

DEPARTMENT OF TRANSPORTATION

- Letter of Preliminary Determination December 20, 2007
- Agency Response February 28, 2008
- Letter of Final Determination April 1, 2008
- Agency Response April 23, 2008
- EEPC Response May 23, 2008



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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December 20, 2007

Janette Sadik-Khan

Commissioner

New York City Department of Transportation

40 Worth Street

New York, NY 10013

Re: Preliminary Determination Pursuant to the Audit of the Department of Transportation (DOT) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through December 31, 2006.

Dear Commissioner Sadik-Khan:

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..."

This letter contains the preliminary determinations of EEPC pursuant to its audit of compliance by the Department of Transportation (DOT) during the twenty-four month period commencing January 1, 2005 and ending December 31, 2006. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the DOT has failed to comply in whole or in part with the City's EEO Policy.

The purpose of this audit is to evaluate the agency's compliance with the EEO, 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 DOT's Agency Specific Plans, quarterly EEO reports, and responses to an EEOC Document and Information Request Form. EEOC staff also analyzed Citywide Equal Employment Database System (CEEDS) data by which the DOT determines underutilizations and concentrations of targeted groups within the workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. Where CEEDS data revealed underutilizations within the DOT workforce, the auditors determined whether the agency had undertaken reasonable measures to correct those underutilizations. (Appendix 5)

The EEOC auditors also conducted in-depth, on-site interviews with the DOT's EEO officer, deputy EEO officer, career counselor and seven EEO counselors.

A survey of 1000 people employed by the DOT during the audit period was distributed. (This number excludes 22 surveys that were returned as undeliverable.) One hundred twelve people (11.5%) responded. Significant survey findings are attached and discussed in the proceeding pages. (Appendix 1)

Description of the Agency

Established by Local Law No. 27 of 1977, the Department of Transportation (DOT) includes the Divisions of Bridges and Roadways, Transportation, Borough Divisions, and Administration. The mission of the Department is to provide for the safe, efficient, environmentally responsible movement of people and goods in New York City. In order to fulfill this mission, the DOT controls and regulates traffic; builds and maintains streets, sidewalks, highways, bridges and municipal parking facilities; maintains and operates the Staten Island Ferry; monitors and regulates private bus companies, administers pre-school transportation for the disabled; and acts as an advocate and a voice for better transportation.

Personnel Activity During the Audit Period

During the audit period, 1127 people were hired: 492 Caucasians, 333 African-Americans, 181 Hispanics, 116 Asians, and 5 Native Americans. Of the individuals hired, 231 were female. Five hundred sixteen individuals were promoted during the audit period: 241 Caucasians, 163 African Americans, 57 Hispanics, and 51 Asians, and 4 Native Americans. Of the employees promoted, 148 were female. (Appendix 4)

The DOT reports that 81 full-time employees were involuntarily separated during the audit period: 34 Caucasians, 30 African-Americans, 13 Hispanics, 3 Asians, and 1 Native American. Seven of those individuals were female.

Between January 1, 2005 and December 31, 2006, the total number of DOT employees increased by 7.5%, from 4,134 to 4,443. There was a small percentage increase for Hispanics (11% to 12%). The percentage for females decreased slightly (25% to 24%). (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

During the period in review, 38 internal discrimination complaints were filed: 12 sexual harassment, 3 national origin, 1 disability, 1 age, 1 sexual orientation, and 1 retaliation. The other 19 internal discrimination complaints were based on multiple categories. The EEO officer completed and issued reports for 35 of these complaints, which received eight probable cause determinations and 30 no probable cause determinations. Three complaints were pending at the end of the audit period. Twenty-one external complaints were filed: 5 disability, 3 sexual harassment, 1 gender, and 1 retaliation against. The other 11 external discrimination complaints were based on multiple categories. Three of the complaints were closed and one withdrawn; the 17 remaining complaints, filed with the Equal Employment Opportunity Commission, State Division on Human Rights, and City Commission on Human Rights, were pending at the end of the audit period.

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

The DOT is in compliance with the following requirements:

1. The DOT distributed a general EEO Policy statement and the city's EEO Policy Handbook (*About EEO: What You May Not Know*, with addendum) in 2005. Included in the statement are directions on how to access the agency's website and Intranet to locate the Citywide EEO Policy. The EEO policies were not distributed in 2006. However, the agency distributed the Citywide EEO Policy to legal, human resources and EEO representatives as well as managers and supervisors in 2007. It will be redistributed in 2007 due to the newly-appointed Commissioner. The policies are distributed at specific orientation sessions, EEO training sessions, as well as at presentations and discussions. In addition, 75% and 85% of the employees surveyed by the EEOC indicated they had received the EEO Policy Statement and EEO Policy Handbook, respectively.
2. According to the agency's EEO counselors and 79% of the employees surveyed, the DOT's EEO policies are posted on agency bulletin boards. The EEO counselors continually check and maintain the boards to ensure the EEO information is clearly posted and current.
3. The DOT's EEO policies are available in alternate formats (e.g. audio cassette/CD and large print) for use by applicants and employees with disabilities.

Plan Dissemination – Externally

The DOT is in compliance with the following requirement:

The six internal job vacancy notices (Computer Aide, Supervising Computer Service Technician, Senior Statistician, Certified IT Developer (Applications), Senior Estimator (GC) and Civil Engineer) and the five newspaper advertisements (Associate Project Manager I, II, & III, Associate Project Manager II and Administrative Project Manager, Bridge Engineers (2X), and Agency Attorney) and one on-line (Associate Project Manager I, II, & III) submitted by the DOT to the EEPC contain the EEO tag line.

Affirmative Action and Reasonable Accommodation for Persons with Disabilities

The DOT is in compliance with the following requirements:

1. The DOT's EEO Policy includes a "Reasonable Accommodation Procedure."
2. The DOT has provided accommodations for employees such as location transfer, special chair (Inflatable Lumbar Support cushion and a Coccyx Cut Out seat), and a flexible work schedule.
3. According to the EEO officer, the DOT participates in the Section 55-A program. Information about the Program is included in its training booklet, which is distributed during each EEO training and new employee orientation session. Currently, 25 employees participate in the program.
4. The DOT's EEO officer is also the agency's disability rights and reasonable accommodations coordinator.
5. The DOT has completed its own survey of its facilities and submitted an accessibility checklist that indicates the Department of Transportation has street accessible entrances, ramp access, wheelchair accessible elevators, bells and Braille in the elevators, wide restroom stalls, grab bars in the restrooms, and low sink or bathroom fixtures.

EEO Complaint and Investigation System

The DOT is in compliance with the following requirements:

1. The EEO officer receives and investigates discrimination complaints in conformance with the EEOP's model complaint and investigation procedures and implementation guidelines issued by the DCAS.
2. The EEO officer maintains a monthly log of discrimination complaints filed against the agency. She provided a copy of a completed monthly log. The agency head conducts a quarterly review of EEO complaints. Actions such as suspensions, reassignments, and trainings have occurred as a result of the agency head's review.

3. The general counsel informs the EEO office when external EEO complaints/ litigations have been brought against the agency. The general counsel takes responsibility for the investigation and response to the external EEO complaints.
4. The DOT's EEO officer, deputy EEO officer, EEO investigator and counselors have all completed the basic training course for EEO professionals at the Department of Citywide Administrative Services (DCAS).
5. The agency identifies its EEO staff by posting their names, locations and numbers in the EEO Policy Statement.
6. The DOT has individuals not of the same gender available for complaint intake and investigation.

The DOT is not in compliance with the following requirements:

The DOT submitted 10 files designated as "discrimination complaint files" to the EEPD for review. Two of the discrimination complaints (#07-0101 and #07-0102) occurred outside of the audit period. Therefore, they are not included in our analysis.

1. Six of the 8 internal complaint files submitted (#06-1202, #06-0803, #06-1201, #06-0802, #06-0101, and #06-0801) do not contain a discrimination complaint intake form. Corrective action is required.

During the audit exit meeting, the EEO officer said that the information on the intake form is transcribed into typed notes and the intake form is discarded. The EEO officer provided "notes" for three internal complaint files (#06-0701, #06-0802, and #06-0803), which were based on interviews with the complainant, respondent and /or witnesses. In addition, she provided an "investigative report" for each of the three remaining internal complaint files (#06-0801, #06-1201, and #06-1202). It is a requirement of the DCPIG that agencies use the City's Discrimination Complaint Form. In the case when there is an oral or anonymous complaint, the EEO officer must complete the Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form.

Recommendation: All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(a))

2. Six of the 8 internal complaint files submitted (#06-1202, #06-1204, #06-0803, #06-0701, #06-0801, and 06-0703) do not include a written notice of discrimination complaint to the respondent. Corrective action is required.

During the audit exit meeting, the EEO officer stated that some cases were inquiries, not complaints, therefore, no notice to respondents were distributed. Subsequent to the meeting, she submitted supporting documentation. Upon review of these documents, the EEPD auditor found that the EEO officer completed a full investigation and prepared an investigative report for each of the complaints filed. Based on the DCPIG, the respondent should be served with a notice of complaint filed against him/her before the she /he is interviewed.

Recommendation: All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

EEO Training

The DOT is in compliance with the following requirement:

The DOT's EEO trainer, who is the Deputy EEO officer, has completed the DCAS's basic training for EEO professionals and the Cornell University School of Industrial and Labor Relation's EEO Studies Program. The DOT has hired another trainer who also completed the DCAS's basic training for EEO professionals. The training curriculum, which the DOT submitted, is approved by DCAS.

The DOT has a plan to train all new and existing employees on EEO. Each new employee attends an orientation which includes, at a minimum, a discussion of the City's current EEO Policy, the employees' rights and responsibilities under the current EEO policy, and the discrimination complaint and investigation procedure. All new hires receive full EEO training including a component on preventing sexual harassment when the entire program site receives training. Sign-in sheets are used as an attendance record.

The DOT's annual/fourth quarter reports indicated that the agency trained a total of 1,434 employees in FY 2005, (35%) and a total of 1,910 employees (43%) in FY 2006 (43%). In addition, 69% of the employees surveyed indicated they had received EEO training.

Underutilization

The DOT's CEEDS data indicated underutilization of at least three "protected" classes in 10 of the 20 job groups, and persistent underutilization in 4 job groups. (See Appendix 5 for underutilizations at the beginning and end of the audit period.)

Following is an analysis of personnel activity in these categories.

EEO Job Groups / Hires and Promotions:

Managers (002): African-Americans were underutilized during the second, third, and fourth quarters of FY 2005. Hispanics were underutilized during the second and fourth quarters of FY 2005. Females were underutilized in this category throughout the audit period. Twenty-nine employees were hired into this category: 23 Caucasians, 2 African-Americans, 2 Hispanics and 2 Asians; 5 of these were female. Fifty-five individuals were promoted to or within this category: 29 Caucasians, 9 African-Americans, 4 Hispanics, and 13 Asians; 15 of those were female.

Science Professionals (004): African Americans were underutilized during the second, third, and fourth quarters of FY 2005 and the first quarter of FY 2006. Females were underutilized in this category throughout the audit period. One hundred and one individuals were hired into this category: 49 Caucasians, 12 African-Americans, 9 Hispanics, 30 Asians, and 1 Native American;

16 of those were female. Forty-six employees were promoted to or within this category: 15 Caucasians, 15 African-Americans, 2 Hispanics, and 14 Asians; 17 of these were female.

Technicians (010): African-Americans were underutilized in this category during the second, third, and fourth quarters of FY 2005. Twenty individuals were hired into this category: 8 Caucasians, 4 African-Americans, 3 Hispanics and 5 Asians; 7 of those were female. Nine employees were promoted to or within this category: 4 Caucasians, 4 African-Americans, and 1 Asian; 2 of these were female. No Hispanics were promoted.

Clerical Supervisors (012): Hispanics were underutilized in this category throughout the audit period. Twenty individuals were hired into this category: 6 Caucasians, 12 African-Americans, and 2 Hispanics; 18 of those were female. Sixty-seven employees were promoted to or within this category: 10 Caucasians, 43 African-Americans, 11 Hispanics, 1 Asian, and 2 Native Americans; 53 of these were female. No Asians were hired.

Craft (025): African-Americans were underutilized in this category during the second quarter of FY 2005 and the first and third quarters of FY 2006. Three hundred and thirty individuals were hired into this category: 189 Caucasians, 71 African-Americans, 47 Hispanics, 20 Asians and 3 Native Americans; 13 of those were female. Two hundred and eleven employees were promoted to or within this category: 127 Caucasians, 49 African-Americans, 26 Hispanics, and 9 Asians; 13 of these were female.

Operators (026): Hispanics were underutilized in this category during the second and third quarters of FY 2005. Six individuals were hired into this category: 1 Caucasian, 2 African-Americans, 2 Hispanics, and 1 Asian. One employee was promoted to or within this category: 1 Asian. No females were hired and no African-Americans, Hispanics and females were promoted.

Transportation (027): African-Americans were underutilized in this category during fourth quarter of FY 2005. Two individuals were hired into this category: 2 African-Americans. One employee was promoted to or within this category: 1 African American. No Hispanics, Asians, or females were hired or promoted.

Laborers (028): African-Americans were underutilized in this category during the third and fourth quarters of FY 2005 and the first quarter of FY 2006. Females were underutilized during the fourth quarter of FY 2005. Three hundred individuals were hired into this category: 106 Caucasians, 109 African-Americans, 75 Hispanics, 9 Asians and 1 Native American; 32 of those were female. One employee was promoted to or within this category: 1 African-American. No Hispanics, Asians, or females were promoted.

Sanitation Workers (029): Hispanics were underutilized throughout the audit period. No employees were hired or promoted to or within this category.

Para Professionals (031): Females were underutilized in this category during fourth quarter of FY 2005. One hundred and eighteen individuals were hired into this category: 42 Caucasians, 43 African-Americans, 8 Hispanics, and 25 Asians; 51 of those were female. Two employees were

promoted to or within this category: 2 African-Americans; both were female. No Hispanics or Asians were promoted.

Addressing Underutilization

The DOT is in partial compliance with the following requirement:

The DOT issued several advertisements during the audit period. Although it provided a list of newspapers, journals, publications, and websites it used for recruitment purposes, it (list) included only two-minority-oriented newspapers: *El Diario* and *Amsterdam News*. Also, it did not utilize any female-oriented agencies or organizations. The EEO officer told EEPC by email that “CEEDS underutilization is handled by DCAS. However, under Mayor Guiliani and through the current administration, agencies are not required to advertise strictly in minority newspapers. Nevertheless, DOT advertises in the above-mentioned minority-oriented newspapers among others to reach minorities and all other population.” Corrective action is required.

Recommendation: In keeping with the mandate of the EEOP, the DOT should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified are advertised in female- and minority-oriented publications; and sent to professional and community organizations serving minorities, women, and persons with disabilities. (Sect. IV, EEOP)

During the audit exit meeting, the EEO officer provided a comprehensive list of all sources utilized for advertisement of positions in 2005 and 2006. The list included only two-minority-oriented newspapers: *El Diario* and *Amsterdam News* and no female-oriented agencies or organizations.

Recommendation: “Making the Most of New York City’s Recruitment Resources,” (2004 http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf) is a DCAS publication designed to assist agencies in creating a more diverse applicant pool. The DOT should further expand its recruitment efforts by utilizing this document. (Sect. IV, EEOP)

Selection and Recruitment

The DOT is in compliance with the following requirements:

1. According to DOT’s EEO officer, the agency’s hiring personnel have completed DCAS’s structured interview training. She submitted a copy of the agency’s structured interview policy and procedures and interviewer questionnaire.
2. The EEO officer told EEPC auditors that she is involved in the agency’s recruitment process; she assists with developing recruitment strategies, selecting recruitment media and reviewing job interview questions, and conducting workforce analysis.
3. All recruitment literature the DOT submitted indicates that the agency is an equal opportunity employer.

4. The DOT utilizes a discretionary applicant form, which contains no illegal pre-employment inquiries under the EEO laws.

The DOT is in partial compliance with the following requirement:

The DOT's EEO officer received the DCAS's adverse impact training in 2004. However, the agency did not conduct an adverse impact study during the audit period. The EEO officer stated that she only reviews questions prior to the job interview to avoid EEO violations.

Recommendation: The DOT should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).

Promotional Opportunities

The DOT is in compliance with the following requirements:

1. The DOT utilizes the DCAS's managerial performance evaluation form.
2. Sixty-six percent of the survey respondents indicated that they saw the agency's job postings on agency bulletin boards for vacant positions prior to the application deadline.

DOT is in partial compliance with the following requirements:

1. Although the DOT has appointed an individual familiar with civil service and provisional jobs to serve as career counselor, only 12% of survey respondents indicated that they know the name of the person in the agency responsible for providing career counseling. Corrective action is required.

Recommendation: The DOT should inform all employees in writing of the identity, location, and telephone number/email of the new career counselor. (Sect. IV, EEOP)

2. Although 86% of survey respondents employed for over one year received annual evaluations, 53% of survey respondents indicated that the evaluations did not contain recommendations for improving job performance. In addition, 71% of the survey respondents indicated that the evaluation did not contain recommendations for career advancement with the DOT. Corrective action is required.

Recommendation: The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and/or career advancement. (Sect. IV, EEOP)

Supervisory Responsibility in EEO Plan Implementation

The DOT is in partial compliance with the following requirement:

Supervisors and managers are instructed by the DOT's EEO Policy Statement (2005) to discuss the agency's EEO Policies with their subordinates during staff meetings. However, there is no documentation of such meetings between supervisors/managers and their staffs. In addition, fifty-four percent of the survey respondents said that their supervisor/manager did not emphasize his or her commitment to the agency's EEO policies at any staff meeting with them individually or in a group setting nor did s(he) discuss their rights and responsibilities under the City's EEO Policy. Corrective action is required.

Recommendation: It is the position of the DCAS ("Model Agency EEO Commitment Memo," <http://extranet.dcas.nycnet/eo/pdf/mdel-memo.pdf>) and the EEPC that at least twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.

EEO Officer Reporting Arrangement

The DOT is in partial compliance with the following requirements:

1. The EEO officer does not report directly to the Commissioner. She reports to the deputy commissioner every two weeks and the first deputy commissioner (who is not a direct report to the commissioner) once a month. She prepares an agenda and keeps handwritten notes of those meetings. Corrective action is required.

Recommendation: This reporting relationship, in part, violates the citywide EEOP, which requires that the EEO officer report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. Four years ago, though, the DCAS approved a similar DOT EEO officer reporting relationship under the previous citywide EEO policy. If the DOT wishes to continue this reporting relationship under the current citywide EEO policy, it should request a new waiver from the DCAS. (Sect. VB, EEOP)

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

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

EEO Officer Responsibilities

The DOT is in compliance with the following requirement:

The DOT's EEO officer spends 100% of her time on EEO matters.

Special Contingency

The EEPC auditors interviewed seven EEO counselors to determine their role as EEO counselors. During the interview they were asked if they had any suggestions for improving the

effectiveness of the EEO Counselor program. Three of the seven interviewees suggested that the DOT revisit its previous job interviewing procedures and require them to sit in on job interviews. Currently, the DOT's interviewing procedure only requires the EEO officer /counselors to review the interviewers' questions. Corrective action is required.

Recommendation: Since the DOT has a new administration, the Commission suggests that the agency head reconsider its job interviewing procedures to have the EEO counselors be present during job interviews to avert illegal employment discrimination.

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(a))
2. All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))
3. In keeping with the mandate of the EEOP, the DOT should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified are advertised in female-and minority-oriented publications, and sent to professional and community organizations serving minorities, women, and persons with disabilities. (Sect. IV, EEOP)
4. "Making the Most of New York City's Recruitment Resources," (2004 http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf) is a DCAS publication designed to assist agencies in creating a more diverse applicant pool. The DOT should further expand its recruitment efforts by utilizing this document. (Sect. IV, EEOP)
5. The DOT should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).
6. The DOT should inform all employees in writing of the identity, location, and telephone number/email of the new career counselor. (Sect. IV, EEOP)
7. The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and/or career advancement. (Sect. IV, EEOP)
8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," <http://extranet.dcas.nycnet/eo/pdf/mdel-memo.pdf>) and the EEPC that at least twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.

9. This reporting relationship in part, violates the citywide EEOP, which requires that the EEO officer report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. Four years ago, though the DCAS approved a similar DOT EEO officer reporting relationship under the previous citywide EEO policy. If the DOT wishes to continue this reporting relationship under the current citywide EEO policy it should request a new waiver from the DCAS. (Sect. VB, EEOP)
10. The DOT should revise its organization chart to show the reporting arrangement of the EEO officer. (Sect. VB, EEOP)
11. Since the DOT has a new administration, the Commission suggests that the EEO officer meet with the EEO counselors to analyze and discuss the job interviewing procedures and submit any recommendations to their Commissioner.

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

Conclusion

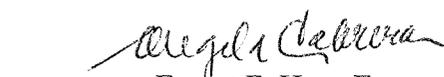
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of DOT's compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned 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. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, 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 to the Mayor 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's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,


Ernest F. Hart, Esq.
Chair

APPENDIX - 1
Department of Transportation
EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (73) No (36)
2. Is your agency's EEO Policy Statement posted on your agency's bulletin boards?
Yes (82) No (22)
3. Were you given the EEO Policy Statement?
Yes (83) No (6) : remember (22)
4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know* ?
Yes (94) No (16)
5. Do you agree with the principles of equal employment opportunity?
Yes (104) (5)
6. Do you believe your agency practices equal employment opportunity?
Yes (60) No (43)
7. Do you know what the City's Equal Employment Opportunity Policy (EEOP) is?
Yes (80) No (24)
8. Has your supervisor emphasized his/her commitment to the agency's EEO policies at any staff meeting during the past 8 months?
Yes (26) No (58) : remember (24)
9. When you started working at your agency, did you attend an orientation session?
If No, please skip to question #11.
Yes (59) No (34) : remember (17)
10. If hired within the past 12 months, did your orientation session include information on your rights and responsibilities under the EEO Policy?
Yes (12) No (9) : remember (11)

DOT SURVEY RESULTS CONTINUED

B. EEO COMPLAINTS

11. Do you know how to file an EEO complaint?

Yes (81) No (27)

12. If you had an EEO complaint, would you bring it to your agency's EEO Office?

Yes (69) No (19) Undecided (24)

13. Would you prefer to file an EEO complaint with an office outside your agency?

Yes (49) No (32) Undecided (31)

14. Did you ever file an EEO complaint with your agency's EEO Office?

If No, please skip to question #18.

Yes (16) No (94)

15. What was the basis of the complaint?

Age (0)	Partnership Status (0)
Alienage or Citizen Status (0)	redisposing genetic characteristic (0)
Arrest or Conviction Record (0)	Race (0)
Color (1)	Sexual Harassment (1)
Creed (0)	Sexual Orientation (0)
Disability (0)	Veteran's Status (0)
Gender (incl. gender identity) (0)	Victim of Domestic Violence, Stalking, and Sex Offenses (0)
Marital Status (0)	Other (4)
Military Status (0)	
National Origin (0)	

16. Were you satisfied with the manner in which your complaint was managed?

Yes (3) No (15)

17. Was your manager or supervisor supportive of your right to file a complaint?

Yes (3) No (13) Applicable (7)

C. EEO TRAINING

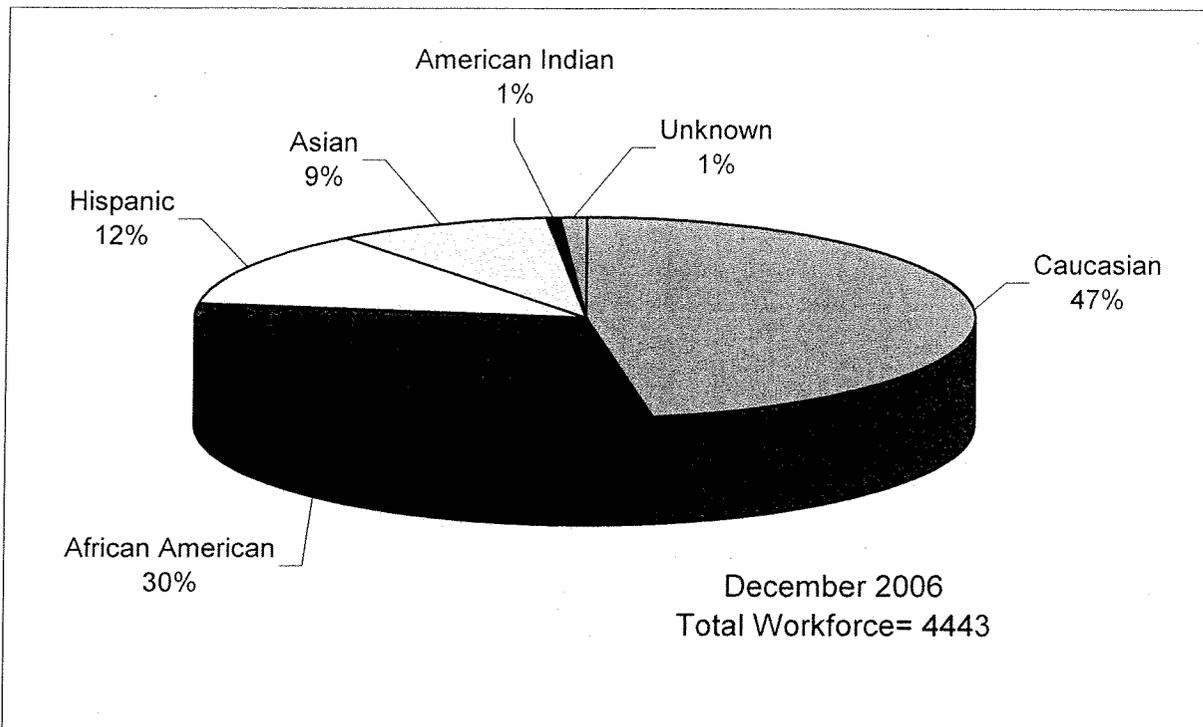
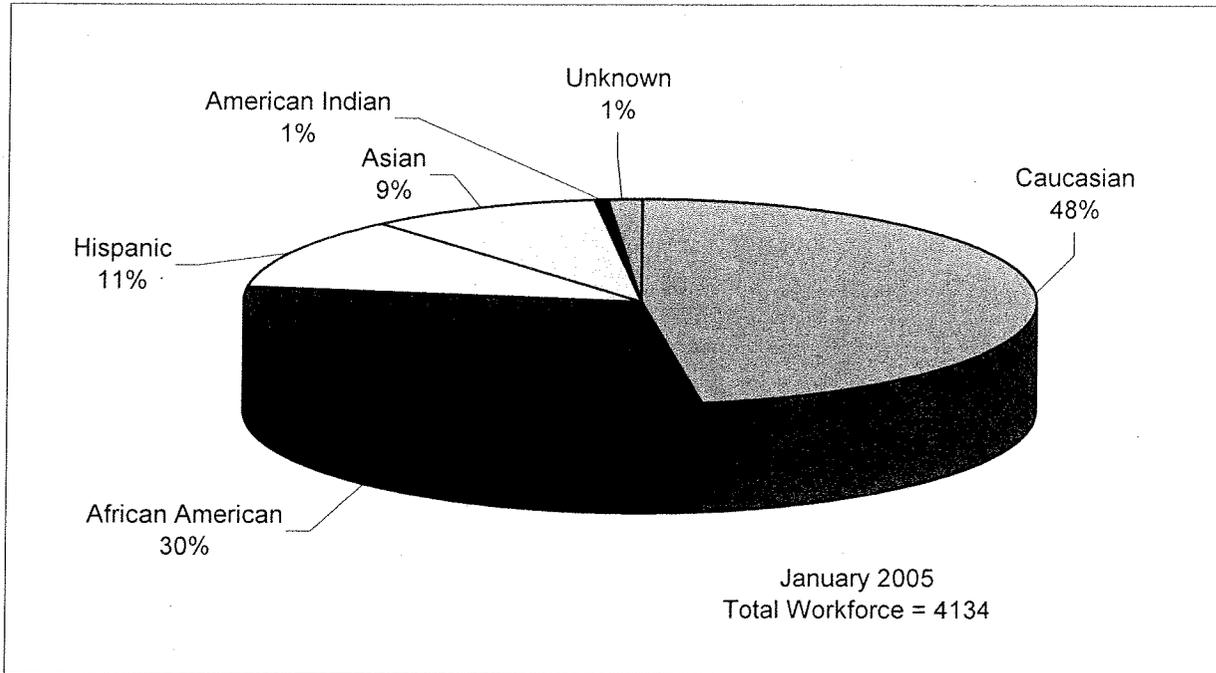
18. Did you receive EEO training? If No, please skip to question #20.

Yes (75) No (34)

19. Did you find this training helpful?

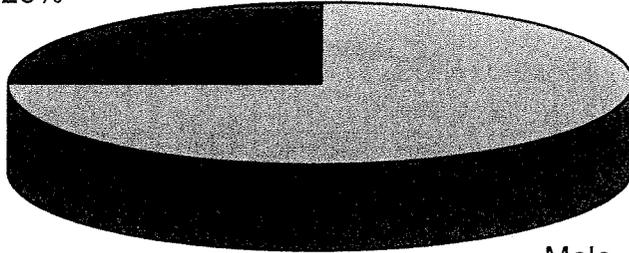
Very (28)	Somewhat (5)
Not really (37)	Waste of time (5)

Appendix - 2
Department of Transportation
Workforce by Ethnicity



Appendix - 3
Department of Transportation
Workforce by Sex

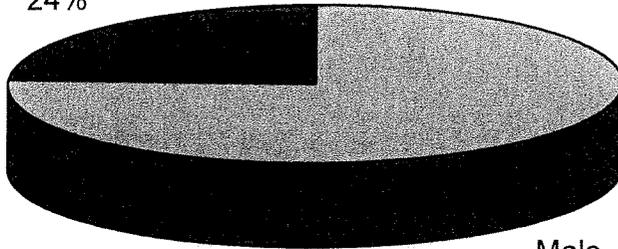
Female
25%



Male
75%

January 2005
Workforce = 4134

Female
24%



Male
76%

December 2006
Workforce = 4443

APPENDIX – 4

The following table indicates personnel activity during the audit period, January 1, 2005 through December 31, 2006.

Department of Transportation

Hires by Sex and Ethnicity

Total Hires: 1127

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Total
896	231	1127	492	333	181	116	5	1127

Promotions by Sex and Ethnicity

Total Promotions: 7

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Total
368	148	516	241	163	57	51	4	516

Source: DOT

Appendix - 5
Department of Transportation
CEEDS
UNDERUTILIZATION CHART
January 1, 2005 - December 31, 2006

	Quarter:	2Q/2005	3Q/2005	4Q/2005	1Q/2006	2Q/2006	3Q/2006	4Q/2006
		(Oct-Dec)	(Jan-Mar)	(Apr-Jun)	(Jul-Sep)	(Oct-Dec)	(Jan-Mar)	(Apr-Jun)
Job Group	Protected Class							
002 Manag.	Afr. Am.	x	x	x				
	Hisp.	x		x				
	Female	x	x	x	x	x	x	x
004 Science Prof.	Afr. Am.	x	x	x	x			
	Female	x	x	x	x	x	x	x
010 Techn.	Afr Am.	x	x	x				
012 Cler. Sup.	Hisp.	x	x	x	x	x	x	x
025 Craft	Afr. Am.	x			x		x	
26 Oper.	Hisp.	x	x					
27 Trans.	Afr. Am.			x				
028 Labor.	Afr. Am.		x	x	x			
	Female			x				
029 Sanit. Work	Hisp.	x	x	x	x	x	x	x

X= Underutilization

Appendix - 5
Department of Transportation
CEEDS
UNDERUTILIZATION CHART
January 1, 2005 - December 31, 2006

	Quarter:	2Q/2005	3Q/2005	4Q/2005	1Q/2006	2Q/2006	3Q/2006	4Q/2006
		(Oct-Dec)	(Jan-Mar)	(Apr-Jun)	(Jul-Sep)	(Oct-Dec)	(Jan-Mar)	(Apr-Jun)
Job Group	Protected Class							
031 Para. Prof.	Female			x				

X= Underutilization



**New York City
Department of Transportation**

Janette Sadik-Khan, Commissioner

40 Worth Street
New York, N.Y. 10013
Tel: 212/676-0868
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9702

February 28, 2008

Ernest F. Hart, Esq.
Chair
Equal Employment Practices Commission
40 Rector Street
14th Fl.
New York, N.Y. 10006

Re: Preliminary Determination Pursuant to the Audit of the
Department of Transportation (DOT) and its Compliance with
the City's Equal Employment Opportunity Policy from
January 1, 2005 through December 31, 2006

Dear Mr. Hart:

In reference to your letter dated December 20, 2007, attached is the Department of Transportation's response to findings by the Equal Employment Practices Commission.

Your recommendations have been reviewed and each issue has been carefully addressed. Some of these recommendations have already been implemented and there is a proposed plan to complete the others.

If any additional information is required please let us know.

Thank you for your consideration in this matter.

Sincerely,

Janette Sadik-Khan
Commissioner

c: A/C Williams

Encl.

DEPARTMENT OF TRANSPORTATION

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

Recommendations:

1. All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, SEC. 12(a))

DOT's Corrective Action:

All complainants do not submit complaints on the traditional Discrimination Complaint form, but in various formats, such as verbally, on the complainant's stationery, or simply as a walk in. When the complaint is taken by an investigator, it is then typed-written. If the complaint is presented on the complainant's stationery, the complainant will not resubmit it on a Discrimination Complaint form. However, we will continue to requests that complaints be submitted on such forms.

2. All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

DOT's Corrective Action:

Complaints are generally mailed to the respondent with a Notice of Complaint via registered mail, which provides us a signature of receipt. This receipt is retained in the complainant's file. However, there are some complaints that are initially Inquiries until the complainant decides to file a formal complaint. In this instance where we have already spoken to the respondent of the Inquiry, we do not provide a Notice of Complaint as he/she is already aware of the issue.

3. In keeping with the mandate of the EEOP, the DOT should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified are advertised in female – and minority – oriented publications, and sent to professional and community organizations serving minorities, women and persons with disabilities. (Sect. IV, EEOP)

DOT's Corrective Action:

Job vacancies are posted in minority publications, such as the El Diario and the Amsterdam News. In addition, Ads are also posted in the Chief, New York Times and other publications to reach the target market. Job Fairs are also

attended by the Agency's Career Counselor to attract qualified candidates that are both minority and female. DOT will continue to post in these publications.

4. "Making the Most of New York City's Recruitment Resources," (2004 http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf) is a DCAS publication designed to assist agencies in creating a more diverse applicant pool. The DOT should further expand its recruitment efforts by utilizing this document. (Sec. IV, EEOP)

DOT's Corrective Action:

We have not utilized this resource and will do so in the future.

5. The DOT should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).

DOT's Corrective Action:

In discussions with DCAS, during this fiscal year we expect to take a look at certain titles to assess candidate selections to determine adverse impact as it relates to race, ethnicity and disability. In the meantime, we will continue to utilize our interview policy and Structured Interviewing classes.

6. The DOT should inform all employees in writing of the identity, location and telephone number/email of the new career counselor. (Sect. IV, EEOP).

DOT's Corrective Action:

A memo dated April 5, 2005, which was forwarded to you went out to all employees with their paychecks informing them of the above information on the career counselor. We will resend this information again under our new Commissioner, Janet Sadik-Khan's signature.

7. The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and/or career advancement. (Sect. IV, EEOP)

DOT's Corrective Action:

Supervisors/managers do include recommendations for improving job performance and/or career advancement in their evaluations and will continue to do so.

8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," <http://extranet.dcas.nycnet/eo/pdf/mdel-memo.pdf>) and the EEPC that at least

twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.

DOT's Corrective Action:

During 2005, the EEO Officer met with every Deputy Commissioner and their senior staff to discuss the EEO Policy and affirm the right of each employee to file a discrimination complaint with the EEO Office. This message was further disseminated to their managers and subordinates. Commissioner Sadik-Khan has prepared a memo documenting the same information which was distributed to all managers and supervisors with the paychecks again, on January 10, 2008.

9. This reporting relationship in part, violates the citywide EEOP, which requires that the EEO Officer report directly to the agency head, or if approved a similar DOT EEO Officer reporting relationship under the current citywide EEO policy. If the DOT wishes to continue this reporting relationship under the current citywide EEO policy it should request a new waiver from the DCAS. (Sect. VB, EEOP)

DOT's Corrective Action:

The reporting structure has been changed as the EEO Officer now reports directly to the agency head.

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

DOT's Corrective Action:

The organization chart has been revised to reflect the current reporting arrangement.

11. Since the DOT has a new administration, the Commission suggests that the EEO officer meet with EEO counselors to analyze and discuss the job interviewing procedures and submit any recommendations to their Commissioner.

DOT's Corrective Action:

The EEO Officer meets with the counselors quarterly and we discuss all pertinent issues to DOT. Job interviewing procedures has been an ongoing discussion at these meeting. A meeting is scheduled for January 25, and this will be a topic for further discussion, which will be submitted to Commissioner Sadik-Khan.

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

This recommendation will be implemented.



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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

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Angela Cabrera
Veronica Villanueva, Esq.
Commissioners

Abraham May, Jr.
Executive Director

Eric Matusewitch, PHR, CAAP
Deputy Director

April 1, 2008

Janette Sadik-Khan
Commissioner
Department of Transportation
40 Worth Street
New York, NY 10013

Re: Final Determination Pursuant to the Audit of the Department of Transportation (DOT) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through December 31, 2006.

Dear Commissioner Sadik-Khan:

Thank you for your February 28, 2008 response to our December 20, 2007 Letter of Preliminary Determination pursuant to the audit of the Department of Transportation's Equal Employment Opportunity Program from January 1, 2005 through December 31, 2006.

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 #4

"Making the Most of New York City's Recruitment Resources," (2004 http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf) is a DCAS publication designed to assist agencies in creating a more diverse applicant pool. The DOT should further expand its recruitment efforts by utilizing this document. (Sect. IV, EEOP)

Recommendation #6

The DOT should inform all employees in writing of the identity, location, and telephone number/email of the new career counselor. (Sect. IV, EEOP)

Recommendation #9

This reporting relationship in part, violates the citywide EEOP, which requires that the EEO officer report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. Four years ago, though the DCAS approved a similar DOT EEO officer reporting relationship under the previous citywide EEO policy. If the DOT wishes to continue this reporting relationship under the current citywide EEO policy it should request a new waiver from the DCAS. (Sect. VB, EEOP)

Recommendation #10

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

Recommendation #11

Since the DOT has a new administration, the Commission suggests that the EEO officer meet with the EEO counselors to analyze and discuss the job interviewing procedures and submit any recommendations to their Commissioner.

Requires Clarification

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

Recommendation #3

In keeping with the mandate of the EEOP, the DOT should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified are advertised in female- and minority-oriented publications, and sent to professional and community organizations serving minorities, women, and persons with disabilities. (Sect. IV, EEOP)

Your Response

Job vacancies are posted in minority publications, such as the *El Diario* and the *Amsterdam News*. In addition, ads are also posted in the Chief, New York Times and other publications to reach the target market. Job fairs are also attended by the agency's career counselor to attract qualified candidates that are both minority and female. DOT will continue to post in these publications.

EEPC Rationale

The DOT's CEEDS data indicated underutilization of at least three "protected" classes in 10 of the 20 job groups, and persistent underutilization in 4 job groups. Your response does not state how the DOT will address these underutilizations.

Recommendation #5

The DOT should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).

Your Response

In discussions with DCAS, during this fiscal year we expect to take a look at certain titles to assess candidates' selections to determine adverse impact as it relates to race, ethnicity and disability. In the meantime, we will continue to utilize our interview policy and structured interviewing classes.

EEPC Rational

It is unclear what the DCAS suggested and what titles will be assessed. Is there a timeframe for the study?

Recommendation #7

The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and/or career advancement. (Sect. IV, EEOP)

Your Response

Supervisors/managers do include recommendations for improving job performance and/or career advancement in their evaluations and will continue to do so.

EEPC Rational

It is unclear if supervisors/managers included recommendations for improving job performance and/or career advancement in their evaluations before the audit or after the audit.

Partially Disagree

For the following reason, hereafter identified as EEPC Rationale, we partially disagree with your response to the following EEPC recommendation:

Recommendation #1

All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(a))

Your Response

All complainants do not submit complaints on the traditional Discrimination Complaint form, but in various formats, such as verbally, on the complainant's stationary, or simply as a walk in. When the complaint is taken by an investigator, it is then typed-written. If the complaint is presented on the complainant's stationary, the complainant will not resubmit it on a Discrimination Complaint form. However, we will continue to requests that complaints be submitted on such forms.

EEPC Rationale

Section 12(a) of the Discrimination Complaint Procedures Implementation Guidelines (DCAS) clearly states that “If the complaint is in writing but not prepared on the City’s Discrimination Complaint Form, the EEO officer/ counselor should ensure that the information required on the City’s Discrimination Complaint Form is captured either by having the complainant(s), or his/her agent amend the original complaint, or file the complaint using the City’s Discrimination Complaint Form.....If the EEO officer has initiated the investigation on his/her own, based upon an oral or anonymous complaint, the EEO officer must complete the Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form and mark the date and time the complaint is filed.”

Disagree

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

Recommendation #2

All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

Your Response

Complaints are generally mailed to the respondent with a Notice of Complaint via registered mail, which provides us a signature of receipt. This receipt is retained in the complainant’s file. However, there are some complaints that are initially inquiries until the complainant decides to file a formal complaint. In this instance where we have already spoken to the respondent of the inquiry, we do not provide a Notice of Complaint as he/she is already aware of the issue.

EEPC Rational

Section 12(b) of the Discrimination Complaint Procedures Implementation Guidelines (DCAS) clearly states that “When the EEO officer or counselor decides that [s]he must investigate an oral complaint, the complaint must be reduced to writing in accordance with the procedures set out in Section 10 before the investigation can begin.” Likewise, when the inquiry becomes a formal complaint, the respondent has the right to be formally served with a Notice of Complaint along with a copy of the complaint.

Recommendation #8

It is the position of the DCAS (“Model Agency EEO Commitment Memo,” <http://extranet.dcas.nycnet/eo/pdf/mdel-memo.pdf>) and the EEPC that at least twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.

Your Response

During 2005, the EEO officer met with every Deputy Commissioner and their senior staff to discuss the EEO Policy and affirm the right of each employee to file a discrimination complaint with the EEO office. This message was further disseminated to their managers and subordinates. Commissioner Sadik-Khan has prepared a memo documenting the same information, which was distributed to all managers and supervisors with the paychecks again, on January 10, 2008.

EEPC Rational

The response does not indicate if supervisors/managers were directed to emphasize their commitment to the agency's EEO policies at least twice a year during normal staff meetings, and affirm the right of each employee to file a discrimination complaint with the EEO Office. The response also does not mention the requirement of documenting the meetings.

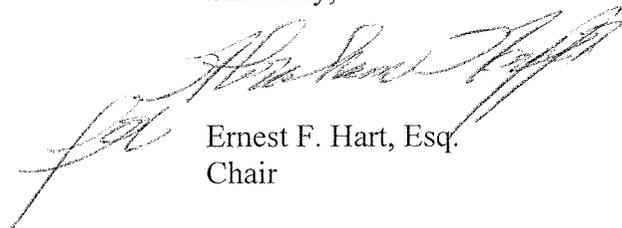
Conclusion

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 Judith 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,



Ernest F. Hart, Esq.
Chair



**New York City
Department of Transportation**

Janette Sadik-Khan, Commissioner

40 Worth Street
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April 23, 2008

Ernest F. Hart, Esq.
Chair
Equal Employment Practices Commission
40 Rector Street
14th Fl.
New York, N.Y. 10006

Re: Final Determination Pursuant to the Audit of the Department of Transportation (DOT) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through December 31, 2006

Dear Mr. Hart:

In reference to your letter dated April 1, 2008, attached is the Department of Transportation's response to the final determination by the Equal Employment Practices Commission (EEPC).

Each of the EEPC's comments has been reviewed and amendments were made to address your rationale.

If any additional information is required please let us know.

Thank you for your consideration in this matter.

Sincerely,



Janette Sadik-Khan
Commissioner

c: A/C Williams

Encl.

DEPARTMENT OF TRANSPORTATION

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

Agree

Recommendations:

4. "Making the Most of New York City's Recruitment Resources," (2004 http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf) is a DCAS publication designed to assist agencies in creating a more diverse applicant pool. The DOT should further expand its recruitment efforts by utilizing this document. (Sec. IV, EEOP)
6. The DOT should inform all employees in writing of the identity, location and telephone number/email of the new career counselor. (Sect. IV, EEOP).
9. This reporting relationship in part, violates the citywide EEOP, which requires that the EEO Officer report directly to the agency head, or if approved a similar DOT EEO Officer reporting relationship under the current citywide EEO policy. If the DOT wishes to continue this reporting relationship under the current citywide EEO policy it should request a new waiver from the DCAS. (Sect. VB, EEOP)
10. The DOT should revise its organization chart to show the reporting arrangement of the EEO officer. (Sect. VB, EEOP)
11. Since the DOT has a new administration, the Commission suggests that the EEO officer meet with EEO counselors to analyze and discuss the job interviewing procedures and submit any recommendations to their Commissioner.

Requires Clarification

3. In keeping with the mandate of the EEOP, the DOT should ensure that job vacancies for which underutilization of women and/or minorities have previously been identified are advertised in female – and minority – oriented publications, and sent to professional and community organizations serving minorities, women and persons with disabilities. (Sect. IV, EEOP)

DOT's Corrective Action:

Job vacancies are posted in minority publications, such as the El Diario and the Amsterdam News. In addition, Ads are also posted in the Chief, New York Times and other publications to reach the target market. Job Fairs are also

attended by the Agency's Career Counselor to attract qualified candidates that are both minority and female. DOT will continue to post in these publications.

EEPC Rationale

The DOT's CEEDS data indicated underutilization of at least three "protected" classes in 10 of the 20 job groups, and persistent underutilization in 4 job groups. Your response does not state how the DOT will address these underutilizations.

DOT's Response:

As a result of the above corrective action, to date, persistent under-utilization has been corrected in one of the four job groups (Sanitation) which you have referenced. In the other three groups female and Hispanic representation has increased. The overall 10 job groups have also showed marked improvements in female, black and Hispanic representation, as a result of postings, ads and job fairs. DOT has also made concerted efforts in addressing under-utilization through outreach, especially in the Science Professional and Craft job groups as representation has increased for the black population. In addition, the EEO Officer has reached out to DCAS to provide information on minority sources which was obtained and will be utilized for future recruitment. These sources encompass job titles within the groups you have identified. In addition to the above corrective action, to support our outreach efforts DOT will also utilize the Department of Citywide Administrative's recruitment resource link.

5. The DOT should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).

DOT's Corrective Action:

In discussions with DCAS, during this fiscal year we expect to take a look at certain titles to assess candidate selections to determine adverse impact as it relates to race, ethnicity and disability. In the meantime, we will continue to utilize our interview policy and Structured Interviewing classes.

EEPC Rationale

It is unclear what the DCAS suggested and what titles will be assessed. Is there a timeframe for the study?

DOT's Response

DCAS is pursuing identifying appropriate training that is customized to the city's needs for EEO Officers. In the meantime, DOT will utilize the Law Department's

program to identify adverse impact in some of the job groups in which you have identified under-utilization.

7. The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and/or career advancement. (Sect. IV, EEOP)

DOT's Corrective Action:

Supervisors/managers do include recommendations for improving job performance and/or career advancement in their evaluations and will continue to do so.

EEPC Rational

It is unclear if supervisors/managers included recommendations for improving job performance and/or career advancement in their evaluations before the audit or after the audit.

DOT's Response

Supervisors/managers have been including recommendations for job performance and/or career advancement in employee evaluations, many years prior to any audit. In the performance evaluation there is a specific section that is headed "Supervisor's Plans and Recommendations," with three sub-headings on (1) performance, (2) recommendations to capitalize on the employee's strengths and (3) recommendations to change conditions. This is standard and has always been in place.

Partially Disagree

1. All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, SEC. 12(a))

DOT's Corrective Action:

All complainants do not submit complaints on the traditional Discrimination Complaint form, but in various formats, such as verbally, on the complainant's stationery, or simply as a walk in. When the complaint is taken by an investigator, it is then typed-written. If the complaint is presented on the complainant's stationery, the complainant will not resubmit it on a Discrimination Complaint form. However, we will continue to requests that complaints be submitted on such forms.

EEPC Rationale

Section 12 (a) of the Discrimination Complaint Procedures Implementation Guidelines (DCAS) clearly states that "If the complaint is in writing but not prepared on the City's Discrimination Complaint Form, the EEO Officer/Counselor should ensure that the information required on the City's Discrimination Complaint Form is captured either by having the complainant(s), or his/her agent amend the original complaint, or file the complaint using the City's Discrimination Complaint Form...If the EEO Officer has initiated the investigation on his/her own, based upon an oral or anonymous complaint, the EEO Officer must complete the Agency Complaint of Discrimination based on Anonymous/Oral Complaint Form and mark the date and time the complaint is filed."

DOT's Response

The procedure as outlined in Section 12 (a) has been the practice of the EEO Office. However, the EEO Officer has not had reason to initiate an investigation on her own based upon an oral or anonymous complaint. When an employee files a complaint based on anonymity, very often they reveal their identity to the EEO Office, but request to remain anonymous. If there is no identity, we will utilize the Anonymous Complaint Form.

Disagree

2. All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

DOT's Corrective Action:

Complaints are generally mailed to the respondent with a Notice of Complaint via registered mail, which provides us a signature of receipt. This receipt is retained in the complainant's file. However, there are some complaints that are initially Inquiries until the complainant decides to file a formal complaint. In this instance where we have already spoken to the respondent of the Inquiry, we do not provide a Notice of Complaint as he/she is already aware of the issue.

EEPC Rationale

Section 12(b) of the Discrimination Complaint Procedures Implementation Guidelines (DCAS) clearly states that "When the EEO Officer or counselor decides that (s)he must investigate an oral complaint, the complaint must be reduced to writing in accordance with the procedures set out in Section 10 before the investigation can begin." Likewise, when the inquiry becomes a formal

complaint, the respondent has the right to be formerly served with a Notice of Complaint along with a copy of the complaint.

DOT's Response:

As stated in the corrective action above, the respondent would have had a copy of the complaint during the Inquiry stage, so that he/she would be already aware of what the issue is in the EEO Office. If after our meeting with complainant and respondent during the Inquiry stage, the complainant is not satisfied, the EEO Office initiates a further investigation, on the formal process. The respondent who is aware at this time that the inquiry has now become an informal complaint would not get a second copy of the same complaint, as this would be redundant. However, the EEO Office makes sure that the information required on the City's Discrimination Complaint Form is captured in the complaint.

8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," <http://extranet.dcas.nycnet/eoo/pdf/mdel-memo.pdf>) and the EEPC that at least twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.

DOT's Corrective Action:

During 2005, the EEO Officer met with every Deputy Commissioner and their senior staff to discuss the EEO Policy and affirm the right of each employee to file a discrimination complaint with the EEO Office. This message was further disseminated to their managers and subordinates. Commissioner Sadik-Khan has prepared a memo documenting the same information which was distributed to all managers and supervisors with the paychecks again, on January 10, 2008.

EEPC Rationale

The response does not indicate if supervisors/managers were directed to emphasize their commitment to the agency's EEO Policies at least twice a year during normal staff meetings and affirm the right of each employee to file a discrimination complaint with the EEO Office. The response also does not mention the requirement of documenting the meetings.

DOT's Response:

In addition to the above corrective action, a memorandum dated April 5, 2005 and signed by Commissioner Weinshall during the audit period 1/2005 – 12/2006, states that "Managers and supervisors must conduct documented meetings with staff at least once a year, to reaffirm their commitment to the agency's EEO Policy and to discuss the right of employees to file EEO complaints with DOT's

EEO Office. We expect managers to document these meetings with sign-in sheets which must be forwarded to the EEO Office annually.” This memorandum was distributed to all employees and the EEO Office received sign in sheets from the managers. A similar memorandum signed by Commissioner Sadik-Khan has since been distributed to all employees.



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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

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Abraham May, Jr.
Executive Director

Eric Matusewitch, PHR, CAAP
Deputy Director

May 23, 2008

Janette Sadik-Khan
Commissioner
New York City Department of Transportation
40 Worth Street
New York, New York 10013

RE: Monitoring Audit Compliance Pursuant to the EEPC's Audit of DOT's Compliance with the City's Equal Employment Opportunity Policy

Dear Commissioner Sadik- Khan:

Thank you for your April 23, 2008 letter transmitting the Department of Transportation's Response to the referenced audit.

Although we disagree with your responses to three of our recommendations, we are committed to work with your EEO Officer to resolve these differences during the Charter-mandated audit compliance process. Those recommendations are:

1. *All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(a))*
2. *All respondents must be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))*
3. *It is the position of the DCAS ("Model Agency EEO Commitment Memo," <http://extranet.dcas.nycnet/eoo/pdf/mdel-memo.pdf>) and the EEPC that at least twice a year during normal staff meetings, supervisors should 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. The meetings should be documented.*

EEPC Counsel/Compliance Director, Judith Quinonez, Esq., or her designee, will contact EEO officer Ann Williams to initiate the City Charter-mandated audit compliance process.

We look forward to working with you and your staff to ensure an effective Equal Employment Opportunity Program in the Department of Transportation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ernest F. Hart".

Ernest F. Hart, Esq.
Chair

C: Abraham May, Jr., Executive Director, EEPC
Judith Quinonez, Counsel, EEPC
Ann Williams, EEO Officer, DOT