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September 18, 2014

Maria Torres-Springer
Commissioner
Department of Small Business Services
110 William Street, 8th Floor
New York, NY 10038

Re: Preliminary Determination: Audit, Evaluation and Monitoring of the Department of Small Business Services' *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

Dear Commissioner Torres-Springer:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit and evaluation. This letter contains the Commission's findings and preliminary determinations pertaining to the period covering January 1, 2012 to December 31, 2013.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The Department of Small Business Services, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates city agency as any "city, county, borough or other office, administration, board, department, division, commission,



bureau, corporation, authority, or other agency of government where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This Commission has adopted *Uniform Standards for EEPC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' practices and policies. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code, §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the Equal Employment Opportunity Commission's Instructions to Federal Agencies for EEO, Management Directive 715; the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

Scope and Methodology

This Commission's audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the EEPC preliminary interview questionnaires and document/information requests, which are sent to EEO professionals and others involved in EEO program administration. EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators,) and others involved in EEO program administration such as the General Counsel are given a two-week deadline to complete and return their individual questionnaires and requested documents. Applicable information from the agency's *Annual EEO Plans and Quarterly EEO Reports* are also reviewed.

The Commission's EEO Program Analysts also conduct additional research, follow-up discussions, and/or interviews with EEO professionals, when appropriate.

Description of the Agency

The Department of Small Business Services (SBS) makes it easier for businesses in New York City to form, do business, and grow by providing direct assistance to business owners, such as business planning, business courses, financing, legal review of contracts and leases, and minority/women-owned business certification; fostering neighborhood

¹ Corresponding audit/analysis standards are numbered throughout the document.



development in commercial districts, and linking employers to a skilled and qualified workforce.

PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:

Determination: The agency is in compliance with the standards for this subject area.

1. Issue a general EEO Policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and attaching, or providing employees pertinent electronic links to, an EEO Policy/Handbook.
 - ✓ The agency head issued an EEO Policy statement via email to all employees reaffirming the agency's commitment to maintaining fair employment practices for all employees. The memo stated that the agency is committed to preventing discrimination by encouraging a work environment that appreciates diversity and ensures that all employees are aware of their rights and obligations under the City's EEO policy. The memo also provided names and contact information for EEO Professionals at the agency and encouraged employees to access the full EEO Policy: *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* via the agency's intranet site *Work Organization and Management Tool (WOMT)*.
2. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency EEO Policy that conforms to city, state and federal laws – for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: a policy against sexual harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for the agency's EEO professionals, as well as federal, state and local agencies that enforce laws against discrimination.
 - ✓ The agency distributed paper copies of the *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies*, for use by managers, supervisors, and legal, human resources and EEO professionals, which included a policy against sexual harassment, reasonable accommodation procedures, and an up-to-date list of protected classes under NYC and NYS Human Rights Laws, and current contact information for federal, state and local agencies that enforce laws against discrimination. In addition the agency's *Complaint Procedure* was posted on its intranet site WOMT.



II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

Determination: The agency is in compliance with the standards for this subject area.

1. Establish and implement an EEO training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.
- ✓ The agency has established an EEO training program for new and existing employees. All new hires are required to complete the DCAS *EEO Computer Based Training* as part of orientation. The agency held eight training sessions during the audit period on various topics including; *As Simple as Respect*, *Citywide Diversity* and *EEO Train the Facilitator*, and *Diversity and EEO Best Practices*.

III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:

Summary of Complaint Activity: The Department of Small Business Services reported that no internal discrimination complaints and one external complaint was filed and resolved, during the period from January 1, 2012 to December 31, 2013. As a result, this Commission could not conduct a robust analysis of the agency's internal complaint and investigation procedures, but concluded the following based on the information and forms submitted.

Determination: The agency is in partial compliance with the standards for this subject area.

1. Include in the complaint file a *Discrimination Complaint Form* or a complaint that captures the facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the alleged discrimination.
- ✓ The *Discrimination Complaint Form* allowed for the capture of facts (by an EEO Professional or Complainant) including; the identity of the complainant, respondent, and witnesses; the bases of the allegation which gave rise to the complaint; prior reporting history, contact information for filing an external complaint, and a request for desired corrective action.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.



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- ✓ The agency's *Complaint Procedure* included a statement regarding an employee/applicant for employment's right to bring a representative of his/her choice to the meeting [regarding alleged discrimination], provided advance notice be given to the EEO Unit.

- The agency's *Complaint Procedure* did not include a requirement to serve the respondent with a notice that included the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. **Corrective action is required.**

Corrective Action 1: In addition to the aforementioned, serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations. Maintain in the complaint file documentation regarding the service of notice on the respondent.

3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.

- The agency's *Complaint Procedure* did not require an EEO Professional to issue or maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties. **Corrective action is required.**

Corrective Action 2: Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.

4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file. Word processed notes are preferred.

NOTE: No internal complaints were filed during the audit period; therefore this Commission did not conduct further analysis in this area.

5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.

- The agency's *Complaint Procedure* did not require a Confidential Written Report within 90 days of the date the discrimination complaint was filed. **Corrective action is required.**

Corrective Action 3: Establish a complaint procedure which requires the issuance of a Confidential Written Report within 90 days of the date the discrimination complaint was filed.

6. In rare circumstances where a complaint investigation cannot commence immediately, or where a confidential report cannot be issued within 90 days, a note shall be made in

the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing.

NOTE: The agency's *Complaint Procedure* should require that in any circumstance where a complaint investigation cannot commence immediately, or where a confidential report cannot be issued within 90 days, a note shall be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing. No internal complaints were filed during the audit period; therefore this Commission did not conduct further analysis in this area.

7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.
 - ✓ The agency's *Complaint Procedure* required that the principal EEO Professional "make a report of the investigation to the Commissioner. If the EEO Professional concludes on the bases of the investigation that discrimination has occurred, he/she shall recommend appropriate corrective action".
8. The agency head reviews the EEO professional's report; promptly issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each final determination (via writing or electronically) to indicate it has been reviewed and adopted.
 - ✓ The agency followed the Citywide *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies*, which required agency head to review the principal EEO Professional's report and promptly issue a determination adopting, rejecting, or modifying the recommended action. Such a determination shall be in writing and may be issued electronically.
9. In order for the agency to demonstrate it has a responsive procedure for investigating discrimination complaints, in accordance with the City Human Rights Law, the complaint procedure requires written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation.
 - ✓ The agency followed the Citywide *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies*, which required the principal EEO Professional advise all parties in writing of the outcome of a complaint.
10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.



NOTE: Since no internal complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

11. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

✓ The agency followed the Citywide *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies*, which required that the agency notify the complainant and respondent in writing when the investigation by the principal EEO professional has been transferred because of the filing of an external complaint. verbatim

12. Establish a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the EEO complaint process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

NOTE: Since no internal and one external complaint was filed during the audit period, the Commission did not conduct further analysis in this area.

13. Maintain EEO-related files in a secure area to ensure confidentiality.

✓ The principal EEO Professional confirmed that EEO- related files were maintained in locked file cabinets inside the principal EEO Professional's office.

14. Establish a procedure where the EEO professional, HR professional (or personnel responsible for employee discipline), and General Counsel review an employee's record for prior incidents of discriminatory conduct as part of the external complaint process.

✓ As part of the investigation of external EEO complaints the principal EEO professional, HR professional, and General Counsel confirmed that procedurally they reviewed the employee's record for prior incidents of discriminatory conduct.

IV. EEO AND REASONABLE ACCOMMODATIONS FOR EMPLOYEES/ APPLICANTS FOR EMPLOYMENT WITH DISABILITIES:

Determination: The agency is in compliance with the standards for this subject area.

1. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.



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- ✓ The agency was prepared to provide information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures in alternative formats upon request. For example, the agency's *Sign Language Interpreter Request Procedure* stated that American Sign Language Interpreters would be provided regularly, on an as needed basis, for specific tasks or events or as a one-time service for training.
- 2. Document reasonable accommodation requests and their outcomes.
- ✓ The agency used its *Reasonable Accommodation Request Form* to document all requests for accommodations. Each reasonable accommodation request was filed electronically in the agency's database.

V. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES - EEO PROFESSIONALS:

Determination: The agency is in compliance with the standards for this subject area.

1. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, federal and state EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
- ✓ The agency appointed an EEO Officer as the principal EEO Professional responsible for implementation of EEO Policies and standards within the agency. The EEO Officer became knowledgeable about city, state and federal EEO laws through completion of several trainings: a 5 week *Train the Trainer* course, and *Sexual Harassment*, *Alternative Dispute Resolution*, and *Reasonable Accommodation* trainings conducted by DCAS. The principal EEO Professional also attended the *National EEO Conference* conducted by the US Department of Labor in 2008, 2009 and 2013.
2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.
- ✓ The agency appointed at least one EEO professional of each gender (i.e. one female EEO Officer and one male Counselor/ Investigator) to receive discrimination complaints and conduct investigations.
3. The principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of the EEO policies and related procedures.
- ✓ The General Counsel and principal EEO Professional maintained an open relationship where they interacted daily as needed to discuss EEO related issues and complaints/ litigation involving EEO matters that was brought against the agency.



4. The principal EEO Professional ensures that employees receive EEO training; supervises the EEO-related activities of other EEO professionals; ensures that EEO policies and complaint procedures are posted at each site where the agency conducts business; ensures that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille); and provides guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.
- ✓ The principal EEO Professional ensured that new and existing employees completed DCAS *EEO Computer Based Training* annually, supervised EEO related activities of the EEO Counselor/ Investigator, ensured that EEO policies and complaint procedures are posted on the agency's Intranet site (WOMT), and provided guidance and assistance to managers, supervisors, and human resource professionals in addressing issues relating to EEO. (See section IV.1 for the availability of policies in alternate formats).
5. The principal EEO Professional will monitor, analyze and report significant trends in the nature and disposition of discrimination complaint activity to provide the agency insight into the extent to which the agency is meeting its obligations under city, state and federal anti-discrimination laws and regulations.

NOTE: Since no internal and one external complaint was filed during the audit period, the Commission did not conduct further analysis in this area.

6. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
- ✓ The principal EEO Professional reported directly to the First Deputy Commissioner of Financial Management and Administration; this reporting relationship was reflected on the agency's organization chart.

VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES – GENERAL COUNSEL:

Determination: The agency is in compliance with the standards for this subject area.

1. The General Counsel assists the agency head in identifying and determining appropriate responses to EEO issues; and is responsible for the investigation of, and response to, external EEO complaints.
- ✓ The General Counsel reported directly to the Agency Head and was responsible for investigating/ responding to external EEO complaints and reviewing EEO plans, issues and training plans with the agency head on a regular basis. When an EEO complaint or issue arose, the General Counsel worked with the principal EEO Professional as needed to resolve, respond, mediate, or settle the issue.



2. The General Counsel works with the principal EEO Professional in the implementation of the agency's EEO policies and related procedures; is available to consult on internal EEO investigations; and informs the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
- ✓ The General Counsel worked with the principal EEO Professional to implement the City's EEO Policy and related procedures in the agency; inform the principal EEO Professional when an external complaint or litigation involving an EEO matter was brought against the agency, and was available to consult if an internal EEO investigation occurred.
3. The General Counsel reviews the agency's annual number of EEO complaints and the agency's obligations as a result of corrective actions required under court decrees and/or governmental audits on an annual basis.
- ✓ The General Counsel held periodic discussions with the principal EEO Professional to review quarterly EEO reports prior to submission. Depending on the circumstances, findings or settlements, the General Counsel insured that the agency met all required obligations of the complaints or litigation.
4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.
- ✓ The General Counsel tracked the disposition of one external complaint filed in the US Federal Court, which was resolved by settlement.

VII. FINAL ACTION FOR AGENCY HEAD:

After implementation of the EEPC's corrective actions, if any:

1. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.



Optional Response to preliminary determination: If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

(Optional Conference) During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

(No Response Option) If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

Mandatory Response to Final Determination: Following this preliminary determination, the EEPC will mail a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,


Mohini Ramsukh, Administrator for Audit and Executive Services

Approved by,


Charise L. Hendricks, PHR
Executive Director

c: Nancy Gannie, Principal EEO Professional