



COMPLIANCE REVIEW REPORT

DEPARTMENT OF COMMUNITY SERVICES & DEVELOPMENT

Compliance Review Unit
State Personnel Board
August 28, 2015

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations.....	3
Examinations	3
Appointments.....	5
Equal Employment Opportunity	8
Personal Services Contracts.....	9
Departmental Response.....	11
SPB Reply.....	12

INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Department of Community Services & Development (CSD) personnel practices in the areas of examinations, appointments, EEO, and PSC's from August 1, 2013, through May 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied With Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied With Procedural Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The mission of CSD is to administer and enhance energy and community service programs that result in an improved quality of life and greater self-sufficiency for low-income Californians. The CSD fosters strong partnerships with local community organizations to provide high impact programs and leverage strategic resources resulting in ever-increasing hope, dignity, and quality of life for California’s low-income residents. The CSD has approximately 115 employees serving California residents.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CSD examinations, appointments, EEO program, and PSC’s from August 1, 2013, through May 31, 2014. The primary objective of the review was to determine if CSD personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

CSD examinations and a cross-section of appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CSD provided, which included examination plans, examination bulletins, job analyses (JA’s), 511b’s, scoring results, notice of personnel action forms, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation evaluations.

The review of the CSD EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CSD staff.

CSD PSC's were also reviewed. The CSD contracted for auditing services and IT consultant services.¹ It was beyond the scope of the compliance review to make conclusions as to whether CSD justifications for the contracts were legally sufficient. The review was limited to whether CSD practices, policies, and procedures relative to PSC's complied with procedural requirements.

On June 8, 2015, an exit conference was held with the CSD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDA's written response on August 18, 2015, which is incorporated into this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications (MQ's) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the MQs. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged

each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CSD conducted two examinations. The CRU reviewed both examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Information Officer III, Career Executive Assignment (CEA)	Department Promotional	Training & Experience (T&E) ²	11/27/2013	1
Senior Information Systems Analyst (Specialist)	Department Promotional	Education & Experience (E&E) ³	9/9/2013	3

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CSD administered two examinations to create eligible lists from which to make appointments. For all of the examinations, the CSD published and distributed examination bulletins containing the required information. Applications received by the CSD were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the MQ’s for admittance to the examination. The CSD notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ’s were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

² The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

³ In an education and experience (E&E) examination, one or more raters reviews the applicants’ Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience

The CRU found no deficiencies in the examinations that the CSD conducted during the compliance review period. Accordingly, the CSD fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CSD made 43 appointments. The CRU reviewed 16 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant Trainee	Certification List	Permanent	Full Time	1
Associate Budget Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Associate Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Information Officer III, CEA	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager III	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 16 appointments reviewed, 2 appointment files included applications in which EEO questionnaires were not separated from the STD 678 employment application. Specifically, 7 of the 580 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the STD 678 state application form states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CSD states that during the review period they went through a transition due to staff turnover. In prior practice it was the responsibility of the Personnel Technician to remove the EEO

questionnaires but due to the lack of resources, this oversight resulted in 7 out of 580 EEO questionnaires not being removed from applications.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSD submit to the CRU a written corrective action plan that the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments

Summary: The CSD did not prepare, complete, and/or retain required probationary appraisals of performance for 3 of the 16 appointments reviewed by CRU, as reflected in the table below.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Information Officer III, CEA	Certification List	1	2
Staff Information Systems Analyst (Specialist)	Certification List	1	1
Associate Budget Analyst	Certification List	1	1
Total		3	4

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed

the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CSD states that the current process does not contain adequate steps to ensure all probationary reports are completed.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSD submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code § 19172.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents, and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to

develop, implement, coordinate, and monitor the department's EEO program. In a state agency with less than 500 employees, such as CSD, the EEO Officer may be the Personnel Officer (Gov. Code § 19795.)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CSD EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CSD staff.

FINDING NO. 4 – Equal Employment Opportunity Program Complied With Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CSD's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the director of the CSD. In addition, the CSD has an established DAC, which reports to the Director on issues affecting persons with disabilities. The CSD completed a workforce analysis, which was submitted to the CRU. The CSD also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily

performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CSD had four PSC's that were in effect. The CRU reviewed three of those contracts, which were subject to the Department of General Services (DGS) approval and thus our procedural review, and are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Onisko & Scholz, LLP	Audit Services	12/1/2013 – 11/1/2015	\$150,000.00	Yes
Richardson & Company	Audit Services	12/1/2013 – 11/1/2015	\$150,000.00	Yes
Webfortis	IT Consultant Microsoft CRM/XRM	5/1/2014 – 5/1/2016	\$249,000.00	Yes

FINDING NO. 5 – Personal Services Contracts Complied With Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSCs reviewed was \$549,000. It was beyond the scope of the review to make conclusions as to whether CSD's justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CSD provided specific and detailed factual information in the written justifications as to how each of the three

contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CSD's PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

The CSD has reviewed the compliance review report and does not dispute the findings. The CSD takes the findings very seriously and will be implementing necessary changes as a result of the final findings. The CSD's changes are as follows:

Findings 1, 4, and 5

Were found to be "in compliance" and no further action is required.

Finding 2

The CSD acknowledges that 7 out of 580 EEO questionnaires were not removed from applications. Process improvements were implemented as a result of these findings to ensure compliance.

All applications that are forwarded to the hiring manager will go through an additional review in an effort to ensure that the EEO questionnaires have been removed. The Human Resources' support staff conducts the first review and the Classification and Pay Analysts conduct the second review. The Classification and Pay Analysts assures compliance with the separation of the EEO questionnaire from the applications.

Finding 3

Upon an employee's appointment, all hiring managers receive an e-mail from Human Resources identifying when probationary reports are due for employees; included in the e-mail is a link to the STD 636 form, *Report of Performance for Probationary Employee*. Human Resources also has a tracking system that will be monitored to identify reports that have been completed or not, and will notify management accordingly.

Additionally, the importance of completing all probationary reports is a topic discussed during the mandatory 2-week *California Health and Human Services Supervisors' Training Academy*, and will continue to be emphasized during the training. Furthermore, CSD will continue to review the process and make necessary enhancements in an effort to ensure timely completion of all probationary reports.

SPB REPLY

Based upon the CSD written response, the CSD will comply with the CRU recommendations and findings. The CSD has already submitted a corrective action plan addressing the findings contained in this report.

It is further recommended that the CSD continue to comply with the afore-stated recommendations and submit to the CRU a written report of compliance within 60 days of the Executive Officer's approval.