

08 | 30 | 2010 Posted By

Wall Street Reform Legislation Creates New Diversity Requirements for Government Contractors

The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, § 342) contains sweeping new diversity requirements for federal agencies involved in the financial sector, as well as the businesses which deal with those agencies. Although the deadline for the creation of the new bureaucracy required by the Act is not until January 2011, and additional rules and standards will be developed later, businesses that will be affected by the new legislation need to begin educating themselves regarding its scope and requirements.

As for the application of the new diversity requirements, the legislation will apply to businesses which deal with a number of federal agencies involved in the financial sector, including the Departmental Offices of the Department of the Treasury, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, each of the Federal Reserve banks, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Securities Exchange Commission, and the Bureau of Consumer Financial Protection.

A large number of businesses will likely be affected by the diversity legislation, because the legislation is intended to broadly apply to:

all contracts of [the above agencies] for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of [the above agencies], at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery. (Emphasis added.)

This language is broad enough that the legislation arguably will apply not only to businesses that traditionally operate in the financial sector, but also to any businesses that contract with the above agencies, such as food service or janitorial businesses.

As for how the new legislation will work, each of the above agencies must establish an Office of Minority and Women Inclusion, to be headed by a director. Among other responsibilities, the director must develop standards for "increased participation of minority-owned and women owned businesses in the programs and contracts of the agency," as well as standards for "assessing the diversity policies and practices of entities regulated by the agency."

At a minimum, the legislation mandates that each agency, in its procedures for reviewing and evaluating contract proposals and hiring service providers, include a component that gives consideration to the diversity of the applicant. Likewise, each contractor doing business with the agency will be required to submit a written statement indicating that it has "ensure[d], to the maximum extent possible, the fair inclusion of women and minorities in [its] workforce ... and, as applicable, [the workforce of] subcontractors."

The director of each Office will be required to "make a determination whether an agency contractor, and, as applicable, a subcontractor, has failed to make a good faith effort to include minorities and women in their workforce." Based on this determination, the director will have the ability to recommend to his or her agency that a contract be terminated, and the agency will then have the ability to terminate the contract, make a referral to the Department of Labor, or "take other appropriate action."

As noted above, these Offices are not required to be established until six months after the legislation was enacted (July 21, 2010), and the standards will be subsequently developed. As a result, there is uncertainty regarding precisely what the standards will be. Businesses that contract with the above agencies will need to stay informed regarding the progress each respective agency has made in establishing its Office, naming a director, and implementing its standards.