



February 21, 2008

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SUBJECT: Management Advisory – The Postal Service’s Equal Employment Opportunity Contracting Function (Report Number HM-MA-08-001)

This report presents the results of the U.S. Postal Service Office of Inspector General’s (OIG) review of the Postal Service’s Equal Employment Opportunity (EEO) contracting function (Project Number 07YG063HM000). This report is in response to a complaint received by the OIG that questioned the need to establish the National Equal Employment Opportunity Investigative Services Office (NEEOISO). The complaint also alleged that the contracting process for obtaining EEO investigators was not consistent with Postal Service contracting policies, and that Postal Service management engaged in discriminatory practices when compensating the contract investigators, resulting in some contractors being paid excessive annual amounts.

### **Background**

The Postal Service began a study in 2002 to explore the establishment of an EEO contracting function that would operate as an Employee Stock Ownership Program (ESOP). One of the reasons for the contracting function was to reduce the backlog of EEO cases that exceeded the EEO Commission’s (EEOC) timeframes for completion of formal investigations.

In 2003, negotiations with a consulting firm to provide a proposal for the ESOP were unsuccessful because of the high proposed cost and the firm’s requirement that the Postal Service guarantee a set number of EEO complaints for investigation. As a result, the EEO contracting function evolved into the Postal Service’s oversight of contract investigators from a single office—the newly established NEEOISO.

The NEEOISO’s goals are to produce quality and timely EEO investigations in accordance with EEOC regulations. To help accomplish these goals, the Vice President, Supply Management, delegated authority to the NEEOISO Executive

Manager<sup>1</sup> to enter into ordering agreements<sup>2</sup> with individuals for EEO complaint investigations and FAD letter<sup>3</sup> writing services. Initially, the NEEOISO contracted with Manpower, Inc. to publicly advertise, screen, and select EEO contract investigators. Manpower, Inc. used predetermined selection criteria and referred 266 applicants to the NEEOISO. NEEOISO officials told us they discontinued using Manpower, Inc. in 2005 because the backlog of complaints was cleared, and because they were not satisfied with many of the referred applicants.

In 2004, the NEEOISO worked with the EEO field offices and the Postal Service Law Department to select 30 EEO contract FAD letter writers from two groups: existing EEO contract FAD letter writers recommended by the EEO field offices, and existing EEO contract investigators interested in becoming FAD letter writers. A review panel consisting of two Law Department members, EEO field managers, and two NEEOISO Executive and Administrative Service level 25 (EAS-25) managers reviewed the candidates and made the selections.

In April 2005, the Postal Service's EEO function was reorganized into two components:

- The National Office of EEO Compliance and Appeals Programs at Postal Service Headquarters handles EEO policy, processes informal complaints, and oversees all Postal Service area and district EEO field offices. Area and district EEO field offices handle informal complaints, including EEO counseling and alternative dispute resolution programs.
- The NEEOISO in Tampa, Florida, oversees the formal EEO complaint process, including contract investigations and FAD letter writing.

The 2005 reorganization was designed to place the EEO activity at the highest levels of the organization so that issues and barriers to workplace relationships could be identified and addressed. For example, the managers of both EEO offices report to the Vice President, Employee Development and Diversity, who reports to the Executive Vice President and Chief Human Resources Officer (Chief HR Officer).

The Postal Service envisioned that the reorganization would strengthen accountability in the EEO system, promote early resolution of workplace disputes, and support strategies to improve the workplace environment. It would also help maintain the neutrality of the investigative and decision process.

The NEEOISO currently uses a staff of about 24 EEO analysts to monitor the contracted EEO services provided by about 99 investigators and 35 FAD letter writers.

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<sup>1</sup> The delegation of authority letters for obtaining EEO investigators and final agency decision (FAD) letter writers are dated December 8, 2003, and August 24, 2004, respectively.

<sup>2</sup> Ordering agreements are negotiated written agreements that contain terms and conditions applying to future contracts between the parties. Ordering agreements typically apply to contracts for services.

<sup>3</sup> A FAD letter contains the agency's findings on the merits of the EEO complaint, or, as appropriate, the rationale for dismissing any claims in the complaint. It also provides appropriate remedies and relief when discrimination is found.

## **Objectives, Scope, and Methodology**

Our objectives were to determine: (1) the business purpose for contracting for EEO investigation and FAD letter writing services; (2) whether the selection of EEO contract investigators and FAD letter writers complied with Postal Service contracting policies and procedures; and (3) the 10 highest-paid EEO contract investigators in fiscal years (FYs) 2004 through 2007. Additional information regarding the objectives, scope, and methodology is in [Appendix B](#).

## **Prior Audit Coverage**

We discuss prior audit coverage in [Appendix C](#).

## **Results**

The business purpose for contracting for EEO investigations and FAD letter writing services was to improve the EEO process. The delegation of contracting authority to the NEEOISO complies with Postal Service *Supplying Principles and Practices*, however, we could not determine whether the selection process for EEO contract investigators and FAD letter writers complies with the delegation of authority requirements. We determined the 10 highest-paid EEO contract investigators in FYs 2004 through 2007, and found that payments ranged from \$57,400 to \$172,869. The following summarizes our findings and recommendation.

### **Business Purpose for Equal Employment Opportunity Contracting**

According to Postal Service officials and documents, the business purpose for contracting for EEO investigations and FAD letter writing services was to improve the EEO process. The Postal Service established the NEEOSIO and contracted for EEO complaint investigations to enhance the independence and neutrality of the EEO administrative process and to improve the overall quality and efficiency of investigations. The November 2003 Decision Analysis Report (DAR)<sup>4</sup> detailed several reasons why improvements in these areas were needed. Specifically, the EEOC conducted a business process review and expressed concerns to Postal Service officials regarding the agency's self-investigation process by employees. In addition, the Califano Report<sup>5</sup> recommended the Postal Service provide independent investigations of its formal employee discrimination complaints. Postal Service management also believed EEO contract investigations would result in substantial cost

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<sup>4</sup> The purpose of the DAR was to justify the need for a centralized facility to manage the EEO contract investigations.

<sup>5</sup> The *Report of the United States Postal Service Commission on a Safe and Secure Workplace Study*, the National Center on Addiction and Substance Abuse at Columbia University, dated August 2000, is also known as the Califano Report.

savings<sup>6</sup> and a reduction in the backlog of EEO cases exceeding the EEOC timeframes for completing formal investigations.

The decision to contract for EEO FAD letter writing services was made in the Pacific Area sometime in 2002 or 2003, to help the area address a backlog of cases and to provide more consistent and timely FAD letters. Postal Service officials identified the action as a best practice, and by FY 2006, FAD letter writing services for all areas were part of the NEEOISO function. According to Postal Service officials, contracting for EEO FAD letter writing services was also in line with the Postal Service's Transformation Plan strategy to centralize and standardize activities considered routine and transactional. Officials stated it was also part of the decision to reorganize the EEO function into two components.

The Postal Service's business purpose for contracting for EEO investigations and FAD letter writing services is consistent with federal regulations,<sup>7</sup> which state that under each agency program, the EEO director shall be responsible for assuring that individual complaints are fairly and thoroughly investigated and final action is taken in a timely manner. Postal Service officials believed that contracting for these services would assist in meeting the requirement to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree to extend the time period.

### **Selection of Equal Employment Opportunity Contract Investigators and Final Agency Decision Letter Writers**

The Supply Management Vice President's delegation of contracting authority to the NEEOISO complies with Postal Service *Supplying Principles and Practices*.<sup>8</sup> Also in compliance is NEEOISO's delegated authority to contract for EEO services outside the requirements of the principles and practices. However, we could not determine whether the selection process for EEO contract investigators and FAD letter writers complies with the delegation of authority requirements. We could not make this determination because the business justification for how the process followed required business principles was not documented. NEEOISO officials stated they did not realize that documenting the selection process or the business justification was necessary, based on their interpretation of the delegation of authority letters.

The Supply Management delegation authority requires the NEEOISO to follow certain business principles.

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<sup>6</sup> The DAR indicated that a net present value of [REDACTED] could be saved as a result of EEO contracting.

<sup>7</sup> 29 Code of Federal Regulations (CFR) 1614, *Federal Sector EEO*, Sections 102 and 106.

<sup>8</sup> We plan to conduct a separate audit of Supply Management's controls over delegations of contracting authority.

- Suppliers must be treated fairly and objectively.
- Actions must adhere to the Code of Ethical Conduct for Employees of the Executive Branch.<sup>9</sup>
- When practical, requirements should be competed among qualified suppliers.
- Contract awards or orders must be issued to the supplier offering the best value to the Postal Service.<sup>10</sup>

In addition, the contract file should generally include the documented business justification and related market analysis supporting the limiting of competition.

At the beginning of our audit, the NEEOISO selection process for obtaining EEO contract investigators and FAD letter writers was not documented. Our discussions with Postal Service officials, however, resulted in agreement that documentation is necessary, and a preliminary draft of the process was subsequently provided to us, as follows.

- The recruitment process for perspective suppliers begins with the NEEOISO notifying existing EEO contractors, headquarters EEO staff, and Law Department attorneys that the NEEOISO is accepting resumes for contract investigators and FAD letter writers. The intent of this notification is for these individuals to share information about the contract opportunities with prospective suppliers they know. Postal Service officials said this process is used to limit the high number of applications that might be received from open competition. For example, according to officials and Postal Service documents, approximately 16,000 applicants applied to Manpower, Inc. for the first EEO investigation contracts in 2003. Postal Service officials said they are not staffed to efficiently screen that number of applicants.
- The selection process consists of an internal panel<sup>11</sup> that reviews the resumes and selects candidates based on their experience in EEO law and complaint processing procedures, or EEO experience as an HR professional. Criteria regarding the level of knowledge or experience required by the applicants varies by internal panel. The NEEOISO requires a sensitive security clearance for all selected candidates, and the candidates must attend training.<sup>12</sup>

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<sup>9</sup> 5 CFR 2635.101(b)(8) states that employees shall act impartially and not give preferential treatment to any private organization or individual. In addition, 5 CFR 2635.101(b)(14) states employees shall try to avoid any actions that create the appearance they are violating the law or the ethical standards set forth in this part.

<sup>10</sup> A Postal Service analysis showed that one price per investigation was established, regardless of the contractor selected. The price was below that normally paid for General Services Administration schedule contract vendors or other comparable suppliers.

<sup>11</sup> A Postal Service document states the review panel consists of an EAS-25 NEEOISO manager and one or more EAS-23 NEEOISO analysts, or a headquarters EAS-25 EEO manager. The document also states that the review panel members must have more than 10 years of EEO experience in EEO law and complaint processing procedures.

<sup>12</sup> Law Department attorneys, EAS-25 EEO managers, and EAS-23 EEO analysts conduct the training.

- The NEEOISO Executive Manager retains the services of existing EEO contract investigators and FAD letter writers by issuing task orders against existing ordering agreements. The decision to retain services is based on management's expectation of the suppliers' capability to perform the task and their past performance.

The business justification for how the selection process ensures fair treatment of suppliers, adequate competition, and the best value to the Postal Service was not documented at the time of our review. Officials stated they would document the justification and include the documentation in the contract file.

Full and open competition is generally regarded as the fairest treatment of suppliers and provides for the most competition. Limited competition, when in the best interest of the Postal Service, is allowed under the *Supplying Principles and Practices* and the delegation of authority granted to the NEEOISO Executive Manager. However, not having documentation to support the business justification for limited competition makes it difficult for the NEEOISO to review and validate its business decisions related to contracting. Without documentation, it is also difficult for the NEEOISO and others to independently assess efforts to ensure that processes and procedures are fair and objective and are consistently applied over time.

### **Recommendation**

We recommend the Vice President, Employee Development and Diversity, in coordination with the Vice President, Supply Management, ensure that the Executive Manager, National Equal Employment Opportunity Investigative Services Office:

1. Fully documents the processes and procedures used to select Equal Employment Opportunity contract investigation and final agency decision letter writing services. This documentation should specifically address how the processes and procedures ensure fair treatment of suppliers, adequate competition, and the best value to the Postal Service.

### **Management's Comments**

The Vice Presidents, Employee Development and Diversity and Supply Management, agreed with the finding and recommendation. They have asked the NEEOISO Executive Manager to fully document the processes and procedures used to solicit and select EEO contract investigation and FAD letter writing services. They explained that selection documentation is in draft form and, when complete in June 2008, will address how the processes and procedures ensure compliance with the five business principles set forth in the delegation of authority. In addition, they are reviewing other associated processes and procedures to determine whether additional documentation is needed to ensure compliance with the OIG's recommendation. Management indicated that all

actions are targeted for completion by the end of FY 2008. Management's comments, in their entirety, are included in [Appendix E](#).

### **Evaluation of Management's Comments**

The OIG considers management's comments responsive to the recommendation.

### **Ten Highest-Paid Equal Employment Opportunity Contract Investigators**

The 10 highest-paid EEO contract investigators in FYs 2004 through 2007 are listed in [Appendix D](#). We determined that the highest amount paid to an EEO contract investigator was \$172,869 in FY 2005. The range of payments for the 10 highest-paid EEO contract investigators by fiscal year was:

- FY 2004 – \$57,400 to \$117,300
- FY 2005 – \$119,300 to \$172,869
- FY 2006 – \$92,860 to \$111,190
- FY 2007 – \$93,000 to \$112,970

NEEOISO officials stated that to provide for an adequate pool of EEO contract investigators for future work, they limited the amount paid to a single investigator. Specifically, beginning in calendar year (CY)<sup>13</sup> 2005, a limit of [REDACTED] was established on the amount an EEO contract investigator could earn in a calendar year. This limit was raised to [REDACTED] in CY 2006. Officials stated the CY limit helps to ensure that more EEO contract investigators receive cases and maintain proficiency in performing investigations. Postal Service documents indicate that for CYs 2005 and 2006, contractors' payments did not exceed the limits.

The OIG considers the recommendation significant and, therefore, requires OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. This recommendation should not be closed in the follow-up tracking system until the OIG provides written confirmation that the recommendation can be closed.

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<sup>13</sup> The NEEOSIO established a CY limit to be consistent with supplier income tax reporting. We obtained contractor payment data by fiscal year to be consistent with Postal Service budgeting practices.

We appreciate the cooperation and courtesies provided by your staff during the review. If you have any questions or need additional information, please contact Chris Nicoloff, Director, Human Capital, or me at (703) 248-2100.

E-Signed by Darrell E. Benjamin,   
VERIFY authenticity with ApproveIt

Darrell E. Benjamin, Jr.  
Deputy Assistant Inspector General  
for Support Operations

#### Attachments

cc: Anthony J. Vegliante  
Mary Anne Gibbons  
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## APPENDIX A. ACRONYMS

CFR	Code of Federal Regulations
CY	Calendar Year
DAR	Decision Analysis Report
EAS	Executive and Administrative Service
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
ESOP	Employee Stock Ownership Program
FAD	Final Agency Decision
FOIA	Freedom of Information Act
FY	Fiscal Year
HR	Human Resources
NNEOISO	National Equal Employment Opportunity Investigative Services Office
OIG	U.S. Postal Service Office of Inspector General

## APPENDIX B. OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine: (1) the business purpose for contracting for EEO investigation and FAD letter writing services, (2) whether the selection of EEO contract investigators and FAD letter writers complied with Postal Service contracting policies and procedures, and (3) the 10 highest-paid EEO contract investigators in FYs 2004 through 2007.

To determine the business purpose for contracting for EEO investigations and FAD letter writing services, we interviewed the Chief HR Officer, the Vice President, Employee Development and Diversity, and the NEEOISO Executive Manager. We also obtained and reviewed relevant documentation.

To determine whether the selection of EEO contract investigators and FAD letter writers complied with Postal Service contracting policies and procedures, we reviewed documents obtained from NEEOISO officials that described the contractor selection process and procedures. We compared the process and procedures to the *Supply Principles and Practices* and the contract delegation authority letters issued to the NEEOISO Executive Manager. We also discussed the process and procedures with Supply Management officials.

We reviewed contractor payment data in the Accounting Data Mart<sup>14</sup> to identify the 10 highest-paid contract investigators for FYs 2004 through 2007. We validated the data by comparing it to NEEOISO's Letter Generator Database<sup>15</sup> and through discussions with NEEOISO officials. We believe the data is sufficiently reliable to form our conclusions and recommendations.

We conducted this review from July 2007 through February 2008 in accordance with the President's Council on Integrity and Efficiency, *Quality Standards for Inspections*. We discussed our observations and conclusions with management officials on November 27, 2007, and January 8, 2008, and included their comments where appropriate.

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<sup>14</sup> The Accounting Data Mart is the repository for all Postal Service accounting and financial data.

<sup>15</sup> The Letter Generator Database is a NEEOISO database that contains all historical and current data on the processing of EEO complaints.

## APPENDIX C. PRIOR AUDIT COVERAGE

The OIG report, *Postal Service's Equal Employment Opportunity Organizational Structure* (Report Number HM-AR-04-004, dated January 8, 2004), concluded that the Postal Service's EEO organizational structure at the headquarters level was consistent with EEO guidance, but the organizational structure at the area level was not. As a result, there was an appearance of a conflict of position or interest in the placement of some Postal Service EEO officials. The report recommended the Vice President, Labor Relations discuss with the EEOC whether the Postal Service's EEO organizational field structure was consistent with the EEOC's regulations and guidance. Management stated that changes were made to the Postal Service's EEO organizational structure. On October 1, 2003, the Postal Service's Law Department assumed the advocacy function for EEO cases in which a hearing request is made. In addition, the investigatory function was being outsourced to independent contract investigators and would be managed from a national EEO services office that was scheduled to open on January 12, 2004. The OIG stated that management's actions taken or planned were generally responsive to the recommendations and should correct the issues identified.

**APPENDIX D. TEN HIGHEST-PAID EEO CONTRACT INVESTIGATORS  
FYS 2004 THROUGH 2007**

Redacted

## APPENDIX E. MANAGEMENT'S COMMENTS



February 13, 2008

DARRELL E. BENJAMIN, JR.

SUBJECT: Draft Management Advisory – The Postal Service's Equal Employment Opportunity Contracting Function (Report Number HM-MA-08-DRAFT)

Thank you for your efforts associated with this report and the opportunity to provide comments. There is an overreaching concept about supplier competition portrayed in the report that we would like to clarify. Unlike most federal agencies, the Postal Service is afforded exemption from full and open competition requirements of the Competition in Contracting Act, 10 U.S.C. § 2304 and the Federal Acquisition Regulation. The Postal Service has flexibility in its procurement practices as governed by 39 U.S.C. § 410 and has established a standard of adequate competition as our practice. Adequate competition is defined in the Supplying Principles and Practices under Process Step 2, Competitive Purchases as "the solicitation of a sufficient number of the best qualified suppliers to ensure that the required quality and quantity of goods and services are obtained when needed and that the price is fair and reasonable." Under a delegation of authority, the delegatee is not required to follow purchasing policies and procedures, only adhere to the five business principles outlined within the delegation letter.

When the National Equal Employment Opportunity Investigative Services Office (NEEOISO) was established, there was a backlog of approximately 4,000 Equal Employment Opportunity cases. In order to eliminate the backlog and develop a qualified supplier base, a contract with Manpower was established to solicit and screen investigative service suppliers. As stated in the report, Manpower received approximately 16,000 responses, of which about 220 were forwarded to the NEEOISO for further review and final vetting. Those 220 suppliers were trained and utilized to reduce the case backlog. Currently, there are approximately 100 qualified contract investigators who hold ordering agreements with the Postal Service and make up NEEOISO's competitive supplier base. While shifting workloads and supplier attrition will naturally alter the number of required investigators and final agency decision (FAD) letter writers, NEEOISO will consistently maintain a pool of qualified suppliers sufficient to ensure that adequate competition among suppliers is achieved.

We agree with the report's recommendation and have asked the Executive Manager, NEEOISO, to fully document the processes and procedures used to solicit and select Equal Employment Opportunity contract investigation and FAD letter writing services. In fact, such efforts are currently underway. Selection documentation is in draft form and, when complete, will address how the processes and procedures ensure compliance with the five business principles set forth in the delegation of authority. The documentation process should be completed by June 2008. In addition, other associated processes and procedures are being reviewed to determine whether additional documentation is needed to ensure compliance with your recommendation. All actions are targeted for completion by the end of the FY2008.



If you have any questions about this response, please contact Susan Witt at [REDACTED]

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