



COMPLIANCE REVIEW REPORT

**CALIFORNIA STATE TRANSPORTATION
AGENCY**

Compliance Review Unit
State Personnel Board
June 13, 2016

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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 five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training 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 Transportation Agency (CalSTA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from February 1, 2015, through February 29, 2016, and mandated training from February 1, 2014, through February 29, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Applications Were Not Date Stamped	Non-serious or Technical
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious

Area	Finding	Severity
Personal Services Contracts	Personal Services Contract Complied with Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied with Statutory 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 CalSTA was created by Governor Edmund G. Brown Jr. through his Governor’s Reorganization Plan #2, effective July 1, 2013. The CalSTA develops and coordinates transportation policies and programs to achieve the state’s mobility, safety, and environmental sustainability objectives. The CalSTA also provides necessary cabinet-level attention and focus to coordinate the policies and programs emanating from the following transportation-related entities: Department of Transportation, California Transportation Commission, High-Speed Rail Authority, Department of Motor Vehicles, California Highway Patrol, and Board of Pilot Commissioners.

In addition to the aforementioned entities, the Office of Traffic Safety (OTS) is an operational transportation-related entity, but that resides within the CalSTA. The OTS develops the California Highway Safety Plan. The plan uses available state and federal resources to identify and address major traffic safety problems throughout the state.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CalSTA examinations, appointments, EEO program, and PSC’s from February 1, 2015, through February 29, 2016, and mandated training from February 1, 2014, through February 29, 2016. The primary objective of the review was to determine if the CalSTA’s personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the CalSTA's examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CalSTA provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

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

In addition, the CalSTA's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On June 1, 2016, an exit conference was held with the CalSTA to explain and discuss the CRU's initial findings and recommendations. On June 7, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

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.

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 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 by 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 CalSTA conducted three examinations. The CRU reviewed all three of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
CEA A, Chief Director, Operations	Career Executive Assignment (CEA)	Statement of Qualifications (SOQ) ²	12/29/2014	6
CEA B, Agency Information Officer/Deputy Secretary for Information Technology	CEA	SOQ	Until Filled	11

² In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
CEA B, Deputy Secretary, Budget and Finance	CEA	SOQ	Until Filled	4

FINDING NO. 1 – Applications Were Not Date Stamped

Summary: For three of the exams administered, the CalSTA accepted 13 out of 21 applications that were not date stamped. Specifically, the CalSTA accepted three applications for the CEA A, Chief Director, Operations, eight applications for the CEA B, Information Officer/Deputy Secretary for Information Technology, and two applications for the CEA B, Deputy Secretary, Budget and Finance, without date stamps.

Criteria: California Code of Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application ‘within the time’ shall mean postmarked by the postal service or date stamped at one of the SPB offices (or the appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to a verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of a promotional examination. (Cal. Code Reg., tit. 2, § 174, suds. (a), (b), (c) & (d).)

Severity: Non-serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for an examination and to set a deadline for the recruitment phase of the examination. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the examination.

Cause: The CalSTA states that the failure to date stamp all applications was the result of oversight on the part of the employee accepting applications.

Action: The CalSTA has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Rule 174 as part of its departmental response, therefore no further action is required at this time.

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.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) 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 CalSTA made 15 appointments. The CRU reviewed all of the 15 appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Career Executive Assignment (CEA) A, Chief Director, Operations	List Appointment	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
CEA B, Agency Information Officer/Deputy Secretary for Information Technology	List Appointment	Permanent	Full Time	1
CEA B, Deputy Secretary, Budget and Finance	List Appointment	Permanent	Full Time	1
Office Technician (Typing)	List Appointment	Limited Term	Full Time	1
Staff Services Manager I (Specialist)	List Appointment	Permanent	Full Time	1
Staff Services Manager II (Managerial)	List Appointment	Permanent	Full Time	2
Staff Services Manager III	List Appointment	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Executive Assistant	Mandatory Reinstatement	Permanent	Full Time	4
Staff Information Systems Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Executive Secretary	Retired Annuitant	Limited Term	Intermittent	1

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

Summary: For the 15 appointments reviewed, four appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 51 of the 229

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 state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

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

Cause: The CalSTA states that during the timeframe pertaining to this review, there was a change in administrative staff and adequate training on the acceptance of applications was not provided.

Action: The CalSTA has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Government Code section 19704 as part of its departmental response, therefore no further action is required at this time.

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 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 CalSTA to develop, implement, coordinate, and monitor the CalSTA's EEO program. (Gov. Code, § 19795.)

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 CalSTA EEO program that was in effect during the compliance review period.

FINDING NO. 3– A Disability Advisory Committee (DAC) Has Not Been Established

Summary: The CalSTA did not have an active DAC during the period under review. However, as of May 2016, the CalSTA has active members on a combined DAC with the California Department of Transportation (Caltrans).

Criteria: 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).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities

and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The CalSTA states that, due to the small size of the agency, they have been unable to form and maintain an internal DAC.

Action: The CalSTA currently has active members on a combined DAC with the Caltrans and has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Government Code section 19795 as part of its departmental response; therefore, no further action is required at this time.

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 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 CalSTA had one PSC that was in effect and subject to General Services (DGS) approval. The CRU reviewed that contract listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Prosio Communications, Inc	Marketing Services	8/1/14-7/31/16	\$7,000,000.00	Yes

FINDING NO. 4 – Personal Services Contract 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 dollar amount of the PSC reviewed was \$7,000,000.00. It was beyond the scope of the review to make conclusions as to whether the CalSTA’s justifications for the contract were legally sufficient. For the PSC reviewed, the CalSTA provided specific and detailed fact-based information in the written justifications as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CalSTA PSC complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors basic supervisory training within twelve months of appointment. (Gov. Code, § 19995.4, subds. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

The CRU reviewed the CalSTA's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CalSTA provided ethics training to its six new filers within six months of appointment, and semiannual ethics training to its existing eight filers during the two-year calendar year period commencing in 2013. The CalSTA also provided supervisory training to its two new supervisors within 12 months of appointment. In addition, the CalSTA provided sexual harassment training to its 12 new supervisors within six months of appointment and semiannual sexual harassment training to its existing eight supervisors. Thus, the CalSTA complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The CalSTA's response is attached as Attachment 1.

SPB REPLY

Based upon the CalSTA's written response, the CalSTA will comply with the CRU recommendations and findings. The CalSTA submitted a corrective action plan for the three departmental findings that were out of compliance. Therefore, no further action is required.



Edmund G. Brown Jr.
Governor

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Brian P. Kelly
Secretary

June 7, 2016

Suzanne Ambrose
Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95818

Dear Ms. Ambrose:

The California State Transportation Agency (CalSTA) would like to thank the State Personnel Board's Compliance Review Unit for undertaking the 2015 CalSTA Compliance Review. CalSTA has reviewed the report and provides the following information regarding the findings.

Finding No. 1: Applications Were Not Date Stamped

Cause: Failure to date stamp all applications was the result of oversight on the part of the employees accepting applications.

Department Response: CalSTA will reinforce the practice of date stamping with the relevant staff. Moreover, with the implementation of new recruitment technology, applications submitted via the Exam and Certification Online System (ECOS) will be electronically stamped mitigating this finding. All applications submitted via mail/drop off will be date stamped when the application is accepted. Please find the attached written procedures provided to staff.

Finding No. 2: Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Cause: During the timeframe pertaining to this review, there was a change in administrative staff and adequate training on the acceptance of applications was not provided. Additionally, applicants are unaware that completion of the EEO Questionnaire is only required when applying for state examinations and not when applying for vacant positions.

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Department Response: Written procedures on the acceptance of paper applications have been provided to staff and management to ensure all EEO pages are removed upon receipt in the office. A staff member not part of the application review process will separate and shred the questionnaires before providing the applications to the panel for review. Moreover, with the use of ECOS, the need to remove this page will be phased out as applications are accepted electronically. CalSTA will adhere to the provided procedures for all paper applications received. Please find the attached written procedures provided to staff.

Finding No. 3: A Disability Advisory Committee (DAC) Has Not Been Established

Cause: Due to the small size of the agency, CalSTA has been unable to form and maintain an internal DAC.

Department Response: Due to the small size of the agency, CalSTA partners with a department under our purview for participation on a DAC. During the timeframe pertaining to this review, CalSTA had transferred contracted human resources services provided by the California Highway Patrol over to the California Department of Transportation (Caltrans). CalSTA is now an active member of the Caltrans' DAC. CalSTA representative reports back to the Secretary on issues of concern to employees with disabilities. Please find the attached roster as well as an agenda and minutes from the last meeting.

We appreciate the opportunity to respond to the compliance review. If you have any further questions, please contact Amanda Esquivias, Administration and Finance Manager, at (916) 324-7514.

Sincerely,



BRIAN P. KELLY
Secretary

Enclosure

- (1) Protocol for Receiving Employment Applications
- (2) CTDAC Roster
- (3) CTDAC Agenda and Meeting Minutes