



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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September 22, 2005

Robert W. Walsh

Commissioner

Department of Small Business Services

110 Williams Street, 8th Floor

New York, NY 10038

Re: Final Determination Pursuant to the Audit of the Department of Small Business Services (SBS) and its Compliance with the City's Equal Employment Opportunity Policy from July 1, 2002 through June 30, 2004.

Dear Mr. Walsh:

Thank you for your September 7, 2005 response to our July 28, 2005 Letter of Preliminary Determination pursuant to the audit of the Department of Small Business Services's Equal Employment Opportunity Program from July 1, 2002 through June 30, 2004. After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPC recommendations:

Recommendation #5

SBS should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified will be advertised in female-and minority-oriented publications, and sent to professional and community organizations serving minorities, women, and persons with disabilities. SBS should use the list of minority and female recruitment sources compiled by DCAS ("Making the Most of New York City's Recruitment Resources," 2004, http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf). (Sect. IV, EEOP)

Recommendation #6

SBS should secure the necessary training to conduct adverse impact studies, either from DCAS or another appropriate source. (Section IV, EEOP).

Recommendation #7

SBS's Commissioner should distribute a memo to all managers/supervisors informing them that the "Utilizing Human Resources" section of their annual performance evaluation form includes tasks and standards relevant to EEO performance that will be considered in determining their eligibility for promotions or merit increases. (Sect. IV, EEOP)

Please note: DCAS has distributed a model form for EEO tasks and standards. However, individual tasks and standards for "Utilizing Human Resources" can be established by each agency.

Recommendation #8

SBS should re-distribute information about the identities, location and telephone numbers of the Career Counselors to all agency employees. (Sect. IV, EEOP)

Partially Agree

For the following reasons, hereafter identified as "EEPC Rationale", we partially agree with your responses to the following recommendations:

Recommendation #1

A "Complaint of Discrimination" intake form should be given to all complainants and used when an internal complaint is filed. (Sect. 12 (a), DCPIG)

Your Response:

The Complaint file reviewed for EEPC's audit took place under the agency's prior EEO/EO Officer. Currently, SBS uses a "Complaint Information Form" for each complaint. This "Complaint Information Form" was provided to the auditors on both July 26, 2005 and August 12, 2005. The "Complaint Information Form" is substantially similar to the DCAS form and contains additional inquiries. Consequently, no corrective action should be necessary for this measure. (Refer to Attachment 1 "Complaint Information Form")

EEPC Rationale

Your response does not address the recommendation. Specifically it does not indicate that SBS's "Complaint Information Form" will be used in instances where there is an EEO complaint.

Recommendation #2

Each complaint file should contain a Notice of Discrimination Complaint form to notify the respondent of the allegations being made. (Sect. 12 (b), DCPIG)

Your Response:

The complaint file reviewed by EEPC was drafted by the agency's prior EEO/EO Officer. All complainants and respondents will receive "Notices of Acknowledgement" upon

our office's receipt of their complaints. The "Notice of Acknowledgement" discusses the allegations in the complaint, identifies the involved parties and remedy(ies) sought. Consequently, no corrective actions should be necessary for this measure (Refer to Attachment 2 "Notices of Acknowledgement to Grievant and Respondent"). Note: although these sample letters are from grievances against the agency and its Workforce1 program, the same procedure would be followed for complaints of discrimination.

EEPC Rationale

SBS should either create a letter to be used specifically for discrimination complaints by city employees, or use the Notice of Discrimination Complaint form provided in the DCPIG.

Disagree

For the following reasons, hereafter identified as "EEPC Rationale", we respectfully disagree with your responses to the following recommendations:

Recommendation #3

The EEO Officer should submit a confidential written report to the agency head. The report should consist of the 3 sections outlined in the DCPIG: (1) Findings of Facts, (2) Discussion and Conclusion and (3) Recommendations.

Your Response:

The current EEO/EO Officer issues memorandums to the First Deputy Commissioner in instances of EEO complaints. The First Deputy Commissioner is a direct report to the agency's Commissioner. The EEO/EO Officer reports directly to the First Deputy Commissioner and has regular meetings with him on EEO issues and whenever allegations of discrimination arise.

During the current EEO/EO Officer's tenure, the agency has not received any formal complaints, however when informal incidents transpire, memorandums are drafted containing the following: (1) findings of facts; (2) a discussion/analysis of the issues; and (3) a conclusion. Subsequent to meeting with the First Deputy Commissioner another memorandum is drafted containing recommended actions; this memorandum is also provided to involved supervisors. Consequently, corrective action should not be required under this measure.

EEPC Rationale

Pursuant to the DCPIG, upon the conclusion of a complaint investigation, the EEO Officer should submit a confidential written report that consists of 3 sections ((1) Findings of Facts, (2) Discussion and Conclusion and (3) Recommendations) to the agency head. Based on your response it is unclear whether or not you agree to implement the corrective action.

Recommendation #4

The agency head must sign each report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. (Sect. 12 (b), DCPIG)

Your Response:

During the current EEO/EO Officer's tenure, the agency has not received any formal complaints. In the case of a formal complaint the EEO/EO Officer will obtain the agency head's signature if necessary to attain compliance with this measure. It is unclear if corrective action is

necessary for this measure since the First Deputy Commissioner, who is a direct report to the Commissioner, would currently act in this capacity.

EEPC Rationale

Your response does not indicate if you will implement the recommendation. In accordance with Section 12 (b) of the Discrimination Complaint Procedure Implementation Guidelines, the agency head must sign each written report to indicate that it had been reviewed and whether the recommendation, if any is approved and adopted.

Additional Action:


The Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit and re-emphasizing the agency head's commitment to the agency's Equal Employment Opportunity Program. We accept the draft memo submitted with your response. Your letter should be sent to employees at the end of the compliance period.

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. EEPC Counsel Lisa Badner 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,


for Ernest Hart
Chair