



COMPLIANCE REVIEW REPORT

CALIFORNIA COASTAL COMMISSION

Compliance Review Unit
State Personnel Board
May 1, 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 Coastal Commission (Commission) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2012, through October 31, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Examinations	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 the Commission is to implement the Coastal Act and to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. The Commission was established by voter initiative in 1972 (Proposition 20) and later made permanent by the Legislature through adoption of the California Coastal Act of 1976.

The Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Commission or the local government.

The staff of the Commission consists of about 167 authorized positions (160.2 regular and 6.8 temporary help). The program staff reviews permit applications for coastal development projects and advises local governments on the coastal planning process. Many of these employees are in the Coastal Program Analyst classification series. They are supported by a range of scientific, legal, administrative, and management staff.

The Commission is an independent, quasi-judicial state agency. The Commission is composed of twelve voting members, appointed equally (four each) by the Governor,

the Senate Rules Committee, and the Speaker of the Assembly. Six of the voting commissioners are locally elected officials and six are appointed from the public at large. Three ex officio (non-voting) members represent the Resources Agency, the California State Transportation Agency, and the State Lands Commission.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing Commission examinations, appointments, EEO program, and PSC's from November 1, 2012, through October 31, 2013. The primary objective of the review was to determine if Commission 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 the Commission's 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 Commission 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 Commission's 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 Commission staff.

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

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.

On February 20, 2015, an exit conference was held with the Commission to explain and discuss the CRU's initial findings and recommendations, and to provide the Commission with a copy of the CRU draft report. The Commission was given until April 17, 2015 to submit a written response to the CRU draft report. On May 1, 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. 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 with 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 Commission conducted five examinations. The CRU reviewed all of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Governmental Program Analyst	Departmental Promotional	Education and Experience ²	9/27/2013	4
Coastal Program Analyst I	Open	Qualifications Appraisal Panel ³ (QAP)	Continuous	334
Coastal Program Analyst II	Open	QAP	Continuous	131
Coastal Program Analyst III	Open	QAP	Continuous	54
Coastal Program Manager	Open	QAP	Continuous	57

FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process

Summary: A job analysis was required for each of the civil service examinations. The Commission was unable to provide job analyses for the Coastal Program Analyst I, II and III series and Coastal Program Manager examinations.

Classification	List Active Date	List Expiration Date	No. of Eligibles	No. of Vacant Positions as of 9/30/14
Coastal Program Analyst I	Multiple dates	Multiple dates	334	3
Coastal Program Analyst II	Multiple dates	Multiple dates	131	8
Coastal Program Analyst III	Multiple dates	Multiple dates	54	2
Coastal Program Manager	Multiple dates	Multiple dates	57	1

² 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.

³ 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.

Criteria: The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, § 50, mandates the development and use of a job analysis for the examination process. A “job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State’s civil service.” (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM, and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examinations may not have been job-related or legally defensible.

Cause: The department had been relying on previous desk audits and the expertise of subject matter experts in the development of examination materials. The job analysis process had been started, but not completed at the time of the review.

Action: Within 60 days of the SPB’s Executive Officer’s approval of findings and recommendations, the Commission must submit to the CRU a written report of compliance verifying that the above-stated examination lists have been abolished. Copies of any relevant documents should be included with the report. Prior to the Commission administering any future examinations, the Commission must create and develop each examination based upon a job analysis that meets the requirements of the MSM.

Furthermore, the CRU finds the appointments that were made from the examinations that were administered without a job analysis

were made in good faith, are over a one year old and did not merit being voided.

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

Summary: The Commission did not separate 9 of 35 EEO questionnaires from the STD. 678 employment applications for the Coastal Program Analyst I, II and III, and Coastal Program Manager examinations.

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 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.

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

Cause: The department believes that the forms in question were inadvertently left attached due to the receipt of multiple copies of the same application. Oftentimes, an applicant will send his/her application via email or fax and via postal mail. Additional copies of the application may be sent if the applicant wants to make changes to his/her original application. These additional copies were often received by different persons and placed behind the original application in the examination file without checking to remove the EEO Questionnaire.

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

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 Commission made 23 appointments. The CRU reviewed 20 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Limited Term	Full Time	1
Attorney III	Certification List	Limited Term	Full Time	1
Coastal Program Analyst II	Certification List	Limited Term	Full Time	4
Coastal Program Analyst II	Certification List	Permanent	Full Time	3
Coastal Program Analyst III	Certification List	Limited Term	Full Time	2
Coastal Program Analyst III	Certification List	Permanent	Full Time	1
Coastal Program Manager	Certification List	Limited Term	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Attorney	Mandatory Reinstatement	Permanent	Full Time	1
Coastal Program Analyst I	Mandatory Reinstatement	Permanent	Full Time	1
Coastal Program Analyst II	Mandatory Reinstatement	Permanent	Full Time	1
Coastal Program Analyst III	Mandatory Reinstatement	Permanent	Full Time	1
Environmental Scientist	Mandatory Reinstatement	Permanent	Full Time	1
Environmental Scientist	Transfer	Permanent	Part Time	1

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

Summary: The Commission did not prepare, complete, and/or retain required probationary reports of performance for 3 of the 23 appointments reviewed by CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Coastal Program Analyst II	Certification List	2	5
Environmental Scientist	Transfer	1	2
Total		3	7

Criteria: 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 department provided probationary report forms to managers prior to every due date, but did not have a system to require or track their completion.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Coastal Commission 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 section 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 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 Commission, the EEO officer may be the personnel officer. (*Ibid.*)

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 Commission EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate Commission 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 Commission'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, is also the personnel officer and reports directly to the director of the Commission. In addition, the Commission has an established DAC, that reports to the director on issues affecting persons with a disability. The Commission completed a workforce analysis, which was submitted to the CRU. The Commission also provided evidence of its efforts to promote equal employment opportunity 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 Commission had 71 PSC's that were in effect. Six 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
Acella, Inc.	Crystal Reports - Proprietary software maintenance and support	12/28/2013-12/27/2014	\$119,724.20	Yes
San Francisco State University	Biological and economic expertise services for NOAA Special Merit Grant Award	7/01/2013-12/31/2014	\$117,100.00	Yes
SF Bay Conservation and Development Commission	Federal Fund Pass Through to BCDC to Implement CA Coastal Management Program (CCMP)	7/01/2013-12/31/2014	\$292,697.00	Yes
Tides Center/Marine Education Project	Coordinates School Based Marine Education Project	9/23/2013-10/31/2014	\$99,000.00	Yes
Tides Center/Marine Education Project	Coordinates Community Based Restoration & Education	9/16/2013-9/30/2014	\$106,000.00	Yes
Tricor America, Inc.	Courier Services	4/01/2013-3/31/2014	\$324,000.00	Yes

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

When a state agency requests approval from the Department of General Services (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 PSC's reviewed was \$1,058,521.20. It was beyond the scope of the review to make conclusions as to whether Commission justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the Commission provided specific and detailed factual information in the written justifications as to how each of the six contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the Commission's PSC's complied with civil service laws and board rules.

DEPARTMENTAL RESPONSE

The Commission is dedicated to following all standards of fair examination and hiring. We have contracted to have comprehensive job analyses done of our department specific classifications. Internal processes in the Human Resources office have been revised to include: 1) consistent handling of all applications received to ensure no EEO questionnaires remain attached to the applications after receipt; and 2) probationary reports are tracked to ensure every required report is returned to Human Resources for filing.

SPB REPLY

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

It is further recommended that the Commission 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.