



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14th Floor, New York, New York 10006

Telephone: (212) 788-8646 Fax: (212) 788-8652

Cesar A. Perez, Esq.
Chair
Angela Cabrera
Malini Cadambi Daniel
Elaine S. Reiss, Esq.
Arva A. Rice
Commissioners

Abraham May, Jr.
Executive Director
Charise Hendricks, PHR
Deputy Director
Judith Garcia Quiñonez
Counsel

September 30, 2010

Robert Walsh
Commissioner

Department Small Business Services
110 Williams Street
New York, NY 10038

Re: Final Determination Pursuant to the Audit of the Department Small Business Services (SBS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008.

Dear Commissioner Walsh:

Thank you for your September 20th response to our August 6th Letter of Preliminary Determination pursuant to the Referenced audit.

After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPD recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #1

All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)

Recommendation #2

To ensure that all employees are aware of the Disability Rights Coordinator, the agency should re-distribute to all employees in writing the name, location, and telephone number of this person. (Sect. VB, EEOP)

Recommendation #3

All internal discrimination complaint files should include an *Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form* completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. (DCPIG Sect. 10/12 and Appendix D)

Recommendation #4

Since the EEOP requires that each agency assess its criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the SBS should conduct an assessment of its selection criteria for discretionary titles. The SBS can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

Recommendation #5

To ensure that employees know the identity of the agency's Career Counselor, the personnel officer should re-distribute to all employees the identity of, and the type of guidance which is available from, the Career Counselor. This should be done at least once each year. (12/14/ 2006 Addendum to *EEOP Standards and Procedures to Be Utilized By City Agencies (2005)*) and Sect. VF, EEOP)

Recommendation #7

Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (EEOP, Sect. VE)

Requires Clarification

For the following reason, hereafter identified as EEPC Rationale, we request clarification of your response to the following recommendation, which can be addressed in your response or during the compliance period:

Recommendation #8

At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a

discrimination complaint with the EEO office. These meetings must be documented. (DCAS, Model Agency EEO Commitment Memo and EEPC Position)

Your Response

SBS will inform all senior managers on a bi-annual basis, to meet with staff and re-emphasize their commitment to the agency's EEO polices and affirm the right of each employee to file a discrimination complaint with the EEO office. SBS will require that attendance sheets of these meetings be forwarded to the EEO office.

EEPC Rationale

Your response indicates that the SBS will inform senior managers on a *bi-annual basis*, to meet with staff and re-emphasize their commitment to the agency's EEO polices and affirm the right of each employee to file a discrimination complaint with the EEO office. Our recommendation states that supervisors and managers should implement this practice twice a year; a *semi-annual basis*. Please clarify.

Disagree

For the following reasons, hereafter identified as EEPC rationale, we respectfully disagree with your response to the following EEPC recommendations:

Recommendation #6

Since the *Personnel Rules and Regulations of the City of New York and DCAS* and the *Guidelines for Evaluating Managerial Performance in NYC Agencies* require that managerial and non-managerial employees receive annual performance evaluations the agency should develop a plan, which includes a timetable, to evaluate all employees. (DCAS, Rule 7.5.4(e) of the *Personnel Rules and Regulations of the City of New York*, and the DCAS Division of Citywide Personnel Services, *Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)

Your Response

In accordance with the Personnel Rules and Regulations of the City of New York and the Guidelines for Evaluating Managerial Performance in NYC Agencies, SBS will ensure that managerial and non-managerial employees receive performance evaluations on an annual basis, commencing on January 2011. The program will be monitored by the agency's Human Resources Unit. The program provides for evaluations on a calendar year basis with tasks and standards developed at the beginning of the year and evaluations conducted at the end of the year. Human Resources also suggests mid-year check in evaluations be done by supervisors with their employees.

EEPC Rationale

The EEPC is particularly concerned with performance evaluations for supervisors and managers since this group did not received annual performance evaluations consistently. During the audit, the SBS indicated that it had implemented a new evaluation program for the period from January 1, 2009 to December 31, 2009. Was this new evaluation program implemented? The EEPC would like information on how your agency has implemented this new program and how the program ensures annual evaluations for managers/supervisors.

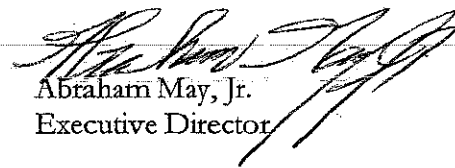
Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance.

If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPD Counsel Judith Garcia Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance process.

Sincerely,



Abraham May, Jr.
Executive Director

C: Judith Garcia Quiñonez, Esq.
Nancy Gannie, EEO Officer