

when the project is half completed; and that a bidder operating under negotiated labor agreements would in some cases be required to violate those agreements in order to comply with the proposed order.

Statutory provisions, such as that contained in 23 U.S.C. 112, for competitive bidding in the award of contracts have been interpreted to require award after advertising to the lowest responsible bidder whose bid is responsive to the terms of the invitation, and it is elementary that bidders must be adequately advised beforehand of all material requirements which will affect their costs or ability to perform. Invitation for bids were designed to secure a firm commitment upon which award could be made for securing the Government's requirements described therein, and not as a first step for subsequent negotiation procedures. 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.*

As to any added delay or cost to the Federal-aid highway program which might be occasioned by the requirement for acceptable affirmative action programs by contractors and subcontractors, such factors would not negate the apparent legality of the requirement. As indicated above, one of the basic requisites in awarding contracts pursuant to competitive bidding is that award be made to a responsible bidder, and added delay and cost in determining the responsibility or acceptability of the low responsive bidder are matters commonly associated with the awarding of such contracts.

Although, as you state, imposition of the procedures proposed by the Office of Federal Contract Compliance will no doubt create other legal and practical problems, we believe that many areas of such contemplated problems may be subject to resolution or disposition by regulations promulgated by the Office of Federal Contract Compliance or by implementing regulations of the agencies as provided for in the proposed order. *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 as a matter of law clearly incompatible with competitive bidding requirements of 23 U.S.C. 112, and therefore illegal, provided the implementing regulations discussed above are issued before the proposed order establishing such requirement becomes effective.*

We trust this serves the purpose of your letter of April 8. Please let us know if we can be of any further assistance in this matter.

Sincerely yours,

FRANK H. WEITZEL,

Assistant Comptroller General of the United States.

Mr. CRAMER. Thank you.

Mr. KLUCZYNSKI. Are there any questions on my right?

Mr. CRAMER. May I also ask, the other letter that was read earlier, submission of Mr. Hughes on relocation —

Secretary BOYD. We have not, we do not have that letter, Mr. Cramer.

Mr. KLUCZYNSKI. The gentleman from Texas, Mr. Roberts.

Mr. ROBERTS. Mr. Secretary, we have a problem on right-of-way acquisitions. I am not sure the problem is not statutory and I seek your advice.

Under our State highway procedures, an appraisal is made by an employee of the highway department. After this appraisal has been