also below 2%. And, of course, a significant number of those charges were resolved without any finding of merit.

As these and other statistics illustrate, the low number of women working in construction is not the result of high discrimination on the part of employers but of low interest on the part of potential employees. Historically speaking, construction is a non-traditional career for women. Even today, getting large numbers of women interested in working in the construction trades is a tremendous challenge. The bottom line is that the majority of women do not want to work in construction as craft workers for a variety of reasons unrelated to unlawful discrimination.

With regard to minorities in construction, the above-cited and other statistics indicate that there is neither a high incidence of race discrimination in construction nor a low incidence of minority employment. According to the Bureau of Labor Statistics data, 38.8% of employees in construction and extraction occupations in 2013 were minorities identified as Black or African American (6.2%), Asian (1.6%), or Hispanic or Latino (31%).

Given these data, AGC believes that the information collection along with any new burdens concerning the employment of women and minorities in construction that OFCCP might be considering is not needed. If OFCCP takes a contrary position, then AGC respectfully requests an opportunity to receive and construction.

Construction Industry Efforts to Promote Equality and Diversity

AGC and other construction industry o overall mission of ensuring that federal contractors offer *all* individuals an equal opportunity for employment, without regard to race, color, religion, sex, national origin, status as disabled or status as a

Provided training and reference materials to construction professionals on affirmative action requirements, preventing on-the-job harassment of any type, and creating a model hiring program;

Technical Assistance Guide for Construction Contractors and all OFCCP-hosted compliance assisted webinars and national events;

Training Program and Project Manager Series, all of which offer modules on ethics, leadership, working in teams, team building, and motivation that promote the values of skill, integrity, and responsibility espoused by AGC and its member firms;

OFCCP presented on the affirmative action requirements of construction contractors;

Coordinated a Federal Construction HR Workshop in 2011, 2012 and 2014 that featured sessions on complying with the affirmative action requirements of construction contractors;

Conducted a live webinar series on OFCCP compliance techniques where two OFCCP representatives were speakers, and made a recording of the event available to the public;

Review job descriptions periodically to make sure that all physical and mental requirements are of a business necessity; and

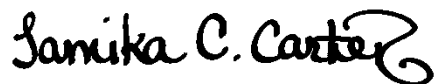
discrimination policies.

Conclusion

AGC understands that there may have been a need for regulations of this nature at the time the EO was originated in 1965. AGC also understands that there are still some bad actors who may discriminate against individuals in protected classes. However, based on reliable data, AGC believes that this is no longer occurring in wide-spread numbers. AGC also believes that the cost and burden estimates for compliance with the EO of \$479 and 16 hours per contractor are grossly underestimated based on the findings throughout this comment letter. Therefore, AGC recommends that OFCCP re-evaluate the cost and time burdens accordingly and focus its time on the few bad actors that give the entire industry a bad name.

AGC would be happy to provide more detailed data with regard to this ICR as derived from a construction contractor survey if given an additional 90 days to prepare, collect responses, and analyze the results.

Sincerely,

A handwritten signature in black ink that reads "Tamika C. Carter". The signature is written in a cursive, flowing style.

Tamika C. Carter
Director, Construction HR

cc: Janis C. Reyes, Assistant Chief Counsel
SBA Office of Advocacy
Janis.reyes@sba.gov