

I directed a letter to the Comptroller General, and he replied May 22, 1968, and I believe you have a copy.

Secretary BOYD. Yes, sir.

Mr. CRAMER. That deals with the question of the Executive order relating to compliance with the equal employment opportunity conditions, and in my letter I raised some questions concerning it. Basically the reply, the most significant paragraph begins on the bottom of page 4 and on the bottom of page 5, the conclusions. I am sure you are familiar with the problems created by the negotiation after the bid opening process relating to these matters. And the effect that might have on the bid-letting process and fixed-prices costs and so forth, and numerous objections raised.

In effect, they say:

In view thereof, there would appear to be a technical defect in an invitation's requirement for submission of a program subject to government approval prior to contract award which does not include or incorporate definite standards on which approval or disapproval will be based. We believe that the basic principles of competitive bidding require that bidders be assured that award will be made only on the basis of the low responsive bid submitted by a bidder meeting established criteria of responsibility, including any additional specific and definite requirements set forth in the invitation, and that award will not thereafter be dependent upon the low bidder's ability to successfully negotiate matters mentioned only vaguely before the bidding. We are therefore advising the Secretary of Labor that if the proposed order is adopted, it should be appropriately implemented, before becoming effective, by regulations, which should include a statement of definite minimum requirements to be met by the bidder's program, and any other standards or criteria by which the acceptability of such program will be judged.

And the last paragraph says:

In any event, we cannot conclude at this time that the proposed requirement for submission of acceptable affirmative action programs prior to awarding Federally assisted construction contracts, is a matter of law clearly compatible with competitive bidding requirements * * *, and therefore illegal, provided the proviso is the key—

provided the implementing regulations discussed above are issued before the proposed order establishing such requirement becomes effective.

Now, I would trust and hope that you will give this matter your consideration as a result of the General Accounting Office determination, and as I understand it has been directed to you through proper channels, as well as to the Department of Labor and others involved.

Also I would hope that your Department would so advise the States of this proposal by GAO. Do you see any problems relating to it or have any reservations about it?

Secretary BOYD. No, I do not. I am very much in favor of this. I think the bidders ought to know what the requirements are.

The Department of Labor, as you know, is the lead agency.

Mr. CRAMER. Yes. I understand.

Secretary BOYD. And we would certainly be in contact with them about this. I presume the Department of Labor will get a copy of this.

Mr. CRAMER. Yes, they got it today.

Now, what will be the attitude of your Department relating to the presently existing requirement until this matter is resolved by Labor, in view of this letter?

Secretary BOYD. Well, I certainly expect an early resolution by the Department of Labor. And without checking with the various States,