



COMPLIANCE REVIEW REPORT

CALIFORNIA STATE LANDS COMMISSION

Compliance Review Unit
State Personnel Board
May 14, 2015

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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 the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California State Lands Commission (CSLC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2012, through November 1, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Job Opportunities Were Not Properly Advertised	Very Serious
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 staff of the CSLC serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration. The CSLC has jurisdiction and management control over certain public lands of the state that were received by the state from the United States. These lands are of two distinct types - sovereign and school lands.

When California became a state in 1850, it acquired approximately four million acres of land underlying the state's navigable and tidal waterways. Known as sovereign lands, these lands include the beds of California's navigable rivers, lakes, and streams, as well as the state's tide and submerged lands along the state's more than 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore. In addition, the state retains fee ownership of approximately 470,000 acres of school lands and also retains the mineral rights to an additional 790,000 acres.

In order to properly manage these lands, waterways, and resources, the CSLC has a staff of approximately 220 professional engineers, land managers, scientists, attorneys, surveyors, marine safety personnel, and administrative staff located in five areas throughout the state. These employees work in one of seven divisions, which include two leasing divisions (Land Management and Mineral Resources Management), the Marine Facilities Division, the External Affairs/Granted Lands Division and support divisions including Environmental Planning, Legal, and Administration and Information Services.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CSLC examinations, appointments, EEO program, and PSC's from November 1, 2012, through November 1, 2013. The primary objective of the review was to determine if CSLC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of CSLC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CSLC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CSLC 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 CSLC staff.

CSLC PSC's were also reviewed. The CSLC contracted for information technology consultation, environmental services, and janitorial services, among others.¹ It was beyond the scope of the compliance review to make conclusions as to whether CSLC justifications for the contracts were legally sufficient. The review was limited to whether CSLC practices, policies, and procedures relative to PSC's complied with procedural requirements.

On February 12, 2015, an exit conference was held with the CSLC to explain and discuss the CRU's initial findings and recommendations, and to provide the CSLC with a copy of the CRU's draft report. The CSLC was given until March 5, 2015 to submit a written response to the CRU's draft report. After a requested extension, on April 21, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance 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.

¹If 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.

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 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 minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of 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 CSLC conducted 17 examinations. The CRU reviewed 11 of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Property Appraiser	Open	Qualification Appraisal Panel (QAP) ²	04/08/2013	2
Marine Safety Operations Supervisor	Open	QAP	12/03/2013	4
Mineral and Land Auditor IV (Specialist)	Open	QAP	09/17/2013	3
Mineral Resources Inspector II	Open	QAP	02/25/2013	6
Mineral Resources Inspector III	Open	QAP	02/25/2013	4
Petroleum Reservoir Engineer	Open	QAP	09/27/2013	5
Public Land Management Specialist I	Open	QAP	10/28/2013	17

² The Qualification Appraisal Panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Public Land Management Specialist II	Open	QAP	10/28/2013	2
Senior Property Appraiser	Open	QAP	04/08/2013	3
Staff Environmental Scientist	Promotional	Education & Experience (E&E) ³	07/15/2013	2
Supervising Management Auditor	Promotional	QAP	09/05/2013	1

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

The CSLC administered 17 examinations to create eligible lists from which to make appointments. For all of the examinations, the CSLC published and distributed examination bulletins containing the required information. Applications received by the CSLC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The CSLC notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs 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.

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

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.

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 CSLC made 85 appointments. The CRU reviewed 30 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Assistant Chief, Marine Facilities Inspection and Management Division	Certification List	Permanent	Full Time	1
Assistant Chief, Mineral Resources Management Division, CSLC	Certification List	Permanent	Full Time	1
Associate Engineer, Petroleum Structures	Certification List	Permanent	Full Time	1
Associate Mineral Resources Engineer	Certification List	Permanent	Full Time	2
Associate Systems Software Specialist (Technical)	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Limited Term	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Graduate Legal Assistant	Certification List	Permanent	Full Time	3
Marine Safety Inspector	Certification List	Permanent	Full Time	2
Mineral Resources Inspector II	Certification List	Permanent	Full Time	1
Mineral Resources Inspector III	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Mineral Resources Inspector II	Certification List	Permanent	Full Time	1
Senior Boundary Determination Officer (Supervisory)	Certification List	Permanent	Full Time	1
Senior Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	1
Assistant Chief Counsel	Permissive Reinstatement	Temporary	Intermittent	1
Attorney III	Permissive Reinstatement	Intermittent	Intermittent	1
Business Service Assistant (Specialist)	Permissive Reinstatement	Permanent	Full Time	1
Senior Engineer, Petroleum Structures (Specialist)	Permissive Reinstatement	Temporary	Intermittent	1
Seasonal Clerk	Temporary Authorization Utilization (TAU)	Temporary	Intermittent	1
Mineral Resources Inspector II	TAU	Temporary	Intermittent	1
Seasonal Clerk	Transfer	Temporary	Intermittent	1
Systems Software Specialist I (Technical)	Transfer	Permanent	Full Time	1
Career Executive Assignment (CEA)	Retired Annuitant	Temporary	Intermittent	1
CEA	Information List	Permanent	Full Time	1
CEA	Range Restructure	Permanent	Full Time	1

FINDING NO. 2 – Job Opportunities Were Not Property Advertised

Summary: The CSLC made appointments to fill 14 vacant positions that it failed to properly advertise on the Vacant Position Database (VPOS), the state’s centralized recruitment portal. By not advertising, the CSLC’s recruitment strategy was not designed to be as broad and inclusive as necessary to ensure the identification of appropriate candidate groups. Of the 14 vacant positions, the

CSLC posted 3 internal bulletins within the CSLC to announce job opportunities for 2 Associate Mineral Resources Engineers and 1 Systems Software Specialist I. The CSLC failed to post 13 vacant positions on either the VPOS or internally. The CSLC states that “interviews were conducted by calling candidates from the certification list.” The CSLC has not provided a basis upon which it made exceptions to advertising.

Criteria: Departments are required to have recruitment strategies designed to be “as broad and inclusive as necessary to ensure the identification of an appropriate candidate group.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

Severity: Very Serious. All interested individuals were not provided the opportunity to apply. By failing to advertise, the department cannot be certain that it has hired the most qualified workforce.

Cause: The CSLC states that they did not implement policies and procedures requiring VPOS posting of all vacancies until mid-2013.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSLC submit to the CRU a written corrective action plan that the department will implement that will ensure that recruitment strategies are “as broad and inclusive” and that vacancies are posted on VPOS.

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 equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources 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. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the CSLC, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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 CSLC's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CSLC staff.

FINDING NO. 3 – 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 CSLC 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, and is the personnel officer and reports directly to the Executive Officer of the CLSC. In addition, the CSLC has an established DAC that reports to the director on issues affecting persons with a disability. The CSLC completed a workforce analysis, which was submitted to the CRU. The CSLC also provided evidence of its efforts to promote equal employment opportunity in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A personal services contract (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 CSLC had seven PSC's that were in effect. Five contracts were subject to Department of General Services (DGS) approval, and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Amec Environmental Services	CEQA Document	5/10/2013-5/9/2016	\$1,117,546.00	Yes
Applied Marine Sciences	CEQA Document	12/20/2012-12/30/2017	\$1,071,273.00	Yes
Mcorp	IT Services	3/20/2013-4/30/2015	\$75,000.00	Yes
Natoma Technologies, Inc.	IT Services	6/29/2013-6/30/2015	\$249,920.00	Yes
Shandam Consulting Services	IT Services (CNRA Migration Project)	6/1/2013-6/30/2015	\$170,500.00	Yes

FINDING NO. 4 – 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 \$2,684,239. It was beyond the scope of the review to make conclusions as to whether CSLC justifications for the contract were legally sufficient. For all PSC’s subject to DGS approval, the CSLC provided specific and detailed factual information in the written justifications as to how each of the five contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, CSLC PSC’s complied with procedural requirements.

DEPARTMENTAL RESPONSE

The State Lands Commission agrees with the findings and has taken actions to ensure compliance in future reviews. (Attachment 1)

SPB REPLY

Based upon the CSLC's written response, the CSLC will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

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

MEMORANDUM

To: State Personnel Board
Attn: Suzanne Ambrose
801 Capitol Mall
Sacramento, CA 95814

Date: May 14, 2015

File: SPB 2015 Audit Response

From: Jennifer Lucchesi, Executive Officer

100 Howe Ave #100-S, Sacramento, CA 95825-8202

Subject: **Response to SPB Compliance Review Report**

The State Lands Commission (SLC) appreciates the opportunity to respond to the State Personnel Board's (SPB) Compliance Review Report. The SLC regards the audit process with a high degree of respect and views this process as a collaborative effort between the SLC and the SPB to ensure that our Human Resources (HR) office obtains its goal of full compliance with established requirements and best practices.

In 2013, the SLC participated in a baseline audit with the SPB. The SLC was found to be compliant in the areas addressed by this audit. Participating in this initial audit process helped us to identify a number of areas where our HR practices could be improved. By the time our initial Compliance Review Report was issued in November of 2013, we had instituted a number of improvements to our practices.

In February of 2014, we were notified by the SPB that we would be audited a second time. This new audit looked at our personnel practices in the areas of examinations, appointments, Equal Employment Opportunity and Personal Services Contracts from November 1, 2012 through November 1, 2013. This timeframe largely preceded the completion of the first audit and the changes that were implemented as a result of our 2013 SPB audit.

As a result, the Finding Number 2 in this Compliance Review Report is not reflective of our current practices. All of the identified deficiencies have been corrected.

The following is the SLC's response to the specific deficiencies noted in the Compliance Review Report.

Finding Number 2

The report indicates that 16 positions were not properly advertised. We have provided documentation showing our Job Bulletin Distribution check sheet for four positions indicating that the VPOS posting was done for those positions. The check sheet and bulletin for the Systems Software Specialist was utilized to fill two positions. Also provided is a duty statement for Senior Boundary Determination Officer with a hand written note on it indicating that the position was posted on VPOS from 8/30/13 to 9/6/13. The SLC recognizes that the SPB expects us to keep a copy of the VPOS posting in the exam file. **The SLC HR office has already corrected this process.**

Of the remaining 9 positions, two were for Retired Annuitants. Both of these individuals were hired based on their intimate knowledge of projects they had worked on as permanent employees of the SLC. **This practice has been changed to comply with the requirement to advertise all vacancies on VPOS.**

The remaining 7 positions were filled by using departmental examination lists many of which were for departmental specific classifications. Reachable candidates on those lists were contacted to arrange for interviews. Following our first compliance review, which concluded in November 2013, our practices in this area were changed to comply with the requirement to advertise all vacancies on VPOS. **Our current practices are consistent with this requirement.**

Summary

We appreciated the opportunity to discuss the findings in this report with you on February 12, 2015 and to explain the process changes we have instituted over the last two years to bring our Human Resources processes into compliance with requirements and best practices. As outlined here, all of the findings in this report have already been addressed by the State Lands Commission.

Please let me know if we can provide you with any additional information. I can be reached at (916) 574-1800 or Jennifer.Lucchesi@slc.ca.gov.