

BRONX BOROUGH PRESIDENT'S OFFICE

- Letter of Preliminary Determination December 10, 2009
- Agency Response January 29, 2010
- EEPC's Response February 5, 2010



EMPLOYMENT PRACTICES COMMISSION

City of New York

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December 10, 2009

Honorable Ruben Diaz, Jr.

President

Borough of the Bronx

851 Grand Concourse

Bronx, New York 10451

Re: Resolution #09/26-011/ Preliminary Determination Pursuant to the Audit of the Bronx Borough President's Office's (BXPO) Equal Employment Opportunity Program from July 1, 2005 to June 30, 2007.

Dear President Diaz:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

The Charter defines 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..." The Bronx Borough President's Office (BXPO) is funded by the City of New York and is therefore considered a city agency pursuant to Chapter 36, section 831(a) of the New York City Charter.

This Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment programs for minority group members, women and other protected classes. This audit measures the

BXPO's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Federal, State and City Human Rights Laws. All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the 2005 Citywide Equal Employment Opportunity (EEO) Policy; and the Discrimination Complaint Procedures and Investigation Guidelines (DCPIG), which has been adopted by the BXPO (issued by the Department of Citywide Administrative Services (DCAS) in 1993 and amended in 2001). The relevant sections of these guidelines and documents are cited in parenthesis, where applicable, at the end of each recommendation.

The purpose of this audit is to evaluate the agency's compliance with the standards cited above, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the BXPO's EEO Policy, and a review of responses to an EEPC Document and Information Request Form. The EEPC auditors also conducted an in-depth, on-site interview with the EEO officer and the two EEO counselors.

A survey of 80 people employed by the BXPO during the audit period was distributed (This number excludes 1 survey that was returned as undeliverable.) Six people (7.6%) responded. The survey data are attached. (Appendix 1)

Description of the Agency

Borough Presidents are the executive officials of each borough. The City Charter gives them authority to: work with the Mayor in preparing the annual executive budget submitted to the City Council and to propose borough priorities directly to the council; review and comment on major land use decisions and propose borough sites for city facilities within their respective boroughs; monitor and modify the delivery of city services within their boroughs; and engage in strategic planning for their borough.

Personnel Activity During the Audit Period

During the audit period, 21 people were hired: 12 Caucasians, 1 African-American, 6 Hispanics, and 2 Asians. Of the employees hired, 8 were female. Five people were promoted during the audit period: 2 Caucasians, 2 African-Americans, and 1 Hispanic. All 5 employees were female. (Appendix 4)

The BXPO reports that 3 full-time employees were involuntarily separated during the audit period: 2 African-Americans and 1 Hispanic. One of those individuals was a female.

Between January 1, 2005 and December 31, 2006, the total number of employees increased by 5, going from 77 to 82. There were percentage increases for Caucasians (29% to 34%) and Asians (0% to 1%). There was a percentage decrease for African Americans (23% to 20%) and Hispanics (48% to 45%). The percentage for females (61%) did not change. (Appendices 2 and 3)

Discrimination Complaint Activity during the Audit Period

The agency reports that no internal or external discrimination complaints were filed during the audit period.

PRELIMINARY DETERMINATION

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

Plan Dissemination – Internally

The BXPO is in compliance with the following requirements:

1. The BXPO distributed its EEO Policy Statement and its Discrimination Complaint Procedure to all employees, by email, in October 2007.
2. The EEO Policy is included in the “new hire” package.
3. The BXPO distributed, by email, the EEO Policy Handbook, “*About EEO: What You May Not Know*” to all current and new employees in October 2007. The EEO officer provided an internet link to the EEO Policy Handbook and also distributed the Handbook during the last internal EEO training in 2004. The Handbook is also included in the new hire package which is distributed at new employee orientation sessions.
4. The BXPO’s EEO Policies are posted on agency bulletin boards on the 2nd floor near the personnel office. In addition, the EEO officer periodically checks the boards to insure posting of the Policies.

The BXPO is in partial compliance with the following requirements:

1. The BXPO did not issue a Sexual Harassment Prevention Policy Statement. Corrective action is required.

Recommendation: The BXPO should issue a Sexual Harassment Policy Statement and distribute it to all employees.

2. The EEO Policies were last distributed in October 2007. Corrective action is required.

Recommendation: It is the Commission’s position that the BXPO should distribute its EEO Policies to all employees at least annually. (Sect. VB, Citywide EEOP)

Plan Dissemination – Externally

The BXPO is in compliance with the following requirements:

1. The four job vacancy notices submitted by the BXPO to the EEPC (Director of Information Technology, General Counsel to the Borough President, Timekeeper, and Housing Planner) included the EEO tag line.

2. The four job advertisements submitted by the BXPO to the EEPC (General Counsel to the Borough President, Director of Information Technology, and Deputy Press Secretary) were advertised in the *Gotham Gazette*, *City Limits.org*, *Craigslist.org*, and *The Chief-Leader*, respectively, and included the EEO tag line.

EEO and Reasonable Accommodation for Persons with Disabilities

The BXPO is in compliance with the following requirements:

1. The BXPO's EEO Policy includes a "Reasonable Accommodation Procedure." It has provided reasonable accommodations to employees who requested them such as a reduced work day and the ability to work from home.

2. The BXPO submitted a completed EEPC accessibility checklist that indicates the BXPO is accessible to, and usable by, persons with disabilities. The BXPO has street accessible entrances, ramp access, wheelchair accessible elevators, bell and Braille in elevators, wide restroom stalls, grab bars in restroom, and low sink or bathroom fixtures.

3. The EEO officer has been appointed the disability rights coordinator.

The BXPO is in not compliance with the following requirements:

1. The EEO Policies are not available in alternate formats for use by persons with disabilities. Corrective action is required.

Recommendation: The BXPO should follow section VB of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities (e.g., large print, audio cassette or Braille).

2. The BXPO does not participate in the Section 55-A Program brochures. Corrective action is required.

Recommendation: The agency should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS. (Sect. IIB, Citywide EEOP)

EEO Complaint and Investigation Procedures

The BXPO is in compliance with the following requirements:

1. The EEO officer reported that she investigates discrimination complaints based on the agency's internal guidelines and standards as well as the DCAS' guidelines. During the audit period there were no discrimination complaints filed.

2. The EEO officer and the EEO counselors completed the basic training course for EEO professionals at the Department of Citywide Administrative Services (DCAS).

3. The BXPO identifies its EEO personnel in its EEO Policy.

The BXPO is in partial compliance with the following requirement:

The BXPO has a female EEO officer and a female EEO counselor available for complaint intake and investigation; it does not have an individual of the opposite gender available for complaint intake and investigation. Corrective action is required.

Recommendation: The BXPO should appoint an individual not of the same gender as the other EEO professionals that is trained and available to investigate EEO complaints. (Sect. VB, EEOP)

The BXPO is not in compliance with the following requirement:

Although no complaints were filed during the audit period, the BXPO does not have a format in which to log discrimination complaints. Corrective action is required.

Recommendation: The BXPO should develop a format for logging discrimination complaints. (DCAS, DCPIG, 1993, Sect. 12(a))

EEO Training

The BXPO is not in compliance with the following requirement:

The last EEO training was conducted in 2004. No training was conducted since the audit period. There is no definitive plan to conduct EEO training in the future. Corrective action is required.

Recommendation: The BXPO should develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. VC, Citywide EEOP)

EEO Officer Reporting Arrangement

The BXPO is in compliance with the following requirement:

The EEO officer reports to the agency head (and sometimes to the chief of staff who, in turn, reports to the agency head) on EEO matters.

The BXPO is in partial compliance with the following requirement:

The EEO officer does not have regularly scheduled meetings with the agency head; though, they usually meet when needed. She does not maintain documentation of such meetings. Corrective action is required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the agency head or direct report to the agency head regarding EEO program operational decisions should be maintained.

The BXPO is not in compliance with the following requirement:

The organization chart submitted to EEPC (2006) does not show a reporting relationship between the EEO officer and the agency head or a direct report to the agency head. Corrective action is required.

Recommendation: The BXPO should revise its organization chart to show the reporting arrangement of the EEO officer. (Sect. VB, EEOP)

EEO Officer Responsibilities

The BXPO is in compliance with the following requirement:

The EEO officer told EEPC auditors that she devotes 5-10% of her time to EEO matters; the balance of her time is devoted to her duty as executive assistant to the deputy borough president. Although she does not have any support staff as EEO officer, she believes she has adequate resources to meet her obligations under the EEO program.

Selection and Recruitment

The BXPO is not in compliance with the following requirement:

1. Structured interview training was not provided to personnel involved in the recruitment and hiring process during the audit period. The BXPO's personnel data indicated that 21 people were hired during the audit period. Corrective action is required.

Recommendation: The BXPO should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sect. 1c, Citywide EEO Policy)

2. The EEO officer has not formally analyzed its 2006 workforce data to determine if women and/or minorities are underrepresented in particular job categories. However, she did a general look at the workforce and believes that the BXPO is doing a great job in representing women and minorities in the management job categories. She stated that women make up 90% of the management workforce. Corrective action is required.

Recommendation: The BXPO should formally analyze its workforce data to determine if women and/or minorities are underrepresented in particular job categories. (Sect. IV, EEOP)

Recommendation: If BXPO's workforce shows underutilization in any of the protected groups, it should further expand its recruitment efforts by developing a list of additional recruitment resources targeted toward these groups. The BXPO should use this list for subsequent recruitment efforts in these job groups until underutilization is eliminated. (Sect. IV, EEOP)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The BXPO should issue a Sexual Harassment Policy Statement and distribute it to all employees.
2. It is the Commission's position that the BXPO should distribute its EEO Policies to all employees at least annually. (Sect. VB, Citywide EEOP)
3. The BXPO should follow section VB of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities (e.g., large print, audio cassette or Braille).
4. The agency should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS. (Sect. IIB, Citywide EEOP)
5. The BXPO should appoint an individual not of the same gender as the other EEO professionals that is trained and available to investigate EEO complaints. (Sect. VB, EEOP)
6. The BXPO should develop a format for logging discrimination complaints. (DCAS, DCPIG, 1993, Sect. 12(a))
7. The BXPO should develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. VC, Citywide EEOP)
8. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the agency head or direct report to the agency head regarding EEO program operational decisions should be maintained.
9. The BXPO should revise its organization chart to show the reporting arrangement of the EEO officer. (Sect. VB, EEOP)
10. The BXPO should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sect. 1c, Citywide EEO Policy)
11. The BXPO should formally analyze its workforce data to determine if women and/or minorities are underrepresented in particular job categories. (Sect. IV, EEOP)
12. If BXPO's workforce shows underutilization in any of the protected groups, it should further expand its recruitment efforts by developing a list of additional recruitment resources targeted toward these groups. The BXPO should use this list for subsequent recruitment efforts in these job groups until underutilization is eliminated. (Sect. IV, EEOP)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency 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. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

At the November 16, 2009 Audit Exit Meeting -- attended by you, EEO Officer Vivien Velez, Legal Counsel Al Rodriguez, and Chief of Staff Paul Del Duca from the BXPO and Commissioner Angela Cabrera, Lead Auditor Michelle Marecheau, Junior Auditor Adrienne Smith, Executive Director Abraham May, Jr., and Deputy Director Charise Hendricks from the EEPC -- the BXPO representatives presented a response to the Commission's Draft Preliminary Determination, which contained a summary of the actions already taken to ensure compliance with the audit recommendations. There were no factual corrections to the draft.

Conclusion

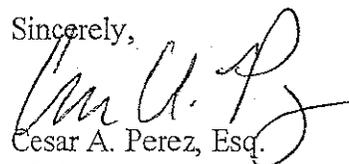
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the BXPO's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. As your staff informed us during the exit meeting, you have already implemented some of our recommended corrective actions. Please specify these corrective actions in your response, and include any documentation as addenda to your formal response to the Preliminary Determination.

Pursuant to Section 832 of the New York City Charter, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend the appropriate corrective actions that you should implement in your agency's EEO Plan.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,


Cesar A. Perez, Esq.
Chair

APPENDIX - 1

BRONX BOROUGH PRESIDENT'S OFFICE EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (4) No (2)
2. Is your agency's EEO policy statement posted on the agency bulletin boards?
Yes (2) No (3)
3. Is your agency's Sexual Harrassment Policy Statement posted on the agency bulletin boards?
Yes (2) No (3)
4. Were you given the EEO Policy Statement?
Yes (3) No (0) Do not remember (3)
5. Were you given the Sexual Harassment Policy Statement?
Yes (3) No (0) Do not remember (3)
6. Do you have a copy of the Discrimination Complaint Procedures?
Yes (2) No (0) Do not remember (4)
7. Do you agree with the principles of Equal Employment Opportunity?
Yes (6) No (0)
8. Do you know how to obtain your agency's EEO Policy?
Yes (5) No (1)
9. Has your supervisor emphasized his/her commitment to the agency's EEO policies at any staff meetings during the past 8 months?
Yes (2) No (2) Do not remember (2)

B. EEO COMPLAINTS

10. Do you know how to file an EEO Complaint?
Yes (4) No (2)
11. If you had a discrimination complaint, would you bring it to your agency's EEO Officer?
Yes (4) No (0) Undecided (2)
12. Did you ever file a discrimination complaint with the EEO Office?
(If No, please skip to question #17)
Yes (1) No (5)
13. What was the basis of the complaint? _____
14. Were you satisfied with the manner in which your complaint was managed?
Yes (0) No (1)
15. Was your manager or supervisor supportive of your right to file a complaint?
Yes (0) No (0) N/A (1)

C. SEXUAL HARASSMENT

16. Did you receive Sexual Harassment Prevention training? (If No, please skip to question # 19)

Yes (3) No (2)

17. Did you find this training helpful?

Very (0) Somewhat (3)
No (0)

18. Would you prefer to file a sexual harassment complaint with an office outside your agency instead of your agency's EEO office?

Yes (2) No (2)

D. JOB ADVANCEMENT

19. Do you see job postings on agency bulletin boards for vacant positions prior to the application deadline?

Yes (5) No (0) Do not remember (1)

20. Do you believe your agency practices equal employment opportunity?

Yes (3) No (3)

AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

21. Has your agency made facilities accessible for persons with disabilities?

Yes (5) No (1)

22. Did you ever ask for an accommodation for a physical or mental disability?

Yes (0) No (6)

23. If so, did the agency accommodate you?

Yes (0) No (0)

OPTIONAL

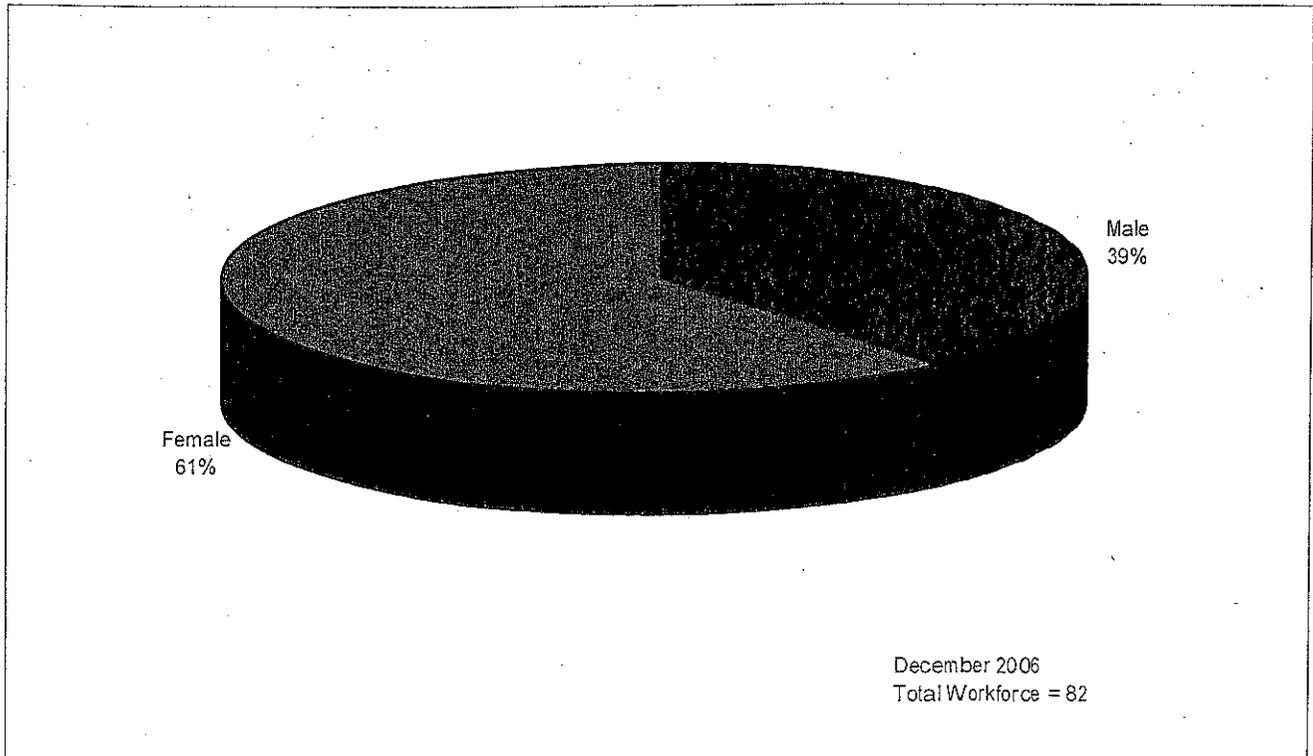
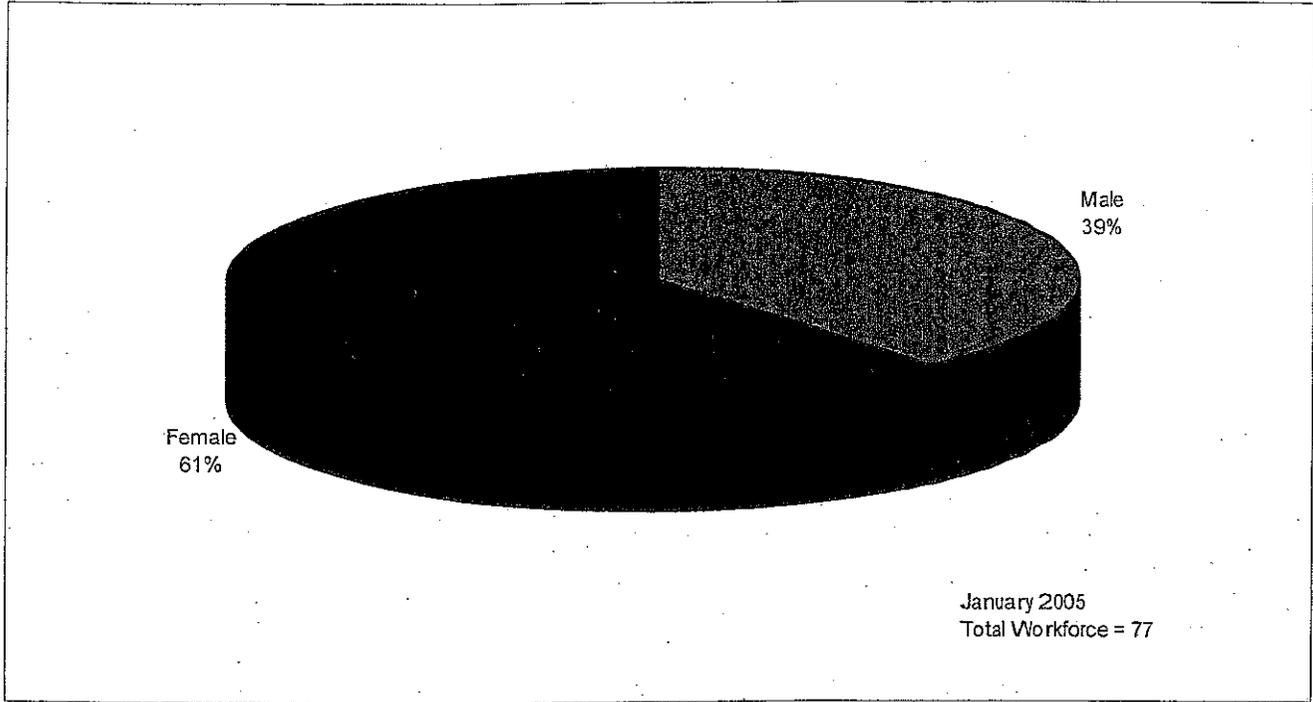
24. What is your race/ethnicity? _____

25. What is your gender?

Male (2) Female (1)

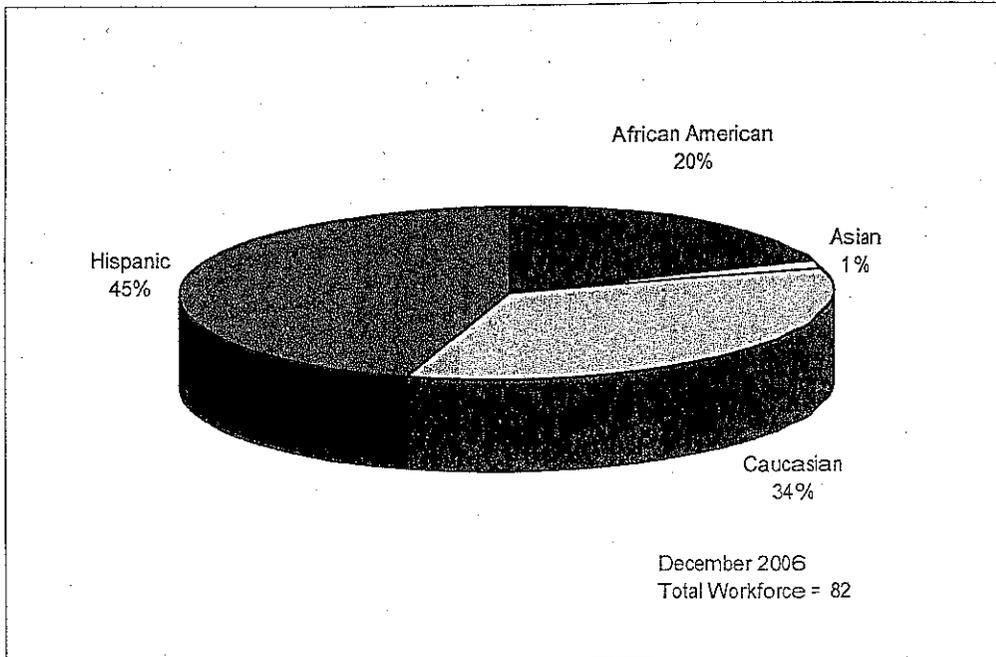
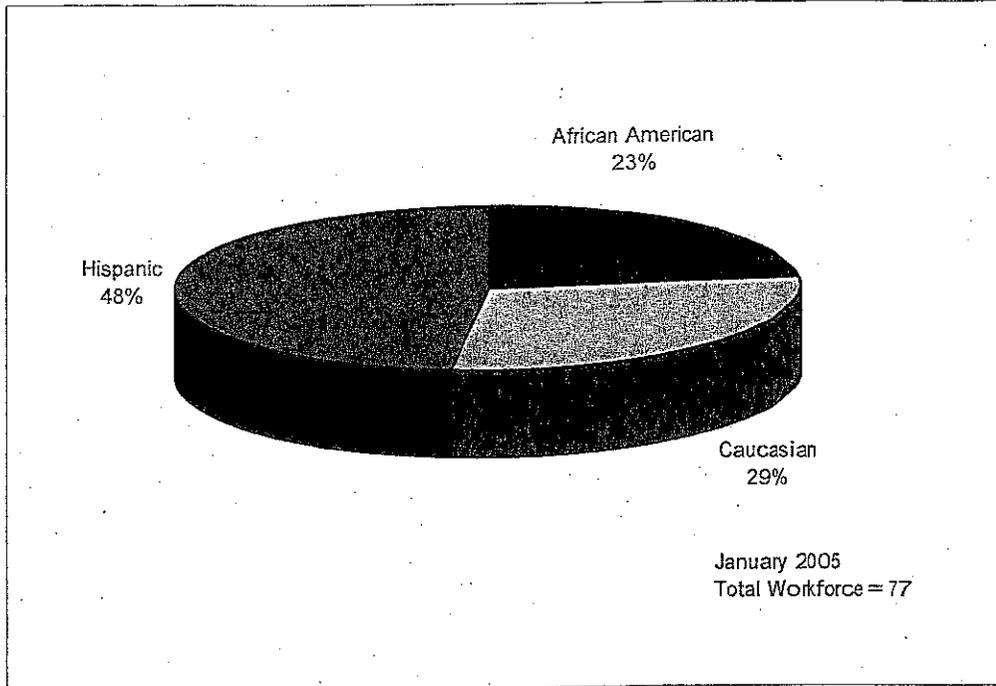
Appendix - 2

Bronx Borough President's Office Workforce by Gender



Appendix - 3

Bronx Borough President's Office
Workforce by Ethnicity



APPENDIX – 4

The following table indicates personnel activity during the audit period, July 1, 2005 to June 30, 2007

Bronx Borough President's Office

Hires by Sex and Ethnicity

Total Hires: 21

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Unknown	Total
13	8	21	12	1	6	2	0	21

Promotions by Sex and Ethnicity

Total Promotions: 5

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Unknown	Total
0	5	5	2	2	1	0	0	5



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OFFICE OF THE BRONX BOROUGH PRESIDENT
THE BRONX COUNTY BUILDING
851 GRAND CONCOURSE
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RUBEN DIAZ, JR.
BOROUGH PRESIDENT

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January 29, 2010

Abraham May, Jr.
Executive Director
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

Dear Mr. May:

This letter is in response to the Commission's Preliminary Determination letter to the audit of the Bronx Borough President's Office Equal Employment Opportunity Program. In our Exit meeting of November 16th, we have agreed to the following corrective actions.

In your summary of recommended corrective actions you cited the following:

1. The Bronx Borough President's Office should issue a Sexual Harassment Policy Statement and distribute it to all employees.

Corrective Action:

- Our Legal Department has revised our EEO Policy to add our Sexual Harassment Policy in which we have incorporated your corrections as well.
2. The Bronx Borough President's Office should distribute its EEO Policies to all employees at least annually.

Corrective Action:

- A copy of the EEO Policy, as amended, will be distributed to all staff annually.

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EEPC Response Letter

3. The Bronx Borough President's Office should follow section VB of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities (e.g., large print, audio cassette or Braille)

Corrective Action:

- At the meeting we explained that because of budget constraints producing our EEO policy statement in Braille is not feasible. However, we will distribute a large print version of the policy statement.
4. The agency should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute program brochures issued by the DCAS (SECT IIB, Citywide EEOP)

Corrective Action:

- We have the brochure for the 55-A Program. It will be distributed to the staff.
5. The Bronx Borough President's Office should appoint an individual not of the same gender as the other EEO professionals that is trained and available to investigate EEO complaints.

Corrective Action:

- I have appointed Christopher McShane as our new EEO Counselor. He has received and completed his training from DCAS and his completion certificate is enclosed.
6. The Bronx Borough President's Office should develop a format for logging discrimination complaints.

Corrective Action:

- We have received your sample of a complaint log. We have revised and enclosed the complaint log that will be used by my EEO Officer.

Page 3
EEPC Response Letter

7. The Bronx Borough President's Office should develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it.

Corrective Action:

- We have looked for, and are continuing to look for, an outside EEO trainer for BBPO employees. If we are unable to find an outside trainer, we will conduct the training internally. We hope the completion of these trainings can take place by the end of June, 2010.
8. The EEO Officer needs to have regularly scheduled meetings with the Agency Head (or chief of staff) and maintain documentation of those meetings.

Corrective Action:

- The BBPO EEO Officer will meet quarterly with the Chief of Staff. An agenda with appropriate notes will be maintained for each of those meetings.
9. The Bronx Borough President's Office should revise its organizational chart to show the reporting arrangement of the EEO Officer. (Sect. VB, EEOP)

Corrective Action

- The BBPO EEO Officer currently reports directly to the BBPO Chief of Staff. We are preparing an amended organizational chart which shows this direct reporting line.
10. The Bronx Borough President's Office should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sec. 1c, Citywide EEO Policy)

Corrective Action:

- Paul Del Duca, Chief of Staff handles all matters pertaining to interviewing and hiring personnel. He will attend the appropriate training as it becomes available.

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EEPC Response Letter

11. The Bronx Borough President should formally analyze its workforce data to determine if women/and or minorities are underrepresented in particular job categories. (Sect. IV, EEOP)

Corrective Action:

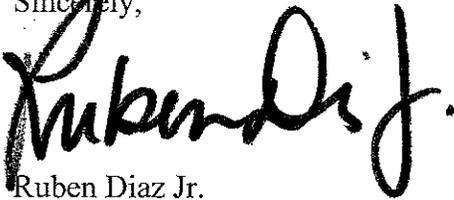
- A current workforce analysis has been enclosed.

12. If Bronx Borough President Office workforce shows underutilization in any of the protected groups, it should further expand its recruitment efforts by developing a list of additional recruitment resources targeted toward these groups. The Bronx Borough President's Office should use this list for subsequent recruitment efforts in these job groups until underutilization is eliminated. (Sect. IV, EEOP)

Corrective Action:

- As per the data presented in the attached workforce analysis, we believe the staffing patterns at our office meet the City's diversification requirements but look forward to receiving any needed guidance from EEO.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruben Diaz Jr.", written in a cursive style.

Ruben Diaz Jr.



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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Judith Garcia Quiñonez

Counsel

February 5, 2010

Honorable Rubin Diaz, Jr.

Bronx Borough President

851 Grand Concourse

Bronx, NY 10451

Re Initiation of Audit Compliance

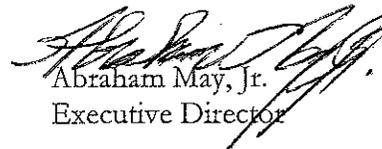
Dear Borough President Diaz:

On behalf of Chair Cesar Perez, Esq. and the members of the Equal Employment Practices Commission, I want to thank you for your January 29, 2010 Response to our December 10, 2009 Preliminary Determination pursuant to the audit of your office's Equal Employment Opportunity Program from July 1, 2005 to June 30, 2007.

We are pleased that you agree with all of the audit recommendations. In lieu of a letter of final determination, we will initiate the City Charter-mandated compliance process. Towards that end, Counsel/Compliance Director Judith Garcia Quiñonez, Esq. will contact your EEO Officer Ms. Vivian Velez, and schedule a meeting.

We thank your for your cooperation and we look forward to working with you and your staff to ensure an effective Equal Employment Opportunity Program in the office of the Bronx Borough President.

Sincerely,


Abraham May, Jr.
Executive Director

C: Judith Garcia Quiñonez, Esq.