

OFFICE OF FEDERAL CONTRACT COMPLIANCE

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MILWAUKEE BRANCH NAACP

vs.

SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION (SEWRPC)

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COMPLAINT

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1. Complainant Milwaukee Branch of the National Association for the Advancement of Colored People (NAACP) is an organization dedicated to protecting the civil rights of all people of color.
2. The Milwaukee Branch of the NAACP is located at 2745 N Dr Martin Luther King Dr., Milwaukee, WI 53212, and its telephone number is (414) 562-1000.
3. The Milwaukee Branch of the NAACP is concerned with, and has frequently been involved in issues affected the hiring and employment of persons of color in the Milwaukee area, and many of its members are affected by these issues.
4. The Southeastern Wisconsin Regional Planning Commission (SEWRPC) is a Metropolitan Planning Organization located at W239 N1812 Rockwood Drive, Waukesha, WI 53187, with a mailing address of P.O. Box 1607, Waukesha, WI 53187.
5. SEWRPC receives federal contracts in excess of \$50,000, including, inter alia, a contract with the U.S. Geological Survey for \$84,700.
6. SEWRPC also receives federal funding, including but not limited to a \$3,200,000 grant from the Federal Transit Administration.
7. Upon information and belief, SEWRPC indirectly receives federal funding from other entities, including but not limited to monies it received from Milwaukee County, that Milwaukee County received from the U.S.G.S.
8. SEWRPC employs more than 50 persons.
9. SEWRPC is subject to equal opportunity and affirmative action requirements of the Office of Federal Contract Compliance, including Executive Order 11246 and 41 C.F.R. Ch. 60.

***Facts Relating to Lack of Professional Staff Diversity***

10. SEWRPC has been subject to affirmative action regulations since at least 1975.
11. A copy of SEWRPC's Affirmative Action Plan, in effect from July 1, 2007 - June 30, 2008 (hereinafter, "AA Plan"), is attached hereto as Exhibit A. A copy of SEWRPC's Job Group Analysis for the same period is attached hereto as Exhibit B.
12. Upon information and belief, SEWRPC's Affirmative Action Plan and Job Group Analysis for July 1, 2008-June 30, 2009 has not been completed.
13. The AA Plan identifies, as a "Problem Area," its lack of minority professional staff.
14. In June 1996, SEWRPC had only one professional staff person of color out of 41 professional staff members, and no professional African-American or Latino staff.
15. In June 2007, more than a decade later, SEWRPC still had only one professional staff person of color out of 42 professional staff members, and no professional African-American or Latino staff.
16. The single person of color on SEWRPC's professional staff in June 2007 was the same individual who had been there since June 2001, if not earlier.
17. As of June 2007, SEWRPC had no senior professionals, principal professionals, or officials or managers of color on its professional staff.
18. As of June 2007, SEWRPC had no senior or supervisory staff of color on its technical staff.
19. SEWRPC's AA Plan asserts that increasing diversity among its professional staff is difficult because it anticipates hiring only for one or two professional positions per year over the subsequent several years.
20. SEWRPC's AA Plan also asserts that increasing diversity among its professional staff is difficult because many of its professional staff remain at SEWRPC for many years.
21. The AA Plan's "Action-Oriented Program" to "increase Nonwhite Employment on the Commission Staff," includes, *inter alia*,
  - a. Expanding the use of minority media to advertise job openings;
  - b. Expanding the minority groups and neighborhood organizations that are notified

- of job openings<sup>1</sup>; and
- c. Establishing working relationships with minority groups and neighborhood organizations through which SEWRPC may identify qualified minority candidates for employment, and through which the groups could refer qualified minority candidates to SEWRPC for consideration in the pool of candidates when staff positions become open.
22. SEWRPC's Action Oriented Program said that these affirmative actions would be taken with respect to "job openings."
  23. SEWRPC's Action Oriented Program did not state that SEWRPC would take affirmative action only for entry level jobs or in any way indicate that SEWRPC would prefer to promote from within.

***Facts Relating to Non-Compliance with Affirmative Action in Promotion***

24. In or about March 2008, it became public knowledge that SEWRPC's Executive Director planned to retire at the end of 2008.
25. The Executive Director is a professional position within SEWRPC, and the retirement of the Executive Director would create a professional "job opening" in that position.
26. In 2006, SEWRPC established an Environmental Justice Task Force (EJTF), the stated mission of which is to "enhance the consideration and integration of environmental justice throughout the regional planning process," by, inter alia, "ensur[ing] public involvement of low-income and minority groups in decision making" and "assur[ing that] low-income and minority groups receive proportionate share of benefits."
27. The EJTF is a group that includes persons of color, persons with disabilities, and members of neighborhood organizations.
28. At a meeting on March 18, 2008, members of the EJTF - having learned that SEWRPC's white non-Hispanic Executive Director was planning to retire - requested that the process to hire a new Executive Director be conducted in a manner to ensure a diverse pool of candidates and participation from diverse constituencies (such as the EJTF) in the selection process, including helping to identify appropriate candidates for consideration in the pool of candidates.
29. On March 20, 2008, SEWRPC's Executive Committee rejected the request of

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<sup>1</sup>As discussed below, it is not clear that SEWRPC has in fact made adequate efforts to expand the pool of community groups it uses to advertise job openings, or to seek a diverse national pool of groups.

SEWRPC's own EJTF and instead voted to negotiate a contract to promote SEWRPC's assistant director, a white non-Hispanic person, to the position of Executive Director.

30. On April 24, 2008, SEWRPC's Executive Committee ratified a contract with its assistant director to become Executive Director.
31. SEWRPC conducted no search for the Executive Director opening, and thus did not comply with the commitments it made in its AA Plan to advertise job openings in minority media and to minority organizations and neighborhood groups.
32. SEWRPC conducted no search for the Executive Director opening, and thus did not comply with the commitments it made in its own AA Plan to work with minority groups and neighborhood organizations to identify persons who might be able to fill openings with the Commission.
33. At a May 27, 2008 EJTF meeting, EJTF members requested that SEWRPC conduct a search to ensure a diverse pool of candidates for the assistant director position being vacated by the assistant director due to his hiring as Executive Director.
34. At the May 27 EJTF meeting, the current Executive Director stated that SEWRPC preferred to "promote from within."
35. At an EJTF meeting on July 29, 2008, SEWRPC's Executive Director reiterated that SEWRPC "promotes from within" "whenever possible" and that any affirmative action in hiring is focused on entry-level positions.
36. At the July 29 EJTF meeting, EJTF members reiterated their concerns about SEWRPC's lack of affirmative action for hiring at multiple levels, not just for entry level positions.
37. Despite the facts that SEWRPC has been subject to affirmative action requirements for more than three decades; has attained only negligible improvement in minority hiring even at entry levels, especially for professional staff; has a total lack of persons of color in senior and supervisory professional positions; and has an almost all-white professional staff, "promoting from within" is its longstanding pattern and practice.
38. As a result of SEWRPC's history of failing to recruit and hire meaningful numbers of people of color to even entry level professional positions, its insistence on a policy of promoting from within has resulted in precluding persons of color from being placed in leadership positions within the organization as these positions have become available.

***Facts Relating to Non-Compliance With Affirmative Action in Use of Professional Service Subcontractors***

39. SEWRPC has hired, and continues to hire, “independent contractors” who provide significant and ongoing professional services, including many of the kinds of services that are or potentially could be performed by SEWRPC employees.
40. Upon information and belief, SEWRPC has routinely identified, hired and retained most or all of these “independent contractors” on a “no bid” basis.
41. Upon information and belief, SEWRPC retains significant control over the performance of work by these “independent contractors.”
42. Upon information and belief, SEWRPC did not comply with affirmative action or disadvantaged business enterprise requirements or policies in hiring these contractors, or otherwise attempt to ensure that the professional services contractors it hired are members of diverse groups.
43. Upon information and belief, SEWRPC has not engaged in any efforts to monitor or otherwise ensure that these professional service subcontractors engage in Affirmative Action.
44. SEWRPC does not identify or report these professional service subcontractors in its EEO reports, and does not maintain demographic data on them.
45. Such “independent contractors” from whom no demographic information is collected, who were not recruited through the methods specified in the AA Plan, and who are not identified in affirmative action reports, include, but are not limited to, the following:
  - a. Since 1997, SEWRPC has annually contracted with its former executive director, who upon information and belief is a white non-Hispanic person, to provide engineering, planning and surveying services including but not limited to “determination of an annual work program” related to public land surveys; “oversight of Commission staff activities intended to carry out the work program,” and designing and executing other projects assigned by SEWRPC. For 2008, SEWRPC pays its former director \$6,500 per month (\$78,000 per year) based on the “equivalent of three-quarters time of service,” and provides him with office space, a vehicle, telephone service, and support staff; during some prior years, SEWRPC also paid for its former director’s health insurance.
  - b. Since 2006, SEWRPC has utilized the services of two designated individuals, who upon information and belief are white non-Hispanic persons, as “personal service contractors” for planning services related to the 30<sup>th</sup> St. Corridor

Redevelopment, and, upon information and belief, has provided them with office space in Milwaukee County. The 30<sup>th</sup> St. Corridor is in the central city of Milwaukee, an area predominantly populated by persons of color.

- c. Since 2007, if not earlier, SEWRPC has entered into an annual contract with the University of Wisconsin Extension for the services of a specifically identified individual, who upon information and belief is a white non-Hispanic person, for public education and outreach, including outreach to communities of color. The contract obligates SEWRPC to pay 100% of this person's salary and benefits, and mileage and expenses.

***Facts Regarding Inaccurate and Misleading Establishment of Reasonable Recruitment Areas***

46. SEWRPC chose to locate its main office in Waukesha County, a county whose population is less racially and ethnically diverse than the population of SEWRPC's seven-county region as a whole.
47. The population of Waukesha County is only one percent African-American and three percent Latino, while the population of neighboring Milwaukee County is twenty-six percent African-American and eleven percent Latino.
48. The population of Milwaukee County, which borders Waukesha County and which contains the region's largest city, is much larger than the population of Waukesha County, and the number of persons of color who live in Milwaukee County is 99% of the **total** number of people who live in Waukesha County.
49. Upon information and belief, more professionals of color live and work in Milwaukee County than in Waukesha County.
50. Beginning in 2006, SEWRPC rented a satellite office in Milwaukee County, at the Milwaukee County Research Park.
51. SEWRPC failed to identify its Milwaukee location of business in its AA Plan and reports.
52. Had SEWRPC used Milwaukee County as a reasonable recruitment area its minority placement goals for professional, technical, and clerical staff would have been significantly greater than the placement goals it set using a Waukesha County recruitment area.
53. Had SEWRPC used Milwaukee County as a reasonable recruitment area its minority placement goals for its professional, technical, and clerical staff would have been significantly greater than the placement goals it set using Southeastern Wisconsin or the State of Wisconsin as a reasonable recruitment area.

54. SEWRPC failed to engage in routine national searches for higher-level professional or management positions, even though its AA Plan recognizes that such a search may be appropriate.
55. SEWRPC failed to evaluate the circumstances under which a national search would be appropriate and the specific job group or job titles for which such a search would be appropriate.
56. Using a national recruitment pool for professional staff positions would have led to a higher utilization goal as the national labor market has a greater proportion of persons of color in professional staff job categories.
57. At an EJTF meeting on July 29, 2008, SEWRPC's assistant director stated that it uses some national organizations (*e.g.*, the American Society of Civil Engineers) to advertise for those positions for which it conducts searches, but did not identify any national organizations representing persons of color (such as the National Society of Black Engineers).

***Facts Regarding Failure to Develop and Execute a Meaningful Action-Oriented Program***

58. According to its 2001-2002 AA Plan, SEWRPC employed five persons of color: one professional and four technical staff.
59. As of the 2007-2008 AA Plan, SEWRPC still employed only five persons of color<sup>2</sup>: one professional, three technical and one clerical staff.
60. All of SEWRPC's officials, managers, principal professionals, and senior professionals are white non-Hispanic persons.
61. As of June 2007, SEWRPC had no supervisory or senior staff of color among its technical staff.
62. SEWRPC's "Problem Statement" acknowledging that its professional staff is under-representative of persons of color emphasizes why SEWRPC believes persons of color cannot be recruited, rather than identifying shortcomings and ways to improve in its recruitment practices.
63. SEWRPC's "Problem Statement" does not mention or discuss the lack of senior or supervisory staff of color.
64. SEWRPC's 2007-2008 Action Oriented Program was virtually identical to its 2001-2002

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<sup>2</sup>Not including summer interns whom SEWRPC inappropriately classified as "technical" staff.

Action Oriented Program, containing no indication that SEWRPC had meaningfully analyzed any reasons for the failure to significantly improve minority hiring or removed barriers.

65. SEWRPC's Action Oriented Program identifies only a handful of community agencies in its seven-county region for job recruitment efforts even though many more such agencies exist, and fails to evaluate the effectiveness of its use of those agencies for recruitment purposes.
66. SEWRPC's Action Oriented Program fails to identify any national entities that could facilitate recruitment of persons of color.
67. SEWRPC's Action Oriented Program fails to describe good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

***Facts Regarding Failure to Develop Meaningful Response to Address Transit-Related Barriers***

68. SEWRPC's 2007-2008 AA Plan identified, as a "Problem Area," the lack of public transportation and the "time and expense of commuting to the Waukesha area."
69. The lack of public transportation and the "time and expense of commuting to the Waukesha area" has been listed as a Problem Area since 1996, if not earlier.
70. At the time it first identified this barrier, SEWRPC's office was located in downtown Waukesha, which at least had limited public transportation.
71. Subsequently SEWRPC purchased a building that is inaccessible by public transportation, and moved its office to that location.<sup>3</sup>
72. The only transit-related aspect of SEWRPC's 2007-2008 Action Oriented Program is that SEWRPC will provide information on "commuter bus services and car pool programs."
73. SEWRPC's AA Plan fails to acknowledge that no commuter bus service to its current offices exists.
74. Providing information on commuter bus service and car pool programs is also less action than SEWRPC pledged (but apparently failed) to take in prior years.

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<sup>3</sup>SEWRPC purchased this building for approximately \$3.4 million from a company owned by white non-Hispanic persons whom SEWRPC also regularly uses and pays as "independent contractors" for professional services.

75. For example, in 2001-2002, prior to its move out of downtown Waukesha, SEWRPC's Action Oriented Program indicated it would seek to develop a shuttle service.
76. Between the years of 2003-04 and 2004-05, when SEWRPC moved from downtown Waukesha, SEWRPC's Action Oriented Program raised the possibility of reinstating transit services between Waukesha and Milwaukee counties.
77. Upon information and belief, SEWRPC failed to take or continue most or all the actions specified in its prior affirmative action plans to reduce transit barriers.
78. Numerous reports and studies (including planning studies conducted by SEWRPC) identify the lack of transit as a barrier to employment in Waukesha County that has a disproportionate effect upon persons of color.
79. SEWRPC has not undertaken any study to determine the extent to which persons of color have been dissuaded from applying for positions with SEWRPC because of location or transportation-related barriers.
80. At an EJTF meeting on July 29, 2008, SEWRPC's Executive Director stated that it was likely that SEWRPC would delete or modify the lack of transit as a barrier in its next AA Plan, without having taken any action to address transit-related barriers or conducted any formal study to determine the extent to which location and/or transit issues pose a barrier to persons applying for positions at SEWRPC.

***Facts Regarding Failure to Employ Persons of Color in Milwaukee Office***

81. SEWRPC's 2007-2008 AA Plan identified, as a "Problem Area," the lack of public transportation and the "time and expense of commuting to the Waukesha area."
82. Beginning in 2006, SEWRPC rented a satellite office in Milwaukee County, at the Milwaukee County Research Park.
83. Public transportation is available to SEWRPC's Milwaukee County office, and the "time and expense" of commuting to the Milwaukee County office for Milwaukee residents is significantly less than the "time and expense" of commuting to SEWRPC's Waukesha County office.
84. The population of residents of color in Milwaukee County is substantially greater than the population of residents of color in Waukesha County.
85. Upon information and belief, SEWRPC has provided Milwaukee County office space to white non-Hispanic professional service contractors, but has not provided regular employment for persons of color in that location.

86. At an EJTF meeting on July 29, 2008, an EJTF member inquired whether SEWRPC would open an office in Milwaukee to address affirmative action concerns.
87. SEWRPC's Executive Director indicated it was not considering opening such an office and stated that SEWRPC professional staff could afford transportation to Waukesha.
88. SEWRPC has also failed to analyze or evaluate whether factors other than the "time and expense of commuting to the Waukesha area" (and the perceived lack of professionals of color) contribute to the lack of professionals of color on SEWRPC staff.<sup>4</sup>
89. SEWRPC has also failed to analyze or evaluate whether factors other than the "time and expense of commuting to the Waukesha area" limit opportunities for technical and/or clerical staff of color within SEWRPC staff.

***Facts Regarding Misleading Reporting on Staff Demographics***

90. SEWRPC's 2007-2008 AA Plan and Job Group Analysis includes and counts as employees part-time and temporary employees without acknowledgment that the majority of the temporary and part-time employees are persons of color, while most of the full-time employees are white non-Hispanic persons.
91. In its 2007-2008 AA Plan, SEWRPC reported that seven of its "technical staff" were persons of color.
92. SEWRPC's 2007-2008 AA Plan reports interns, who only work at SEWRPC for summer and vacation periods, as employees in the "technical staff" category, and counts them towards its minority hiring goals.
93. The EEOC prohibits counting interns (or other temporary employees) as "employees" for EEO reporting purposes.
94. When the temporary interns are excluded from the employee count, SEWRPC had only three technical staff members of color, not the seven it reported in its 2007-2008 AA Plan.

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<sup>4</sup>Such factors could include, for example, concerns by persons of color about traveling to the overwhelmingly white location of SEWRPC's offices; concerns about racial profiling by suburban police; the lack of persons of color in SEWRPC supervisory and management positions; the perceived lack of promotion opportunities; or other factors.

***Facts Regarding Failure to Maintain Demographic Information on Professional Service Subcontractors***

95. SEWRPC hires multiple persons who provide significant and ongoing professional services and designates them as “independent contractors.”
96. SEWRPC frequently pays these “independent contractors” nearly as much, if not more, than it pays its staff.
97. SEWRPC’s “independent contractors” frequently provide services similar to the services provided by SEWRPC’s staff, such as engineering and planning services.
98. SEWRPC retains substantial control over the work performed by its “independent contractors.”
99. SEWRPC’s AA Plan and Job Group Analysis do not include or mention persons who provide professional services to SEWRPC but whom SEWRPC identifies as “independent contractors.”
100. SEWRPC declines to collect or maintain demographic information on the racial composition of “independent contractors” who provide professional services.
101. Upon information and belief, these contractors are white non-Hispanic persons.

***Facts Regarding Inadequate Affirmative Action Reporting***

102. SEWRPC’s AA Plan and Job Group Analysis fails to include an organizational display containing, *inter alia*, a detailed “presentation of the contractor’s organizational structure” showing “each organizational unit in the establishment, and . . . the relationship of each organizational unit to the other organizational units in the establishment.”
103. SEWRPC’s AA Plan and Job Group Analysis fails to include, for each organizational unit, the job title and race of each unit supervisor and the racial composition of the incumbent job holders in each unit.
104. SEWRPC’s AA Plan and Job Group Analysis fails to include a workforce analysis that contains a listing of each job title ranked from the lowest paid to the highest paid within each department or organizational unit.
105. SEWRPC’s AA Plan and Job Group Analysis fails to include the lines of progression for professional and technical jobs, even though SEWRPC has a policy of “promoting from

within.”<sup>5</sup>

106. SEWRPC’s AA Plan and Job Group Analysis fails to include an analysis of terminations or separations by race or ethnicity.<sup>6</sup>
107. SEWRPC’s AA Plan and Job Group Analysis fails to evaluate its compensation system to determine whether there are race or ethnicity-based disparities.
108. SEWRPC’s 2007-2008 AA Plan and Job Group Analysis fails to evaluate selection, recruitment, referral and other policies (including but not limited to the policy of promoting from within) to determine whether they result in disparities in the employment or advancement of persons of color.<sup>7</sup>
109. The SEWRPC 2007-2008 AA Plan and Job Group Analysis does not describe the “good faith” efforts undertaken in the prior year, nor does it discuss the reasons why the prior year’s plan was unsuccessful in increasing hires of minority professionals.

### ***Claims***

110. SEWRPC violated 41 C.F.R. § 60-1.7(4) by failing to file complete and accurate reports, including by:
  - a. Classifying and reporting summer interns as “technical staff;”
  - b. Failing to identify or acknowledge the substantial racial disparities between its full time staff and part-time or temporary staff;
  - c. Asserting it would engage in affirmative action for job openings without acknowledging that it prioritizes promoting from within for positions other than entry level jobs;
  - d. Engaging in the pattern and practice of classifying white non-Hispanic persons

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<sup>5</sup>Although the AA Plan, Appendix C-3, shows a promotion/transfer log form, the data from this form is not included or analyzed.

<sup>6</sup>Although the AA Plan, Appendix C-4, shows a termination log form, this data is not included or analyzed.

<sup>7</sup>Such evaluation should include, for example, whether the applicant pools used for hires in the prior year were representative of the availability pool; whether the interview pools for hires were representative of the applicant pools; whether the outreach efforts were adequate; and the racial/ethnic composition of the hiring committees.

who provide professional services as “independent contractors” and excluding them from its AA Plan, Job Group analysis and other reports and affirmative action obligations;

- e. Failing to identify its Milwaukee County location of business;
  - f. Asserting it would provide information on commuter bus service to its office when no such service exists; and
  - g. Failing to include the information required by 41 C.F.R. § 60-2.11, as set forth in ¶¶ 102 - 109.
111. SEWRPC violate 41 C.F.R. §§ 60-2.2(b) and 60-2.10(a), by “deviat[ing] substantially from an approved affirmative action program,” including by:
- a. Refusing to engage in the methods specified in the AA Plan in hiring an Executive Director;
  - b. Refusing to engage in the methods specified in the AA Plan in hiring an assistant director;
  - c. Engaging in the pattern and practice of prioritizing promoting from within, rather than actively seeking diverse candidates through the methods specified in the AA Plan; and
  - d. Providing no-bid professional services contracts to white non-Hispanic persons and to companies owned and/or operated by white non-Hispanic persons, without seeking diverse candidates through the methods specified in the AA Plan.
112. SEWRPC violated 41 C.F.R. § 60-2.11, by, *inter alia*, failing to include in its Affirmative Action Report and Job Group Analysis:
- a. A detailed “presentation of the contractor’s organizational structure” showing “each organizational unit in the establishment, and . . . the relationship of each organizational unit to the other organizational units in the establishment,” as required by 41 C.F.R. § 60-2.11(b);
  - b. For each organizational unit, the job title and race of each unit supervisor and the racial composition of the incumbent job holders in each unit, as required by 41 C.F.R. § 60-2.11(b)(3)(ii);
  - c. A workforce analysis that contains a listing of each job title ranked from the lowest paid to the highest paid within each department or organizational unit, as

required by 41 C.F.R. § 60-2.11(c)(1); and

- d. The lines of progression for professional and technical jobs, as required by 41 C.F.R. § 60-2.11(c)(2),(3).
113. SEWRPC violated 41 C.F.R. § 60-2.14 by failing to properly determine availability by, *inter alia*:
- a. Failing to develop placement goals or compare performance to incumbency based upon a national recruitment area, despite asserting in the AA Plan that national recruitment would be appropriate for professional positions;
  - b. Failing to use a national recruitment area for supervisory or management positions, for which a broader search would be expected and is contemplated under its own AA Plan; and
  - c. Failing to identify or use Milwaukee County to establish a reasonable recruitment area and placement goals, despite the existence of a Milwaukee office, resulting in drawing a recruitment area that has the effect of excluding persons of color.
114. SEWRPC violated 41 C.F.R. § 60-2.17(b) by, *inter alia*, failing to conduct:
- a. An analysis of applicant flow, hires, terminations, promotions, and other personnel actions by race and ethnicity, as required by 41 C.F.R. § 60-2.17(b)(2);
  - b. An evaluation of its compensation system to determine whether there are race or ethnicity-based disparities, as required by 41 C.F.R. § 60-2.17(b)(3); and
  - c. An evaluation of selection, recruitment, referral and other policies<sup>8</sup> to determine whether they result in disparities in the employment or advancement of persons of color, as required by 41 C.F.R. § 60-2.17(b)(4).
115. SEWRPC violated 41 C.F.R. § 60-2.17(c) by failing to make good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results by, *inter alia*:
- a. Refusing to comply with affirmative action requirements in seeking an Executive Director;
  - b. Refusing to comply with affirmative action requirements in seeking an assistant director to replace the person named as Executive Director;

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<sup>8</sup>Including, *e.g.*, the policy prioritizing promoting from within.

- c. Engaging in the routine policy and practice of prioritizing promoting from within, when its professional staff is almost entirely white non-Hispanic;
  - d. Providing professional service contracts to white non-Hispanic persons and to companies owned and/or operated by white non-Hispanic persons, without seeking diverse candidates through the methods specified in the AA Plan or other action-oriented programs;
  - e. Failing to describe the “good faith” efforts undertaken in the prior year or the reasons why the prior year’s plan was unsuccessful in increasing hires of minority professionals;
  - f. Failing to develop a “results-oriented,” program that is “tailored in such a way that proper execution will result either in an increase in the minority group . . . representation in the job group, if vacancies occur, or clear documentation of contractor action sufficient to constitute good faith effort” as set forth in the OFCCP compliance manual;
  - g. Failing to develop meaningful methods to address known transit-related barriers; deciding to make its own offices less accessible by transit; and threatening to modify or eliminate transit inaccessibility as a reported barrier to employment of persons of color based upon subjective perceptions rather than objective standards;
  - h. Failing to use its current Milwaukee office and/or to ascertain the feasibility of obtaining office space in another Milwaukee location, to improve its employment of persons of color; and
  - i. “Following the same procedures which have previously produced inadequate results,” and failing to “execute action-oriented programs designed to correct any problem areas.”
116. SEWRPC violated 41 C.F.R. § 60-3.3.A by establishing selection procedures that have the intent or effect of discriminating on the basis of race or ethnicity including, *inter alia*:
- a. Prioritizing promoting professional staff from within, when the professional staff is and long has been almost entirely white non-Hispanic;
  - b. Providing professional services contracts, without bidding and/or engaging in affirmative action, to white non-Hispanic persons and to companies owned and/or operated by white non-Hispanic persons; and
  - c. Classifying individuals who provide professional services under SEWRPC’s

direction and control as “independent contractors” rather than employees and declining to comply with affirmative action in the selection of those subcontractors.

117. SEWRPC violated 41 C.F.R. § 60-3.4 by failing to collect and maintain demographic data, and thus failing to keep records relevant to selection procedures on persons subcontracted for professional services.

***Relief Requested:***

Wherefore, complainant requests the following relief:

118. That OFCCP accept this matter as a class complaint pursuant to 41 C.F.R. § 60-1.23;
119. That OFCCP conduct a compliance evaluation of SEWRPC pursuant to 41 C.F.R. § 60-1.20;
120. That OFCCP conduct a corporate management compliance evaluation of SEWRPC pursuant to 41 C.F.R. § 60-2.30;
121. That SEWRPC be declared non-responsible under 41 C.F.R. § 60-2.2;
122. That SEWRPC be debarred from the receipt of future contracts, pursuant to 41 C.F.R. § 60-1.27;
123. That, in the alternative, SEWRPC be ordered to:
- a. Eliminate its pattern and practice of promoting from within among its professional staff without engaging in Affirmative Action;
  - b. Engage in meaningful affirmative action for all staff position hiring and promotions, including but not limited to director and assistant director positions;
  - c. Require that SEWRPC engage in affirmative action before hiring any independent contractors who provide professional services and/or require that these be designated as staff positions and then subject to Affirmative Action requirements;
  - d. Locate an office within the City of Milwaukee, at a location accessible by public transportation, and provide meaningful opportunities for persons of color to work at that location;
  - e. Provide, at SEWRPC’s expense, a carpool, van or other transportation from the central city of Milwaukee to the Waukesha County office, to facilitate employment of persons of color in SEWRPC’s office; and
  - f. Take such other actions as are deemed appropriate.

Submitted by:

/s/

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I declare under penalty of perjury that the information in the foregoing complaint is true and correct to the best of my knowledge.

/s/

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Jerry Ann Hamilton, President  
NAACP - Milwaukee Branch