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Non-Discrimination

ADMINISTRATION OF NON-DISCRIMINATION POLICY
ON CONTRACT WORK

FOR: Managers of Operations
Principal Staff, Washington

1. Purpose. The purpose of this Bulletin is to serve as a guide to AEC operating officials and employees concerning the administration of the policy of non-discrimination in employment on AEC contract work.
2. Policy. It is the policy of the AEC that no employee or applicant for employment in the atomic energy program shall be discriminated against because of race, creed, color, or national origin.
3. Requirement for Non-Discrimination Provision in Government Contracts.
The requirement for a non-discrimination provision in Government contracts originated with Executive Order 8802, issued in 1941, and an amending order, E. O. 9346, issued in 1943. These orders reaffirmed the Federal Government's policy of full participation in the defense program by all persons regardless of race, creed, color, or national origin. E. O. 9346 requires contracting agencies of the Government of the United States to include in contracts a provision obligating the contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin and requiring him to include a similar provision in sub-contracts.

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4. Standard AEC Contract Clause. Pursuant to E. O. 9346, the following standard non-discrimination clause has been prescribed for inclusion in AEC contracts:

In connection with the performance of this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder, except contracts the performance of which does not involve the employment of persons. (GM-PER-27, Section 4c(4), revised 8/15/52.)

(Note that the revised clause excepts only those contracts "the performance of which does not involve the employment of persons." This revision was made when it was found that no authority existed for the earlier version of the clause which excepted contracts "for standard commercial supplies or for raw materials.")

The clause has the same legal force and effect as other provisions in AEC contracts. It applies not merely to hiring practices but to the various aspects of employment including work assignment, upgrading, lay-off, and opportunity for training.

5. Responsibility for Enforcement. The Executive Orders of 1941 and 1943 requiring a non-discrimination provision in Government contracts did not specifically place responsibility for obtaining compliance on the contracting agency. However, E. O. 10308, issued December 9, 1951, orders that "the head of each contracting

agency shall be primarily responsible for obtaining compliance by any contractor or subcontractor with the non-discrimination provisions of any contract entered into, amended, or modified by his agency and any subcontract thereunder, and shall take appropriate measures to bring about the said compliance."

In the AEC, the General Manager has placed this responsibility on the Managers of Operations (GM-PER-27). Specifically, the Managers of Operations are responsible for the following:

- a. Insure that the contract clause set forth above is incorporated in all contracts involving the employment of labor within the continental limits of the United States.
 - b. Review the policies and practices of contractors in the area of fair employment to make sure that contractors are carrying out their responsibilities under the non-discrimination clause of the contract.
 - c. Investigate and take appropriate action on complaints of discrimination in employment on AEC contracts.
6. Preliminary Discussion with Contractors. Problems in the administration of the non-discrimination policy will be kept to a minimum if contractors have a clear understanding of the considerations underlying the Government's policy and of their obligations under the non-discrimination provision in their contracts with the AEC. To assure that these considerations are properly understood, they

should be discussed with the prospective contractor during the period of negotiations, with emphasis on the right of all citizens to fair and equal treatment in employment on work paid from public funds and the obligation of both the AEC and the contractor to make good that right. It should be stressed to the contractor, as a fact attested by the experience of AEC and American industry generally, that racial tensions and time-consuming race relations problems are minimized when the employer announces, and consistently follows, a policy of equal treatment of all individuals in respect to employment and working conditions. Particularly in the case of long-term contracts, the prospective contractor should be requested to furnish copies of his established personnel policies pertaining to non-discrimination, or if he has no such established policies, a statement of the practices he proposes to follow in discharging his non-discrimination obligation under the contract.

The economic and efficiency factors in Federal non-discrimination policy should also be emphasized to the contractor, in particular (1) the urgent need for utilization of all available skills in the present period of national labor shortages; (2) the fact that AEC support in such matters as contractor employee deferments and contractor requests for exemptions from established regulations and requirements is premised on such full utilization; and (3) the fact that the spending of Government

funds on regional and national advertising for special skills is only justified when the skills which are available locally are being fully utilized.

At this time, also, the contractor should be advised that it is the policy of the AEC to provide employee facilities on the basis of voluntary association of individuals and to make no provision for duplicate facilities on any basis but the total requirements of the particular project.

7. Evaluating Compliance. Reviews of contractors' policies and practices to make sure they are discharging their contractual responsibility for non-discrimination will, in general, be concerned with a contractor's stated personnel policies, actual recruitment and employment practices, employment patterns, complaints of discrimination, and the contractor's record with respect to corrective action in any instances of discrimination. Some of the considerations pertaining to these items are discussed below:

a. Personnel Policies. Contractor personnel policies pertaining to non-discrimination should (1) provide the basis for meeting the commitments embodied in the non-discrimination clause, (2) be so stated as to provide positive guidance from top management to employees of the contractor who will be directly responsible for carrying out the company's non-discrimination obligation, and (3) be made known to all those involved in their implementation.

- b. Recruitment and Hiring Practices. Recruitment and hiring practices on the contract work should be consistent in all respects with the policy of non-discrimination. Practices which are generally held to be discriminatory include specifying race or color in recruitment advertising or in requisitions on employment agencies, and requiring applicants to check race or color on application forms. Most states and municipalities which have FEP laws prohibit these practices in their fair employment regulations. Other practices which are plainly inconsistent with a policy of non-discrimination are the segregation of interview lines and maintaining separate application files based on race or color.
- c. Employment Patterns. Contractors' employment patterns at given locations provide a basis for evaluating compliance with the policy of non-discrimination. Patterns of employment with respect to minority workers should be evaluated in relation to the availability of minority workers with skills required by the contractor. For example, in an area where the labor market includes a significant number of Negro workers with varied skills, a company which employs no Negroes or assigns Negroes to unskilled jobs only is obviously open to question on the score of apparent discrimination.
- Particular attention should be given to contractors' training programs as an aspect of employment, since a discriminatory

pattern once established tends to be perpetuated at all higher job levels. A special problem comes up in connection with building trades apprentice training programs where the selection of trainees is a responsibility which the contractor shares with others. However, where AEC funds or facilities are provided in support of such apprentice training programs, the AEC is in a position to influence the policies on selection of trainees and can use this influence to prevent practices which would deny such training to members of minority groups.

The number and availability of minority workers in various occupations can be ascertained, either formally or informally, from local and state employment offices, and in larger cities from the National Urban League which maintains a placement service for Negroes including clericals and professionals. The employment patterns of other plants in the area may also afford comparisons on which to evaluate the employment pattern of the contractor.

In the case of long-term contracts, periodic or at least occasional surveys should be made of the number and occupations of minority workers employed on the contract work. Usually, these surveys will concern Negroes only. Many companies, especially those in states having fair employment laws, do not maintain a record of employees by color. However, there is nothing to prevent an employer from making an informal

count of Negroes on his payroll and their occupational distribution.

- d. Complaints. A discrimination complaint usually points to a particular personnel practice, such as interviewing, selection, training, upgrading, or layoff, and provides the basis for specific review and correction of the practice on which the complaint is based. Depending on the type and frequency of complaints, they may indicate, among other things, defects in the contractor's personnel policies or procedures, questionable practices by contractor officials, or lack of proper instruction of these officials in their responsibilities under the non-discrimination policy. On the other hand, a total absence of complaints is not a guarantee that the contractor is doing all he should to comply with non-discrimination policy.
- e. Corrective Action. A contractor's record on corrective actions, pursuant to discrimination complaints, should be evaluated not only with regard to whether action was timely and remedied the particular complaints but whether it was effective in preventing recurrence of similar situations.
8. Taking Action on Complaints. Complaints of discrimination received by AEC, involving a contractor, should be promptly followed up in writing by the Operations Office and a full explanation should be requested of the contractor. Where it appears that the contractor is at fault, the complaint should be followed up in writing by the Manager of Operations and assurances of corrective action obtained from the contractor's local top management.

The basis for corrective action by AEC in discrimination cases is the legal contractual obligation assumed by the contractor when he accepts atomic energy work. The non-discrimination clause has the same legal force as any other contract clause; questions which come up under it should be handled with the contractor in the same affirmative manner as other questions of contract performance are handled. The ultimate recourse of the Government against a contractor who refuses to comply with the non-discrimination clause, as with any other contract clause, is cancellation of the contract. While such a recourse always remains a possibility in particular cases, it is the policy of AEC to use every reasonable means, short of cancellation, to bring about the necessary correction in a contractor's employment practices. The steps to be taken will depend on the circumstances of individual cases. In the great majority of cases, it should suffice to establish the facts, to confront the contractor with them and to request an explanation. The matter should be pursued until there is assurance that the contractor has corrected the discriminatory practice in question.

Where a contractor states he is unable to comply with the non-discrimination provision because of discriminatory practices on the part of a local labor union, the problem should be taken up directly with the union. Both the A. F. of L. and C.I.O. national organizations have spoken out vigorously on the record for fair employment and this national policy is a part of many union constitutions. Full use should be made of these facts where a local

union is following a contrary policy on AEC work. If negotiations at the local level are unsuccessful the facts should be reported to the Division of Organization and Personnel, Washington, so that the AEC can where appropriate request the cooperation and assistance of the International in bringing the local union's practices into line with national policy.

9. Relations with Outside Committees and Agencies.

- a. President's Committee on Government Contract Compliance. The AEC is one of the five major Government contracting agencies represented on the President's Committee for Government Contract Compliance and cooperates fully in the Committee's programs to improve compliance with the non-discrimination clause on contract work. The Committee is not an operating agency and does not regard the processing of individual complaints as one of its normal functions. It does, however, receive complaints from minority organizations and individuals and transmit these complaints to the contracting agencies with a request for a report on the facts and the action taken. It is the policy of the AEC to cooperate with the Committee in the handling of such complaints and to make investigations and reports as requested by the Committee.

Contacts with the Committee on Government Contract Compliance will as a general rule be handled by the Division of Organization and Personnel, Washington.

- b. State and Municipal FEP Commissions. The Conference of State Fair Employment Commissions meeting in Washington in July 1952 pledged full cooperation to the President's Committee in the supervision of fair employment practices on Federal contract work in their respective states. These agencies are working to make effective essentially the same policies which have been adopted by the Federal Government for its contract work. Accordingly, it is the AEC's policy to cooperate with these agencies on any problems of discrimination involving its contractors.

In general, contacts with the State Fair Employment Commissions will be handled directly by Operations Offices. (Appendix A to this Bulletin lists the states having some form of fair employment legislation.)

- c. Minority Organizations. Minority organizations, such as the National Urban League, National Association for Advancement of Colored People, and Anti-Defamation League, have a legitimate interest in non-discrimination in employment on public work. Requests for information concerning minority group employment on AEC work and discrimination complaints from such organizations should receive careful consideration from Operations Offices and contractors. Copies of significant correspondence between Operations Offices and minority

organizations should be furnished to the Division of Organization and Personnel, Washington.

By authority of the General Manager

Oscar S. Smith, Director
Division of Organization and
Personnel

Enclosure:
Appendix A

STATES WITH F.E.P. LEGISLATION

As of June 1952, the following states had some form of fair employment practice legislation:

<u>STATES</u>		
Colorado	New Jersey	Rhode Island
Connecticut	New Mexico	Washington
Indiana	New York	Wisconsin
Massachusetts	Oregon	