

ATTACHMENT 1

STATEMENT OF WORK DISCRIMINATION COMPLAINT INVESTIGATIONS IN FEDERAL EMPLOYMENT UNITED STATES PATENT AND TRADEMARK OFFICE

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- Authority
- Investigative and Acceptability Standards
- Required Methods
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Purpose

1. The Office of Civil Rights administers the internal United States Patent and Trademark Office discrimination complaint program. Part of this responsibility is to conduct or provide for the investigation of discrimination complaints based on race, color, religion, sex, national origin, age, disability, or retaliation brought by employees and job applicants within the Agency. The investigations must comply with regulations of the Equal Employment Opportunity Commission and the specific requirements of the Agency.
2. This Blanket Purchase Agreement (BPA) is to acquire resources from the private sector to provide investigations by either traditional investigative or fact-finding conference methods to meet the indefinite quantity requirements of the Agency during the period of performance under the award.
3. The statement of work provides the authorities, the standards for acceptable delivery, and the required methods for conducting and reporting traditional and fact-finding conference investigations under the BPA.
4. Upon award each contractor, or contractor employee to work on this BPA, shall execute and return to the COTR the Non-Disclosure Agreement [Appendix I.] before the company and / or its employees will be allowed to commence to providing investigative services.

Authority

5. The authority for conducting discrimination complaint investigations within the United States Patent and Trademark Office is delegated to the Director, Office of Civil Rights. The Agency's internal discrimination complaint program is described by [United States Department of Commerce] Department Administrative Order 215-9.¹

6. The authority for the Agency's EEO complaint processing program is contained in the regulations of the Equal Employment Opportunity Commission at 29 CFR § 1614, and policy guidance provided by EEOC Management Directive 110 [November 9, 1999]. Related laws and regulations governing the Agency's authority to process complaints of discrimination include 42 U.S.C. 2000e-16; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; 29 U.S.C. 206(d); E.O. 10577, 3 CFR 218 (1954-1958 Comp.); E.O. 11222, 3 CFR 306 (1964-1965 Comp.); E.O. 11478, 3 CFR 133 (1969 Comp.); E.O. 12106, 44 FR 1053 (1978); and Reorganization Plan No. 1 of 1978, 43 FR 19807 (1978).

Investigative and Acceptability Standards

- Blanket Purchase Agreement (BPA)
- Withdrawal/Resolution/Settlement
- Task Limitations
- Analysis Theory
- Determination of Adequacy

BPA

7. Each investigation will require an in-person, on-site interview, teleconference interview, or fact finding conference investigation of a specific EEO complaint. Contractor shall specify which investigative method will be used, either traditional investigation or fact-finding conference. Telephone interviews are permitted on a case by case basis with the consent of the agency. The maximum period of performance for each investigation is sixty (60) calendar days unless otherwise stated in the BPA call. The contractor shall deliver the final approved Report of Investigation [ROI] as a Microsoft Word document on (1) compact disc, (1) original and (5) paper copies in final form to the agency. **In certain occurrences, the agency will require an expedited investigation. The degree of urgency will determine the time period in which the completed investigation and delivery of the final ROI is required. The categories for expedited delivery are as follows:**

25-29 calendar days

¹Many of the United States Department of Commerce's Department Administrative Orders were adopted by the Agency when it became a Performance Based Organization in April 2000. Department Administrative Order 215-9 was one of the orders that was adopted by the USPTO at that time.

30-34 calendar days
35-39 calendar days

8. Traditional EEO investigations use face-to-face interviews to develop affidavits and/or replies to interrogatories to get the testimony needed for the ROI, whereas fact finding conference investigations [FFC] use face-to-face interviews with a court reporter in a conference setting to obtain the testimony. The statement of work describes the required methods for both.

9. The Office of Civil Rights has adopted uniform time requirements for complainant and witness responses to requests from EEO investigators. See, Appendix II, Letter of Authority. The standard reply time is 15-calendar days from the date any witness receives a written request for information or documents, a draft affidavit, or a set of interrogatories from the investigator. To invoke the time requirement, the written request must be hand-delivered or sent via Certified-Return Receipt Mail and documented as evidence in the ROI.

Withdrawal/Resolution/Settlement

10. Complaints may be withdrawn and the investigation canceled at any time by written statement by the complainant. Complaints may also be withdrawn and the investigation canceled at any time by a written settlement agreement between the agency and the complainant.

11. Should a complainant desire to withdraw their complaint, have the complainant execute a written statement, date and witness the statement and send the document to the COTR. The COTR will confirm the withdrawal and then accept the signed withdrawal as the completed, full delivery.

12. Should a complainant desire to settle the complaint and initiates this request with the contractor, have the complainant execute a written statement defining the requested settlement terms and conditions, date and witness the statement and send the document to the COTR. The COTR will confirm the settlement offer and then determine to continue or discontinue the investigation. If the contractor's settlement document results in a definitive settlement of the complaint, it will be accepted as a completed, full delivery. If the investigation is otherwise discontinued, the contractor will be paid for actual time spent under the discontinue order terms in accordance with contract section F.1 and FAR Clause 52-242-15.

Task Limitations

13. Each investigation ordered under this BPA shall be limited to the specific issues accepted by the Office of Civil Rights. The accepted issues and incidents relevant to them constitute the purview of the investigation. Any new issues that may be raised by the complainant should be referred to the COTR.

14. THE CONTRACTOR SHALL NOT INVESTIGATE, AGREE TO INVESTIGATE OR COMMENT ON THE ACCEPTABILITY OF ANY NEW ISSUE; however, the complainant

may add or delete the bases for their allegations at any time during the complaint process. Changes in bases must be covered by the investigation.

Analysis Theory

15. The method of analyzing discrimination claims and allocating the burden of proof was developed by the Federal and Supreme Courts. Although the burden of proof shifts between the complainant and the agency, the complainant always bears the ultimate burden of persuading the Agency, EEOC or court that discrimination occurred.

16. In the federal complaint process, the complainant bears the initial burden of proof. He or she must establish facts, which, if unexplained by the agency, would allow a reasonable person to infer that discrimination occurred. This is the *prima facie* case.

17. Generally, the complainant can establish a *prima facie* case by showing that:
1) He or she belongs to one or more groups protected by federal civil rights laws; and 2) employees outside the protected group and who are similarly situated to the complainant were treated more favorably. To be “similarly situated”, all relevant aspects of a comparable employee’s situation must be nearly identical to the complainant’s. The relevant question is whether the complainant and the comparable employees were treated differently under similar circumstances. Complainants alleging age discrimination, disability discrimination or retaliation for participating in the EEO process can also establish a *prima facie* case by showing that the action complained of would not have occurred “but for” their age, disability, or participation in EEO activity.

The Complainant’s Testimony

18. The contractor’s ROI must establish that the investigator asked the complainant to identify the basis for the complaint (race, sex, age, etc.), to describe the treatment complained of, and to identify others whom he or she believes received more favorable treatment. Even if the complainant is unable to identify any comparable employees, the investigator must ask what is the factual basis for the complainant’s belief that he or she was discriminated against.

19. Each complainant’s affidavit or FFC testimony shall demonstrate that the complainant was given the opportunity to define a claim for compensatory damages and to set out fully how he or she was damaged, what relief is requested and the nature of that relief.

20. The ROI must also reflect that the complainant had an opportunity to produce evidence that the agency’s explanation is a pretext for discrimination and/or is unworthy of belief. If the agency’s response is unknown to the complainant at the time he or she testifies, the investigator should conduct a follow-up interview after obtaining the agency’s response. If the complainant has already executed an affidavit or replied to interrogatories, the investigator may need to prepare a supplemental affidavit or set of interrogatories. If the investigation is conducted by Fact-Finding Conference, the investigator may recall the complainant to give additional

testimony on the record, or if the conference has concluded, may prepare a supplemental affidavit or set of interrogatories.

The Agency Witnesses

21. Once the complainant has produced his or her evidence in support of the *prima facie* case, the burden of proof shifts to the agency to articulate a legitimate, nondiscriminatory reason for its action. The agency must explain why it took the action complained of, but it does not need to disprove the complainant's allegations. The investigator must interview the agency officials who were involved in the decision making process or who otherwise have personal knowledge of the matter giving rise to the complaint. The ROI must also demonstrate that agency officials were asked to provide any evidence in support of their position.

22. If the investigator is aware of the complainant's assertions of pretext at the time he or she interviews the agency witnesses; it is advisable to obtain the agency's response to these claims. If the agency's initial explanation for its action provide evidence sufficient to address the pretext claims, follow-up interviews can be avoided.

The Standard of Proof

23. The standard of proof in discrimination claims is the "preponderance of the evidence." This means that a party must prove his or her case by evidence which is more creditable and convincing than the evidence presented by the other side.

24. Exclusive of the provisions of the Prompt Payment Act, the United States Patent and Trademark Office shall have 15 calendar days from COTR's receipt of product to inspect all deliveries under this BPA to determine if the ROI is adequate to meet the requirements of the Government. If the government does not approve the deliverable due to excessive spelling or grammatical errors or defective organization/presentation the deliverable will be rejected and contractor will be notified. Once notified, the vendor must provide an acceptable deliverable within 15-30 calendar days. The time frame for corrected deliverable is contingent upon the scope of errors.

25. Conduct and report each investigation using the required methods for the type of investigation ordered. Each delivered ROI shall include a thorough review of the circumstances under which the alleged discrimination occurred, the agency organization and employees involved, and the agency's mission as it is involved with the accepted issues of complaint. The investigation shall discover and exhibit the evidence to establish the allegations and proofs of the complainant, the replies and proofs of the agency, what events/actions happened in fact, which employees are similarly situated to the complainant and what comparable treatment they received from the agency, and what corroboration exists to support the charge of discrimination or its denial.

26. The investigation must develop and report sufficient evidence to allow an independent trier of fact to adjudicate the charges of discrimination using the ROI as the sole source of

evidence to make a final decision. The ROI must also contain adequate descriptions and explanations to allow a person unfamiliar with the United States Patent and Trademark Office and its employment practices to understand the results of the investigation using only the ROI as his/her source of information.

27. The information needed for an appraisal of the utilization of persons by basis group(s) shall be recorded in statistical form in the investigation, unless specific information as to a person's membership or non-membership in the complainant's group is needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint because the person(s) have been named as part of the complainant's allegations and/or the agency reply.

28. If necessary, such as the case for national origin or religion, the investigator shall obtain information regarding the membership or non-membership of a person in complainant's protected group by asking each person concerned to provide the information voluntarily. The investigator shall not require or coerce an employee to provide this information.

29. Delivered ROI's shall contain the following minimum evidence:

- a. The formal complaint.
- b. EEO Counselor's report and attachments.
- c. Complaint transmittal, acceptance, and decision letters.
- d. Contractor's letter of authority. (The COTR will furnish a. through d. with the task order.)
- e. An accurate organization chart prepared by the investigator identifying and defining the relationships of the organizations, involved parties and testifying witnesses by unit, job title, series, grade, and basis groups. Comparable employees or applicants shall be identified only by number and/or job title, unless specifically named as part of the complainant's allegations and/or the agency reply.
- f. Complainant's affidavit or FFC transcript of sworn testimony sufficient to explain the allegations and reasons for them, to establish complainant's prima facie case and pretext arguments, claims for compensatory damages, and to develop what evidence the complainant has to prove the complaint.
- g. Affidavits or FFC transcript of the sworn testimony of responding agency witnesses sufficient to fully articulate the agency's reply to all allegations raised by the complaint or developed by the investigation, and to fully report the existing evidence to defend the agency's actions.

- h. Affidavits or FFC transcript of the sworn testimony of corroborating and developed witnesses sufficient to resolve the issues in the complaint, or to otherwise provide evidence of what actions occurred to complainant and similarly situated employees or candidates, why, and if the reasons are legitimate and nondiscriminatory or not.
- I. Documentation relevant to the matters at issue sufficient to substantiate the events and claims in the complaint; to provide the existing evidence of what happened to complainant and similarly situated employees or candidates; to provide the regulations, authorities and/or standing practices of the agency which may have authorized, required or prohibited the actions being investigated; and to provide evidence proving the occurrences to be legitimate and nondiscriminatory or not.
- j. A statistical survey of the comparable treatment of similarly situated employees or candidates, identified by base group membership(s), that is directly relevant to the complained of actions or decisions covering the most recent two-year period. Likewise, if there are no comparable actions, employees or candidates the ROI must provide clear explanation and corroboration of that fact.
- k. Any investigator's testimony of record reviews, research, necessary observations, unsigned witness information, evidence of tampering with a document that may not be apparent from copies to be exhibited, and reporting any situation affecting the full coverage of the investigation.

Required Methods

Traditional EEO Investigations

- 30. Planning The Investigation. Analyze the accepted issues in the complaint and the information disclosed with the assignment. The places of investigation, the evidence to be obtained and the direction of the investigation will vary from case to case.
- 31. The COTR will issue a task-specific Scope of Work, and copies of the formal complaint, EEO Counselor's report, acceptance letter/s defining the issues accepted by the Office of Civil Rights, and related complaint history documents. The contractor shall develop an initial investigative plan from these documents and then;
 - a. Contact the Office of Civil Rights with the investigation plan, the anticipated investigative schedule and a request for referral to an agency EEO Specialist to discuss any administrative support necessary for the investigation.
 - b. Contact the complainant, and, if applicable, his or her Representative, to announce the assignment of the investigation and provide to that person a copy of the Letter of Authority by mail, fax or in-person.

32. Interviewing Witnesses. Conduct face-to-face interviews with all witnesses at the sites of investigation and reduce pertinent testimony to standard affidavits in forms admissible as evidence to Federal appellate agencies and Courts. (Appendix III., Standard Affidavit Format).
33. Perform the following at the inception of each interview:
- a. Provide clear identification by Letter of Authority (Appendix II.) and photographic identification or Federal Government Credential.
 - b. Inform the witness of the investigation's purpose and how their testimony shall be used.
 - c. Answer any questions by the witness regarding their rights and obligations in the complaint process. *[Contractors may obtain from the COTR copies of available OCR employee brochures which explain the EEO complaint process, EEO investigations, and Fact-Finding Conferences, and use them as handouts.]*
34. Permit complainants, the principal agency witness, **and all** witnesses placed in an adversary posture by the complaint or by the investigation to seek counsel or to consult representatives in answering questions or executing affidavits, if requested.
35. Standard affidavits are required by EEOC regulations, and specified by EEOC Administrative Judges and the EEOC Office of Federal Operations. Obtain and exhibit the testimony of all parties to the complaint, witnesses to the events, or those having relevant knowledge about the issues in the complaint using affidavits or interrogatories signed under oath, affirmation, or penalty of perjury that the information is true and correct.
36. Affidavits may be typed or handwritten. The witness must initial each page and sign the statement in the presence of the investigator. The investigator shall then sign the affidavit as witness, (Appendix III., Affidavit Format).
37. If a handwritten affidavit is executed a typed facsimile must be prepared, labeled as such in a clear manner on each page of the facsimile, and located in the report under the same exhibit preceding the handwritten copy.
- a. The facsimile face page shall identify the typist -- "Prepared by (name/date)".
 - b. The Report Index shall describe both documents under the exhibit.
38. The investigator shall provide each witness a copy of his/her own affidavit, and a copy of the facsimile if one is prepared, when executed or by return mail.
39. Use interrogatories when witnesses are beyond commuting distance from the sites of the investigation or when a mailed response is necessary. Always telephone the proposed witness prior to mailing the interrogatories to verify the address and to answer any questions the witness may have.

40. If interrogatories are used, the investigator shall prepare an appropriate cover letter to meet the same informational and advisement obligations as imposed by a face-to-face interview. Require the replies to the interrogatories within 15-calendar days from the date of receipt.
41. Send interrogatories Certified Mail-Return Receipt.
42. Interrogatories need not be witnessed by a second party but must be attested to and signed by the witness.
43. Obtaining Documents. Personally obtain documents to be entered into evidence from official agency files from the custodian of record, from other accountable agency witnesses, or from other Department offices by verbal request. Grant reasonable latitude to custodians requesting supervisory clearance to release requested material, provided the investigation is not delayed and the documentation is furnished within 15-calendar days from the date of the request. Refer difficult situations to the COTR.
44. AGENCY DOCUMENTS PROVIDED AS PART OF THE ADMINISTRATIVE COMPLAINT FILE, THE EEO COUNSELOR'S REPORT, OR OBTAINED FROM THE COMPLAINANT ARE NOT CONSIDERED AS COMING FROM AN ACCOUNTABLE AGENCY RECORD SYSTEM. The individual copy of such documents may be exhibited in the ROI, but the investigator must review or obtain the official agency copy of each document to make certain it is identical. The responsibility of determining the existence, relevancy, authenticity, usable copy, and inclusion of documents is the same investigative responsibility as developing and reporting witness testimony.
45. Personally conduct and report all file system record reviews as Investigator's Testimony, below, or obtain the results of reviews by agency witnesses as signed documents. Describe any evidence of tampering with or incompleteness of the files reviewed.
46. Investigator Testimony. If needed by circumstances in the investigation, the investigator shall personally report information as evidence in the ROI two (2) ways: exhibiting a signed Investigator's Memorandum for each subject matter being reported or making written notation on another exhibited document. In each instance, date and sign each document.
47. The word and reliability of the investigator is given great weight in the Federal discrimination complaint process. Information reported by the investigator may not substitute for the obligation of getting required witness testimony by affidavit, but, if appropriate, it may be entered into the ROI under exhibit and accepted as evidence.
48. Accepted conventions have developed where direct testimony by the investigator is appropriate and usable. The use of investigator testimony; however, is judgmental and the COTR will determine its acceptability in any situation. Standard conventions for investigator testimony generally include:
- a. Deleting names and information protected by the Privacy Act.
 - b. Assigning employee identification numbers and adding basis data to agency documents.

- c. Reporting file/record reviews conducted by the investigator to summarize comparable treatment or to explain searches for information.
- d. Reporting explanatory information concerning organizations, operations, or functions from witnesses who are not knowledgeable of the events or issues in the complaint.
- e. Reporting results of multiple interviews when sufficient corroboration has already been established by several affidavits, and the testimony is repetitive and substantively identical.
- f. Instances where an interview was conducted and the witness refuses to furnish an admissible affidavit or recants, the investigator is required to testify as to what was said to him or her.

49. Interviewing Complainants and Agency Witnesses. Interview the complainant and agency witnesses to obtain their testimony and to develop leads to other witnesses and to locate documentary evidence.

50. The agency official(s) whose actions are alleged to be discriminatory, whether identified by the formal complaint or during the course of the investigation, must respond to any and all allegations made against them or against the agency. During interviews make available to the agency officials all pertinent documents (i.e., documents in which the agency official is identified and charged with discrimination or other wrongdoing) that will appear in the ROI, including the EEO Counselor's report, the formal complaint, and the complainant's affidavit, to allow them full reply opportunity.

51. Decide which witnesses suggested by the complainant or the agency will have material and pertinent information, and develop additional witnesses as necessary to complete the investigation. Explain in an Investigator's memo if testimony is not taken from any witness(s) specifically requested by the complainant or agency officials. Also, explain if any relevant documentation could not be obtained during the investigation and why.

52. Notify the COTR immediately of any lack of cooperation, incident, confusion, or question of propriety, which would impact on the integrity and results of the investigation. The COTR will attempt to resolve any issues within the scope of the task order and this statement of work.

Fact Finding Conference Investigations

53. The Fact Finding Conference Investigation [FFC] is an alternate procedure designed to facilitate the collection of facts and evidence in an EEO investigation. The FFC method is generally faster and lends itself better as a forum to resolve the complaint.

54. In an FFC, the investigator takes direct testimony during a formal, face-to-face meeting of the complainant, the principal agency or operating unit witness, and other witnesses. The complainant and agency also formally present documents to the investigator during the proceeding. The investigator controls the FFC and decides who will testify, what questions will be asked, and whether the testimony being provided is germane to the issues that the Agency has accepted for investigation. The investigator shall decide which documents will be used for the ROI, consistent with the specifications of this statement of work. During the FFC, testimony is taken verbatim by a court reporter who is provided by the contractor. The testimony is transcribed by the court reporter and entered into the ROI by the investigator as a single exhibit. With the agreement of the attending parties, the investigator may also serve as a neutral participant and attempt to resolve the complaint by production of a signed settlement or withdrawal.

55. Agency and personal representatives (including staff of the Office of General Counsel and non-Federal attorney/advisors) may accompany the complainant and other witnesses. They may provide advice and assistance; however, the representatives may not testify, object to investigator questions or procedures, question any of the witnesses.

56. Investigations by FFC do not substitute for any hearing which may be conducted by the EEOC nor do they serve to indict, try, or adjudicate the complaint or individuals. The FFC is included in EEOC Management Directive (EEO MD-110), Chapter 6, VI.B., as a method available Federal agencies to conduct EEO investigations.

57. FFC Participants. The participants needed for an FFC will vary from case to case; however, because the conference is a singular, formal proceeding the participants must be planned for in advance of the date(s) for which the hearing is scheduled. Each FFC will include, but is not limited to, the following participants to testify under oath and/or provide documents without a pledge of confidence:

- a. Investigator. The investigator is a person working under contract for the agency trained in conducting EEO investigations and FFC's, and will notify the participants and conduct the proceedings.
- b. Complainant. The person who filed the formal complaint, he or she is entitled to be present throughout the FFC to provide testimony and other evidence pertaining to the accepted issues, to make points or raise questions when called upon by the investigator, and to have counsel.

- c. **Principal Agency Witness(s).** The principal agency witness is the person responsible for the activity or action involved in the complaint. The principal agency witness is normally the deciding official for actions at issue and the most knowledgeable about the reasons for the agency's position. The principal agency witness is entitled to listen to complainant's allegations and testimony, respond to the allegations, provide documentary evidence, and to have counsel.
- d. **Agency Representative.** The agency representative is an official of the operating unit concerned with the complaint, such as a labor counselor or a management employee relations specialist to be present during the FFC to ensure the agency's position is sound and supportable. This person may also assist the possible settlement of the complaint but is not to be the personal representative of the principal agency witness, above. The agency representative is entitled to be present throughout the FFC, to make a point or raise a question when called upon by the investigator, and to provide to the record a closing statement on behalf of the agency.
- e. **Personal Representatives.** Parties to the complaint may have personal representatives for counsel during the FFC but there is no requirement. A personal representative may provide counsel and advice to their client, and to make or raise a question when called upon by the investigator. The personal representative for the complainant, if present, may also provide to the record a closing statement on behalf of the complainant.
- f. **Witnesses.** Witnesses are agency employees or other persons having knowledge deemed relevant and material to the accepted issues. Each side is provided the opportunity to name witnesses and indicate what they believe each witness can contribute to resolving the issues in the complaint. The investigator decides which witnesses will appear by determining before the FFC who has the best, firsthand knowledge of the matters at issue to avoid taking repetitive testimony.
- g. **EEO Resource Person.** The Office of Civil Rights may furnish a staff person to assist coordinating witness scheduling in cases involving numerous participants. This person may also help copy documents and otherwise facilitate the FFC but is not a participant.
- h. **Court Reporter.** The court reporter records the testimony presented during the FFC verbatim and is provided by the contractor at their cost. The reporter may interrupt testimony to clarify an acronym, name or something else s/he did not understand. The reporter can also swear in witnesses, transcribe interrogatories, and read testimony or a prior witness from his/her notes.
- i. **Observers.** The Agency or operating unit may wish to have observers who are not parties to the complaint present during the FFC to learn information about the process. If either party objects to the presence of an observer, the investigator will consider the reasons and decide whether to permit or exclude the observer.

58. Planning The FFC. Analyze the accepted issues in the complaint and the information disclosed with the assignment. The place for the FFC, the evidence to be obtained and the direction of the investigation will vary from case to case.

59. The COTR will provide the contractor with a task order from the Agency's Contracting Officer, a Letter of Authority [Appendix II.], a task-specific Scope of Work, and copies of the formal complaint, EEO Counselor's report, acceptance letter(s) defining the issues accepted by the Office of Civil Rights, and related complaint history documents. Develop an initial investigative plan from these documents and then;

- a. Contact the Office of Civil Rights with the anticipated schedule for the FFC and request referral to an EEO Specialist to discuss any administrative support necessary for the conference.
- b. Contact the complainant, and, if applicable, their Representative, to announce the assignment of the FFC and provide to them a copy of the Letter of Authority by mail, fax or in-person.
- c. Provide written notice to the major participants and witnesses to confirm the date, time and location of the conference.

60. The Pre-Conference. Conduct a pre-conference of the involved parties not recorded by the Court Reporter. Give each party a copy of the complaint and any other relevant material. Answer questions posed about the process and attempt to ascertain if there is any possibility to settle the complaint. If there is a chance for settlement, pursue settlement negotiations until the complaint is resolved or it becomes clear resolution is not eminent.

61. The Formal FFC Proceedings. The formal FFC will commence if the complaint is not settled during the pre-conference. The investigator shall assign the seat for each party and inform the court reporter to begin recording the proceedings verbatim.

62. The investigator shall perform the following on the record at the inception of each FFC:

- a. Provide clear identification by Letter of Authority (Appendix II.) and photographic company identification or Federal Government Credential.
- b. Inform the witnesses of the investigator's purpose and the intent of the FFC.
- c. Answer any questions by the witness regarding their rights and obligations in the complaint process. *[Contractors may obtain from the COTR copies of available OCR employee brochures which explain the EEO complaint process, EEO investigations, and Fact-Finding Conferences, and use them as handouts.]*

63. The Investigator must permit complainants and all witnesses placed in an adversary posture by the complaint or the investigation to seek counsel or consult representatives in answering questions during the conference, if requested.

64. The investigator shall read into the record the names of those present and the issue(s) under investigation. After entering the preliminary information, the investigator will put the complainant under oath to reaffirm the allegations and explain them. The investigator will also

ask questions specifically pertaining to the accepted issues. The principal agency witness is then placed under oath and asked to respond, as questioned by the investigator.

65. The order of the witnesses and the sequence of issues in multiple issue complaints are decided by the investigator. In multiple issue complaints, the investigator may decide to address all issues with each witness in sequence or may decide to address only one issue at a time with each witness in sequence and return to the beginning for the subsequent issues, as may best benefit crafting the investigative record in the most logical and expedient way.

66. The investigator may introduce documents as evidence during the FFC which were obtained prior to the conference and/or request documents from the parties during the course of the conference. The request(s) for documents from parties, if done, will be on the record.

67. At the conclusion of the conference the complainant or their personal representative may provide a closing statement for their side and the agency representative [not the personal representative of the principal agency witness] may provide a closing statement for the agency; however, there is no obligation for closing statements by the parties. The investigator will determine the conclusion of the conference and close the record.

68. Witness Testimony. One of the goals of using the FFC is to avoid the requirement to conduct individual interviews to draft affidavits for witnesses to review, edit and sign. However, in cases where a witness is not available for good cause, the investigator shall conduct face-to-face or telephonic interviews to secure affidavits or seek the testimony via interrogatories.

69. If a witness is not available during the FFC and the investigator determines the witness is needed, the investigator may get the information by seeking affidavits or replies to interrogatories. The contractor shall follow the instructions for obtaining witness testimony by affidavit or interrogatories in, Traditional EEO Investigations, above.

70. Obtaining Documents. Prior to the start of the FFC the investigator may require the complainant and agency witnesses to provide all supporting documents at the time of the conference. The investigator may also personally obtain documents to be entered into evidence from official agency files from the custodian of record, accountable agency witnesses, or other Department sources by verbal request. Follow the instructions for obtaining documents in, Traditional EEO Investigations, above.

71. Investigator Testimony. In addition to the investigator's direct testimony on record during the FFC, circumstances may develop additional needs for the investigator to personally report information as evidence elsewhere in the ROI. Two forms are permissible: exhibiting a signed Investigator's Memorandum for each subject matter being reported or making written notation on another exhibited document. Follow the instructions for direct Investigator Testimony in, Traditional EEO Investigations, above.

72. The agency official(s) whose actions are alleged to be discriminatory, whether identified by the formal complaint or during the course of the investigation, must respond to any and all allegations made against them or against the agency. During the conference make available to the agency officials all pertinent documents (i.e., documents in which an agency official is identified and charged with discrimination or other wrongdoing) that will appear in the ROI,

including the EEO Counselor's report, the formal complaint, and the complainant's affidavit, to allow them full reply opportunity.

73. The investigator must decide before or during the conference, which witnesses suggested by the complainant or the agency will have material and pertinent information, and must develop such additional witnesses as necessary to complete the investigation. The investigator must explain on the record during the conference, or separately in Investigator memoranda exhibited in the ROI, if testimony is not taken from any witness(s) specifically requested by the complainant or agency officials. Also, explain if any relevant documentation could not be obtained during the investigation and why.

74. The contractor shall notify the COTR immediately of any incident, instance of confusion, question of propriety, or lack of cooperation encountered which would impact on the integrity and results of the investigation. The COTR shall attempt to resolve any issues within the scope of the task order and this statement of work.

Reporting Investigations (ROI)

75. The ROI is itself a form of testimony by the contractor as to the results of the work done under the authority of the Agency. The contractor is responsible for the accuracy of all information contained in the ROI as a condition of the BPA.

76. In preparing the ROI, arrange all relevant information and evidence under sequential, numbered exhibits.

77. Write a brief report summary to explain the content of the investigation, but DO NOT use the summary to report information or testimony as evidence. [See Investigator Testimony, above.]

78. Identify the complainant and witnesses by their basis membership(s) [i.e. race, sex, age, etc.] in affidavits and the exhibit descriptions of the affidavits.

79. Delete names and other information protected by the Privacy Act from the personal and agency documents of comparable employees and/or candidates other than the complainant. For documents of the complainant, only delete the complainant's SSN. Do not delete the names of comparable employees and/or candidates who have been specifically NAMED as part of the complainant's allegations and/or in the agency reply.

a. Always retain action and organization information, employment, experience and education information, and the pertinent information for which the document is exhibited.

80. Assign an identification number to each deleted name that is consistent to any other numerical reference to the same individual elsewhere in the ROI and provide a log of the names/numbers to the COTR under separate cover.

- a. Delete SSN's, home addresses, employees' home and office telephone numbers, military service information, names of references and their addresses, and information on relatives or supplemental personal information that is not needed to adjudicate the complaint.
 - b. Delete dates of birth and places of birth unless needed for complaints based on age or national origin. Delete pay, disciplinary references, security determinations, T&A data, rating and award information unless needed as evidence to answer the accepted allegation(s).
81. Contact the COTR for any question concerning Privacy Act requirements or deletions.
82. Organize the ROI exhibits in the following sequence:
- a. Administrative complaint documents in chronological order, from oldest to the most recent.
 - b. ***IF AN FFC ROI***, *The Record Transcript of the FFC taken and produced by the court reporter.*
 - c. Affidavits, statements, Investigator's memoranda, and data, studies and charts that were prepared during the investigation, in most logical order.
 - d. All evidence documents and regulations in chronological order of issue, from oldest to the most recent.
83. Generally, only one copy of any individual document is needed in the ROI. Always use the most legible copy, within the following guidelines:
- a. Documents which came with the EEO Counselor's report or that were furnished with the administrative papers may be detached and relocated within the ROI to facilitate logical organization.
 - b. Documents physically appended to the formal complaint form or to witness affidavits must remain appended in the same exhibit as the complaint form or the particular affidavit. In such cases, exhibit duplicate copies of the appended documents in appropriate exhibits.
 - c. If there is a substantive difference between two copies of a document that constitutes relevant evidence to the issue(s) in the complaint, exhibit a copy of both and explain the difference.
84. Visibly mark each page of material exhibited in the ROI with an exhibit and sequential page number.
85. Write a description of the exhibits or a report index that clearly identifies each document, the date of the document and the source. Describe affidavits and written statements submitted to

the investigator as possessive, i.e. "Affidavit of--". Descriptions need not be extensive, however, they must be exact and meaningful. Sources of documents may often be cryptically described, such as -- (OPF), (Pers. Merit File), (Mr. Jones, Wit.), (Bradford Smith, Personnel Management Specialist, OHR), (Complainant), (Public), (Office of Budget Chron), (USPTO Vac.#00-119), etc., as a logical continuation of the preceding exhibit description.

86. Placing any document into the report of investigation is a testimonial by the investigator that the document is authentic at-sight or is as described in the index of the report.

87. Label each report cover as follows:

U.S. United States Patent and Trademark Office

Report of Investigation

(Name of Complainant)

(Complaint Number <to be furnished>)

AND, as to Original Copy, Copy #__, and Volume #__, as appropriate.

88. Create a title page for each report volume with the following information in professional form:

OCR Complaint Number: <to be furnished>

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF CIVIL RIGHTS

EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT OF

(Name of Complainant)

(Position Title/Grade of Complainant)

(Office, Division, and/or Major Subdivision)

(City or Location in the Complaint)

Prepared by:

(Name and address of contractor)

<Also identify the volume number if more than one is reported.>

89. The report, or volume one of the report, shall contain a report section preceding the exhibits with the following minimum information:

United States Patent and Trademark Office, Office of Civil Rights, Crystal Park 1, Suite 608, 2011 Crystal Drive, Arlington, VA 22202

Report of Investigation

Complaint Identification

1. Complainant's name:
2. Job Title, Series, and Grade:
3. Name of organizational unit and address:
4. Complaint Reference Date: <to be furnished>
5. Complaint Number: <to be furnished>

Description of Investigation

1. Investigator: <Investigator's name, Contractor name, and Company address>
2. Date of Assignment: <date task order signed by Contracting Officer>
3. Places of Investigation: <or place and date of FFC>

Issues in Complaint

Nature of action, decision or condition giving rise to the complaint: <exact issue acceptance statement as in OCR acceptance memo, furnished>

Requested Relief: <delete if not stated>

Exhibits <or, Report Index>

(Describe the exhibits by number, title, source and number of pages in a clear, logical and functional manner.)

Summary <Summaries should be concise and not used to report evidence.>

Identify the involved unit, mission, and where the complainant fits in. State the issues as assigned. Follow with a summarization of any changes to the allegations made by the complainant and, if so, any pretext argued. State the agency reply and rationale. Briefly describe the relationship between the exhibits and the issues investigated.

If witness or witnesses, requested by the complainant or other agency witnesses or indicated by the record as being useful, were not interviewed, or if pertinent documents were not collected, highlight these events in the Summary. Describe the events and the reasons for them in detail in an Investigator's Memo and place the memo under exhibit in the report.

If applicable, exhibit Investigator's Memos to describe problems encountered which did or may have limited the investigation or otherwise affected its integrity. Describe any evidence of tampering or alteration of documents which may not be clear in the report copies by adding a cover memo to the exhibit containing the document.

Signed: <Signature of the Investigator>

Date: <Date submitted>

90. The contractor shall generate documents and reports using laser-jet, ink-jet, or similar printing systems capable of producing standard, black print with at least 150X150 resolution. Use printing fonts similar to Courier, M/S Arial or Sans Serif, or Times Roman of at least 12 points.

91. Print/copy all ROI's on 8-1/2 X 11 white bond paper, minimum 20-lb weight. Assemble the ROI's using numerical exhibit tabs that visibly protrude at the right edge and bind the reports at the top within press board report covers.

92. Completed volumes of the ROI shall not exceed 2-1/2 inches thickness, measured at the top binding. Investigations resulting in reports which exceed this dimension shall be continued in successive volumes in the same form as the primary volume. Successive volumes shall be described in the report index of volume one, and the subsequent volumes shall each contain a single title page and continue the exhibits in numerical sequence.

93. Original documents obtained during the investigation which exceed 8-1/2 X 11 shall be incorporated full-sized in the Original Copy of the ROI, but shall be photocopy reduced in the additional copies within the practical considerations of appearance and legibility as acceptable to the COTR. Oversized copy may be required.

94. Two-sided documents shall be exhibited in the Original Copy as obtained, however, one-sided copy shall be used in the additional copies of the report.

95. All exhibited material shall be fully visible and legible in the bound report as delivered. The top binding may not cover the information being reported. This consideration may become a problem because existing copies of Federal/Agency regulations, handwritten affidavits, forms, and other documents may have inadequate margins in their original state to accommodate regular report assembly. Some documents may have notations written into the margins by the involved

parties, which constitute evidence and must be seen. The contractor must develop and use sufficient presentation technique to overcome spacing problems as they arise. Often a 95% photocopy reduction will accommodate most problems and still retain legible presentation.

96. Completed investigations shall be delivered in final form as an Original Copy and 5 additional copies. The style and form shall be generally consistent with available examples of USPTO/OCR completed reports, and be bound, typed, exhibit tabbed, paginated, and copied to professional standards of appearance, legibility and fitness for purpose acceptable to the COTR.

USPTO will send a sample ROI document to each contractor that is awarded a BPA. The ROI deliverable will be organized exactly as the sample. This is the only acceptable format for the deliverable.

97. The contractor must have Internet E-mail capability (is this out of date???) to send and receive documents necessary for the administration of this BPA (invoices, correspondence with the COTR, etc.). Contractors can meet this requirement in a variety of ways using many different commercial services; however, the contractor's E-mail service must have 24-hour send and receive access and interface with United States Patent and Trademark Office's Network E-mail programs.

Travel

98. Nearly all of the United States Patent and Trademark Office employees are located in the greater Washington, D.C. area.

99. There is no travel reimbursement or travel consideration under this BPA for site investigations in Washington, D.C., and the surrounding metropolitan area up to 100 road miles from Washington, D.C.

100. When the COTR orders travel to specific locations, the Agency will reimburse contractor travel costs consistent with the guidelines and rates published by the General Service (There is specific language for Travel in accordance with JTR Administration for travel by federal employees.

Appendix I.

NON-DISCLOSURE AGREEMENT

I, _____, do solemnly swear (or affirm) that I will not divulge data acquired from the United States Patent and Trademark Office [Agency] to any unauthorized person or organization for any purpose.

Neither will I directly or indirectly use or allow the use of data acquired from the Agency for other purposes than that directly associated with my officially contracted duties.

Further, I will not discuss or reveal in any other way the nature of content of any data acquired from the Agency to any unauthorized person or organization.

An unauthorized person or organization shall mean any person or organization not assigned to federal discrimination complaint processing at the Agency or federal appellate agencies having jurisdiction over United States Patent and Trademark Office complaints.

I am aware that the data I will have access to contains personal information that is protected by law from unauthorized disclosure under the Privacy Act of 1974 [P.L. 93-579]. I agree as a sole proprietor, or I am aware that the firm employing under this BPA has agreed, to indemnify the Government for any civil damages incurred as a result of a violation of the Act committed by myself.

I am also aware that the unauthorized use of government information is a violation of the Federal Criminal Code [18 U.S.C. Section 1001]. As set forth in 5 CFR § 2504.16, unauthorized use is punishable by a maximum fine of \$10,000, imprisonment for not more than five years, or both.

Signed _____

Date _____

Firm _____

Signed _____
(Firm Key Contract Representative)

Date _____

Appendix II.
[DATE]

AUTHORITY TO INVESTIGATE

[COMPLAINT] has filed a complaint of discrimination against the United States Patent and Trademark Office. The Agency has contracted with [*person or firm*] to investigate this complaint.

I empower [*person*] to conduct this investigation on behalf of the Agency, as authorized by United States Department of Commerce Organization Order 20-10, as amended April 24, 1991. Upon presentation of this letter of authority and a photographic credential identifying the bearer as the same, you are required to cooperate with the investigation to furnish information, statements and/or affidavits without a pledge of confidence, and to provide access to files and records systems of the Agency to answer the complaint.

You are required to provide to the investigator the information requested by the 15th calendar day following your receipt of this letter and a written request for the information. Should you not provide the information by the 15th calendar day, the investigation will proceed to completion with or without your reply.

The information obtained by this investigation is protected by the Privacy Act of 1974 (P.L. 93-579), and it is collected for use in resolving the complaint of discrimination. The information will be incorporated into a report of investigation to be distributed to the United States Patent and Trademark Office, Office of Civil Rights, the complainant, and possibly to Federal appeal and court systems.

Assistant Director,
Dispute Resolution and Complaints Processing
Office of Civil Rights

Appendix III.

GENERAL AFFIDAVIT FORMAT

State of _____)

)

City of _____)

)

I, Mr. or Mrs. Name, GS-2345-01, Supervisory Witness, Office of Witness Statements, hereby solemnly swear [affirm or attest].

Body of Information Statement

I have read the above statement consisting of _____ pages. I declare under the penalty of perjury that my statement is true, correct, and complete to the best of my knowledge, information, and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

Name

Signed before me at
Arlington, Virginia
on this _____ day of Month, Year

Mary Reily, Investigator