

Contractors meeting such pre-qualification requirements would know exactly what their affirmative action obligations would be in advance of bidding and could develop their bids accordingly. Once bids were opened, awards could be made promptly to the low bidder whose eligibility for equal employment opportunity purposes would have been previously established.

Periodically, the qualification of contractors could be reviewed to determine if past performance has been satisfactory and if commitments for the future are acceptable. If a contractor's performance or commitments fall significantly below the level required, his qualification to bid for future contracts could be terminated or suspended by appropriate action.

Pre-qualification would not only protect bidding and expedite contract awards, it would enable two of the most difficult problems of equal employment opportunity in highway construction to be dealt with effectively. One of these problems is qualifications. The other is labor contracts.

Significant increases in the employment of minority group members in the more highly skilled trades will often be possible only if special training programs are established. Such programs can usually be most productive if all of the members of a contractors association participate in them and if some Federal funding is provided. (The program of the Florida Road Contractors for turning unskilled and underprivileged laborers into skilled road equipment operators is an example of such a program. See attached notice.)

The American Road Builders Association believes that the establishment of such training programs would be encouraged by the adoption of pre-qualification requirements. It believes that individual contractors would participate in such programs more fully under those circumstances than as a result of compliance reviews on a succession of low bidders.

Pre-qualification procedures would also focus attention properly on any situations in which joint apprentice programs or exclusive referral arrangements are considered discriminatory. In such situations the eligibility of all contractors participating in the program and desiring Federally involved contracts would be questioned equally and simultaneously. The issue of whether an existing program or arrangement had to be changed would thus be raised clearly and could be resolved through discussions with the union involved. Such an approach seems most consistent with the position taken by Secretary Wirtz in his recent letter to President Haggerty of the Building and Construction Trades Department of the AFL-CIO concerning the cooperation of building trade unions with affirmative action programs.

We also recognize that in addition to the above situations in which contractor action can most effectively be taken on a joint basis, there are obligations under Executive Order 11246 which each contractor can and should discharge individually. However, we submit that the discharge of such obligations can be insured as effectively in pre-qualification as in pre-award proceedings.

While we oppose compliance reviews in highway construction work between the opening of bids and the award of contracts, we are not contending that such procedures may not be fair and effective in other industries which have different traditions and needs.

Accordingly, we suggest that paragraph 3 of your proposed order be revised to provide that agencies may adopt a pre-qualification procedure as an alternative to the pre-award procedure outlined in paragraph 3(b).

Consistent with the above suggestion, we recommend that Sections 60-1.6(d) and 60-1.29 of the "Proposed Permanent Regulations of the Office of Federal Contract Compliance on Equal Employment Opportunity Obligations of Contractors" be revised to specify that pre-qualification reviews are an acceptable alternative to pre-award reviews.

We further suggest that the pre-award order you have proposed and some of the special pre-award procedures which might be specified under proposed Section 60-1.29(b) should be considered "rules and regulations of a general nature" to be issued by the Secretary of Labor under Paragraph 5.a of the Secretary's Order No. 26-65, 31 F.R. 6921. Section 60-1.2 of the Proposed Permanent Regulations also reserves to the Secretary the issuance of such general rules and regulations. We strongly believe that any order affecting a class of contractors without identifying each by name should be considered a "rule or regulation of a general nature" which should be issued by the Secretary himself.