

Now, therefore be it resolved by the American Road Builders' Association in Convention assembled at Las Vegas, Nevada, this 14th day of February, 1968, That we do hereby make the following declarations with regard to equal employment opportunities in the construction field:

1. That the Association considers it to be a matter of settled national policy that discrimination in employment practices is inequitable, unjust and economically unsound.
2. That the Association is already working toward, and will continue to work toward, the development of an affirmative program to insure equal employment opportunity in the construction industry.
3. That the Association deplores those equal employment opportunity regulations and practices including preaward procedures which interfere with the contractual relationship between the contracting agency and the contractor, those which impose financial burdens on the contractor without provision for the identification and reimbursement of the costs, and those which impose upon the contractor unreasonable requirements with respect to locating and hiring workers who have specific scarce job skills and are members of a specific minority group.

MARCH 11, 1968.

Mr. EDWARD C. SYLVESTER, Jr.,
Director, Office of Federal Contract Compliance,
U.S. Department of Labor, Washington, D.C.

DEAR MR. SYLVESTER: We appreciate the opportunity of presenting written comments on your proposed order which would establish preaward compliance procedures for Federally involved construction contracts of one million dollars or more. We will also comment at this time on those parts of the proposed permanent regulations of the Office of Federal Contract Compliance which concern pre-award procedures.

We strongly urge that the low bidder on Federally-assisted highway contracts not be subjected to a compliance review between the opening of bids and the contract award, as you have proposed.

We believe that such reviews would disrupt sound and well established competitive bidding procedures without significantly improving employment opportunities for members of minority groups.

To the extent that compliance reviews attempt to change patterns of construction employment in particular areas they may be lengthy and involve demands that contractors take action which is costly and contrary to collectively bargained labor agreements.

Such reviews could not be completed within the period of time allowed by state law for the award of highway contracts in many cases. (Thirty-four states require that such contracts be awarded within 30 days of the opening of bids and five of these require awards within 20 days.)

Often the low bidder could not anticipate the costs of recruitment, training or other "affirmative action" demanded in the compliance review. Refusing to permit the low bidder to change his bid to reflect such additional costs would be unfair to him. Allowing such a change would be unfair to other bidders.

When labor contracts control the employment of journeymen or apprentices, the individual contractor—as low bidder or contract awardee—has little power to produce change—especially within a 30-day period. Such changes can generally be made only by agreement between the appropriate contractor association and union.

While we oppose the pre-war procedure you have proposed, we do not contend that only post-award compliance procedures are workable in highway construction. We are firmly convinced that a system of pre-qualification of contractors could promote equal employment opportunity without damaging our present competitive bidding system.

Pre-qualification of contractors is an accepted part of highway contracting. Appropriate programs of affirmative action to insure against discrimination in employment could be added to present requirements for determining eligibility to bid on Federal or Federally-assisted projects. These affirmative action programs could have reasonable variations to fit different areas or conditions and the length of the period during which bidders are considered qualified could also vary to meet changing needs.