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ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

TO:

Director,
Preliminary Plan Review Bureau

SUBJECT: Enforcement of Equal Employment
Opportunity Contract Provisions

Subject Code: 7.30

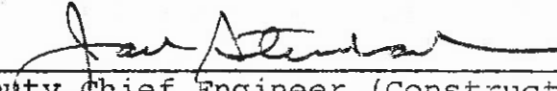
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Deputy Chief Engineer (Construction Subdivision)

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We are now in our seventh year of an E.E.O. program designed to increase the participation by minorities and minority business enterprises in our highway construction program. While significant progress has been made, our achievements have not reached the goals which are anticipated in this program.

The reasons for the shortfall are many and could be attributable to one or more of the following considerations:

1. Reduction in employment opportunities due to a sharply reduced program and high unemployment rates.
2. Prevailing seniority rule procedures in union agreements.
3. Unfamiliarity by contractors with all the E.E.O. requirements, disinterest, or inertia. Desire has been generally lacking to expend time and effort to seek out and employ qualified minority journeymen and firms over others who are available and with whom there have been satisfactory previous relationships.
4. Insufficient or lack of timely enforcement by project and regional personnel because of press of other matters, extensive paperwork or inadequate concern.

In the earlier stages of this program, we attempted to achieve the program objectives by guiding our contractors, issuing warnings of non-compliance and promising sanctions, but always attempting to avoid delays to construction operations. Since this approach has not been wholly successful and since our contractors are now fully aware of what is expected of them, it is time to enforce the E.E.O. requirements in the same diligent manner and direct prompt action as is being applied to our Specification requirements. Such action, including non-payment of progress estimates, stopping contract operations, or show cause hearings leading to disbarment, as appropriate, is even more important with the E.E.O. program since corrective action cannot restore the lost opportunities nor be effective after discriminatory employment practices early in a project have largely frozen the labor force for its duration.

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Accordingly, please instruct all project engineers in the following general guidelines, which are summarized here only for ready reference to the more critical aspects and which are not intended to replace the detailed requirements previously issued or included in each contract.

1. An E.E.O. meeting with the contractor's designated E.E.O. Officer must be held, either prior to award or at least before the start of construction, to be assured of full and prompt compliance with all requirements. Such meeting may be held in conjunction with the usual pre-construction meeting for the convenience of the contractor, provided a special session is included therein with the firm's E.E.O. Officer and our E.E.O. field representative.
2. Regardless of our notices to commence construction within 10 days following approval of the contract award by the Comptroller, no work is to start, except for mobilization and similar set-up operations which do not require recruitment of additional staff, until all related training programs and the contractor's schedule for utilizing trainees have been submitted and approved. However, if no trainees are specified for certain trades because there is to be minimal utilization of such journeymen, operations which require the sole utilization of such trades may be allowed to commence.
3. At the pre-construction conference, the contractor's employment practices are to be thoroughly discussed. Referrals must not be limited to the union hiring hall unless a representative flow of minority journeymen is assured in each trade classification. If such assurance cannot be obtained, employment referrals must be affirmatively solicited from other approved sources to provide equal employment opportunities for qualified minority journeymen. Project engineers must monitor employment on the project, particularly during the early stages of project force build-up, by visual inspection and review of contractor's affirmative action files and monthly reports to assure full and prompt compliance with the program objectives. Violations should result in a prompt stop work order of the affected operations until adequate corrective action is assured. The Regional Office should set up procedures to insure timely telephone coordination with the project engineer when such action is deemed necessary. This Subdivision is to be kept informed of such actions promptly after implementation.

Where "exclusive hiring" provisions are included in a union agreement, the project engineer should assure himself that the contractor is bound thereby by actually checking such agreements. In any case, where such provisions result in an inability by the contractor to achieve adequate minority representation in his journeyman work force, the contractor must refer such situation via the Regional Office for review by appropriate State and federal agencies as to their discriminatory effects prior to engaging his work force.

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4. The percentage of minorities to which reference is made herein is related to minority journeymen, exclusive of trainees, except where specific provisions are included in the contract providing for their inclusion in the "representative flow."

A direct order to stop work on all or specified operations, as appropriate, is justified when:

- a. The percentage of minority journeymen in any trade classification relative to the total number utilized on the overall project work is less than the percentage of minorities in the population of the area of recruitment for the project or the specified hometown plan goals, and the contractor does not have adequate documentation of his affirmative action to seek referrals from sources likely to produce qualified minority journeymen.
 - b. The specified number and classification of trainees are not on board despite the fact that an adequate number of journeymen in such trade classifications to support such training opportunities are working on the project and there is no valid acceptable reason for such delay in training.
5. No subcontractors are to be approved or allowed to start work until the following actions have been accomplished:
- a. The contractor must provide a certification that all the special provisions, which are to be attached to the certification, will be physically incorporated in all contracts with subcontractors, not by reference but by being specifically appended thereto.
 - b. The contractor must have designated a liaison officer who will administer the contractor's minority business enterprise program.
 - c. Form CONR 275 for the subcontractor has been submitted.
 - d. Documentation of the contractor's affirmative action to solicit quotations from qualified minority business firms pursuant to EI-75-11, dated January 29, 1975, has been reviewed and found to be adequate. Letters should, as a minimum, indicate the nature and location of the project, the items to be subcontracted by word description and quantity, where the plans, specifications and subcontract negotiations may be reviewed and discussed, and the name and telephone number of a contact person. The contractor's documentation should also contain all responses received and valid reasons why the proposed subcontractor was selected over qualified minority business firms which expressed an interest.
6. Failure by a contractor to file required reports in a timely manner (i.e., PR1391, FHWA 1409, HC 163 (Optional Form 66)) is subject to a Regional show cause notice and withholding of payment estimates.

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The aforesaid considerations deal only with those most critical in the achievement of the program objectives. Project engineers should also become thoroughly versed in the many other requirements relating to the E.E.O. Special Provisions, the Training Provisions, and the Bid Conditions covering hometown plan areas.

Affirmative action by our project and regional personnel in enforcing these requirements uniformly statewide will assure affirmative action by our contractors. To assure such affirmative action, each Regional Director should assign authority for enforcing this program to a sufficiently capable staff member, responsible to the Regional Construction Engineer, who will review all activities directly in the field as well as the written reports.