



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111
March 26, 2003

MEMORANDUM FOR DIRECTOR OF EQUAL EMPLOYMENT OPPORTUNITY
AND CIVIL RIGHTS

SUBJECT: Request for Exemption of Equal Employment Opportunity Functions

Reference memorandum, Director of Equal Employment Opportunity (SAMR-SFEOA), subject: Inclusion of Equal Employment Opportunity (EEO) in Fair Act, January 5, 2001.

Function. This request includes civilian employees performing a variety of EEO functions (policy development, program management, targeted outreach, program evaluation, statistical analysis, affirmative employment planning, accessibility surveys, complaint processing, training) at the headquarters level and in the field.

Decision. The EEO functions cannot be considered an Army Core competency. Army officials in the management headquarters as well as in the field, who render decisions on EEO complaints, or are making discretionary decisions on behalf of the Government, are performing an inherently Governmental function. In the event an installation becomes contractor operated, with only a few Government employees remaining on-site to administer the contract, the local EEO function will be effectively eliminated from on-site performance and for the federal civilian employees remaining on site, they will be serviced by the nearest appropriate EEO activity.

Requestor's Position on Issues. The requestor claims that all EEO functions are inherently Governmental.

Standard of review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. The EEO function is not one of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Therefore, the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war-fighting competencies are not relevant to the EEO function.

Statutory Requirements Relevant to Risk Issue. The Civil Rights Act of 1964, as amended in 1972, empowers the Equal Employment Opportunity Commission to issue, amend, or rescind suitable procedural regulations. Title 29 of the Code of Federal Regulations, Section 1614.102(b)(4) directs agencies to designate a Director of Equal Employment Opportunity who shall be under the immediate supervision of the agency head. Duties of EEO employees, which are so intimately related to the public interest as to mandate performance by Government employees, are outlined throughout Section 1614.102. Currently, the Equal Employment Opportunity Commission is considering revisions to the administrative complaint process, which may shift the investigation and decision responsibilities away from the agency to be consolidated with the Commission; therefore, the Army's role may be reduced to conducting an informal pre-complaint inquiry and alternate dispute resolution.

Inherently Governmental Relevant to Outsourcing Decision. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. The exemption request claims that all EEO functions are inherently Governmental. Those Army officials who render decisions on EEO complaints are performing an inherently Governmental function as they are using discretion in applying Government authority. Employees who advise management officials on various EEO laws and regulations, however, are not performing an inherently Governmental function.

Statutes Relevant to Sourcing Decision. The Civil Rights Act of 1964, as amended in 1972, empowers the Equal Employment Opportunity Commission to issue, amend, or rescind suitable procedural regulations. Title 29 of the Code of Federal Regulations, Section 1614.102, sets forth agency obligations related to administering a federal EEO program.

Personal Services Relevant to Sourcing Issue. Where supervision by an official making inherently Governmental decisions in a management headquarters is required for effective performance of an activity in support of that decision maker, there

is a basis for exempting that activity, whether advisory or clerical support, to avoid an inappropriate personal services contract. In addition, if persons supervised by an inherently Governmental decision maker in turn must supervise individuals supporting them in order to effectively perform the activity, a further extension of this exemption may be warranted. Those EEO officials rendering decisions on EEO complaints must also closely supervise and provide directions to the immediate staff within their office. Outsourcing this limited advisory/clerical staff may result in an inappropriate personal service contract; therefore, it is appropriate to exempt the entire EEO activity.

Conflicts of Interest Relevant to Sourcing Decision. No conflicts of interest were substantiated in the request.

Military Conversions. Not applicable to this request.



Reginald J. Brown
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

CODING RULES for Equal Employment Opportunity

1. EEO Policy Organizations:

Personnel in:

Office of Equal Employment Opportunity and Civil Rights (within ASA(M&RA) – W00SAA)
EEO Complaints Compliance Review (within Army Review Boards Agency – W336AA)
(for the FY2004 inventory these offices have been realigned to Civilian Personnel Field Agency (W40WAA))

- | | |
|--|---|
| a. Director of the EEOCR | Code E – Civilian Decision and Control |
| b. EEO Managers (GS-260-14 and higher) | Code E – Civilian Decision and Control |
| c. EEO Specialists (GS-260-13 and lower) | Code L – Protected by Law, Statute, Treaty or Agreement |

2. EEO Operations

GS-260's in all other Army organizations

- | | |
|---|---|
| a. EEO Managers - highest graded GS-260(s) in each unit | Code E – Civilian Decision and Control |
| b. EEO Specialist - other GS-260s in same unit | Code L – Protected by Law, Statute, Treaty or Agreement |
| c. EEO Assistants – civilians in GS-0361 | Code L - Protected by Law, Statute, Treaty or Agreement |