



COMPLIANCE REVIEW REPORT

DEPARTMENT OF TECHNOLOGY

Compliance Review Unit
State Personnel Board
December 23, 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 five areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts, 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 Department of Technology (CDT) personnel practices in the areas of examinations, appointments, EEO, personal services contracts, and mandated training from August 31, 2014, through May 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied With Civil Service Law and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

Area	Finding	Severity
Mandated Training	Mandatory 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 mission of the CDT is to support programs and departments in the delivery of state services and information to constituents and businesses through agile, cost-effective, innovative, reliable, and secure technology. The CDT guides policymakers and IT leaders in transforming California’s public sector operations and impacts how Californians access and deliver government services.

The CDT maintains up-to-date policies for IT activities to ensure the state adopts and uses best practices in IT management. The CDT ensures project specific decisions are consistent with the state’s policies and direction for IT development, including project management, oversight, risk mitigation, and procurement solutions. The CDT’s Office of Information Security is the primary state government authority responsible for ensuring the protection of state information, as well as the confidentiality, integrity, and availability of state systems and applications.

The CDT has approximately 923 employees working in over 50 classifications. More than half of CDT employees work in IT classifications within the Office of Technology Services, which delivers comprehensive and cost-effective computing, networking, electronic messaging, and cloud solutions to benefit the people of California.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CDT examinations, appointments, EEO program, personal services contracts, and supervisor training from August 31, 2014, through May 31, 2015. The primary objective of the review was to determine if CDT 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 CDT 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 CDT provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action 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 CDT 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).

CDT PSC's were also reviewed. The CDT contracted for elevator maintenance services.¹ It was beyond the scope of the compliance review to make conclusions as to whether the justification for the contract was legally sufficient. The review was limited to whether the CDT's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

On November 24, 2014, an exit conference was held with the CDT to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDT's written response on December 8, 2015, which is attached to this final compliance review report.

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.

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 CDT conducted three examinations. The CRU reviewed all three of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Deputy Director, Statewide Technology Procurement Division	Career Executive Assignment (CEA)	Statement of Qualifications ² (SOQ)	7/30/2014	6
Assistant Chief, Office of Technology Services	CEA	SOQ	8/19/2014	12
Executive Projects Director, Statewide Project Management Office	CEA	SOQ	1/30/2015	10

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.

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

The CRU reviewed all three of the examinations CDT administered to create eligible lists from which to make appointments. The CDT published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDT were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The CDT notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications 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 CDT conducted during the compliance review period. Accordingly, the CDT 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 CDT made 167 appointments. The CRU reviewed 32 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

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	2
Associate Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	2
Data Processing Manager IV	Certification List	Permanent	Full Time	2
Senior Information System Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Information System Analyst (Specialist)	Certification List	Permanent	Full Time	2
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager I (Specialist)	Certification List	Permanent	Full Time	1
Systems Software Specialist III (Supervisory)	Certification List	Limited Term	Full Time	1
Systems Software Specialist III (Technical)	Certification List	Permanent	Full Time	5
Office Technician (Typing)	Limited Examination and Appointment Program	Limited Term	Full Time	1
Staff Services Analyst	Reinstatement	Limited Term	Full Time	1
Data Process Manager III	Retired Annuitant	Temporary Authorization Utilization	Intermittent	1
Associate Systems Software Specialist	Transfer	Permanent	Full Time	1
Data Processing Manager II	Transfer	Permanent	Full Time	3
Systems Software Specialist II (Technical)	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Part Time	1
Data Processing Manager II	Reclassification	Permanent	Full Time	1
Business Services Officer I	Reinstatement	Permanent	Full Time	1
Data Processing Manager III	Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager II (Managerial)	Training & Development	Permanent	Full Time	1

FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The CDT did not prepare, complete, and/or retain required probationary reports of performance for 8 of the 32 appointments reviewed by the CRU, which are reflected in the table below.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Probation Reports
Associate Governmental Program Analyst	Certification List	1	1
Data Processing Manager IV	Certification List	1	1
Staff Information Systems Analyst (Specialist)	Certification List	1	2
Staff Services Manager I	Certification List	1	1
Associate Information Systems Analyst (Specialist)	Certification List	1	2
Data Processing Manager II	Transfer	3	8
	Total	8	15

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 CDT states that they relied on a manual system and lacked an automated tracking system to allow for follow-up as the due date approached to ensure probationary reports were submitted timely.

Action: The CDT has submitted a corrective action plan for ensuring full compliance in meeting the probationary requirements of Government Code section 19172 as part of its department 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 EEO; 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.)

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

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

Summary: The CDT does not have an active DAC.

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 CDT states that although the department had a DAC in 2012, it was discontinued due to declining participation caused by conflicting work obligations and members leaving the department.

Action: The CDT has submitted a corrective action plan for ensuring the establishment of an active DAC, has recruited new members, and has set a date for an introductory DAC meeting.

The CDT must also submit a copy of the new DAC roster, agenda, and meeting minutes no later than 60 days from the date of the SPB Executive Officer's approval and posting of this report.

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 CDT had one PSC that was in effect. The CRU reviewed the contract, which was subject to the Department of General Services (DGS) approval due to elevator maintenance being considered a hazardous contract per SCM Vol.1, and thus subject to our procedural review, and is listed below:

Vendor	Services	Contract Dates	Contract Amount	Sufficient Justification
Elevator Technology	Elevator Maintenance Services	May 1, 2015 – April 30, 2020	\$43,275	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 the one PSC reviewed was \$43,275. It was beyond the scope of the review to make conclusions as to whether the CDT justification for the contract was legally sufficient. For the PSC subject to DGS approval, the CDT provided specific and detailed factual 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 CDT 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)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (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 having 50 or more employees must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

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

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CDT provided semiannual ethics training to its 1 filer during the 2-year calendar year period commencing in 2013. The CDT also provided supervisory training to its 3 new supervisors within 12 months of appointment. In addition, the CDT provided sexual harassment training its 3 new supervisors within 6 months of appointment, and semiannual sexual harassment training to its 19 supervisors every 2 years.

DEPARTMENTAL RESPONSE

The CDT department response is attached as Attachment 1.

SPB REPLY

Based upon the CDT written response, the CDT will comply with the CRU recommendations and findings. The CDT submitted corrective action plans for both departmental findings that were out of compliance.

It is further recommended that the CDT 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 of this report.



Memorandum

To: Alton Ford, Compliance Review Manager
Policy and Compliance Review Division
State Personnel Board

Date: December 7, 2015

From: Melissa Matsuura, Deputy Director
Administration Division

**Subject: RESPONSE TO THE STATE PERSONNEL BOARD'S COMPLIANCE AUDIT
DRAFT REPORT**

The Department of Technology (CDT) respectfully submits the following information in response to the findings listed in the State Personnel Board's (SPB's) Compliance Audit draft report dated November 18, 2015:

Finding No. 3 – A Disability Advisory Committee Has Not Been Established

Cause:

A Disability Advisory Committee (DAC) was initially established in April 2012. Five employees submitted applications and letters of interest to be considered for the Committee and out of those five members, one was disabled.

The first DAC meeting was held in August 2012. Four members including the EEO Liaison were present. The DAC bylaws were distributed, read and accepted. The Committee decided because of the low participation, no officers would be elected at that time. It was also decided that the recording of minutes would rotate among current members. Due to declining participation in the DAC due to conflicting work obligations and members leaving the department, the meetings were discontinued.

Corrective Action Plan:

On September 18, 2015, the EEO Officer solicited recruitment for DAC members via an email to all CDT employees. A total of four employees submitted applications and letters of interest. Two of the employees are disabled. The EEO Officer has scheduled an introductory meeting with the members on December 10, 2015, to revisit the bylaws, present and discuss the previous Committee's action items, and solicit any new items to be considered.

The EEO Officer and the DAC members will establish a meeting schedule for the 2016 calendar year, and will develop meeting agendas and notes to document the Committee's actions.

Finding No. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**Cause:**

The CDT has relied in the past on a manual system to follow up with managers and supervisors on completing the Probationary Reports. The Human Resources Branch (HRB) is able to print monthly reports of the Probationary Reports (and Annual Performance Evaluations) due for employees and this information is sent to the managers and supervisors each month. However, the HRB lacks an automated tracking system to allow for follow up as the due date approaches to ensure the reports are submitted timely.

Corrective Action Plan:

In September 2015, the HRB began working with the Business Systems and Analysis Unit to discuss activating existing fields within the HR PeopleSoft application in order to generate automated reports that will identify Probationary and Annual Performance Appraisal report due dates. This will allow the HRB to run monthly reports prior to the report due dates and notify managers and supervisors. In addition to creating more functionality within the existing HR PeopleSoft application, the HR Branch is developing internal procedures for the staff responsible for generating the reports, which will include sending email reminders to the managers and supervisors. The procedures will also identify the escalation process should managers and supervisors not respond to the reminders to complete the reports. An HR Memo will be released to all managers and supervisors announcing the implementation of this new tracking system and procedures.

The CDT recognizes the importance of complying with state civil service laws and board regulations with regard to our personnel practices. The HRB has a Supervisors' Toolkit on our internal website that provides valuable information and resources for managers and supervisors on performance appraisals, progressive discipline, and other pertinent topics. In addition, the HRB provides periodic training to managers and supervisors. In 2013, the HRB provided multiple two hour training sessions on Performance Appraisals and Identifying Labor Relations Issues. This training stressed the importance of, and tips for completing, employee probationary reports and annual performance appraisals. The discussion included tips for documenting employee performance and ensuring the timely completion of appraisals. A document titled "Important Tips for Managers and Supervisors on Completing the Report of Performance for Probationary Employees" was posted in the Supervisors' Toolkit, along with the rest of the training presentation and materials.

In 2015, the HRB worked on streamlining the hiring process and developed and provided training on the first phase of the process, which is the Request for Personnel Action Phase. Multiple training sessions were offered to managers and supervisors and an important component of that training was a discussion on Best Hiring Practices. Included in the Best Hiring Practices presentation was a discussion of the importance of completing each Probationary Report. Participants also received a training folder that included a "Best Hiring Practices" handout. Additional training on the other two phases of the Hiring Process will be provided in 2016. These phases include the Recruitment Phase and the Interview/Selection Phase. In each of these phases, the HRB presenters will address the importance of completing timely employee evaluations.

The CDT, and the HRB specifically, is committed to ensuring compliance with state civil service laws and board regulations with regard to our personnel practices, policies and procedures. We are confident that the Corrective Action Plans identified for our Disability Advisory Committee and completion of Probationary Reports will meet our responsibilities.

Thank you for your diligence in our compliance audit and for your valuable feedback during our Exit Conference. Please contact Yolanda Rodriguez, Human Resources Branch Chief, at (916) 431-5466, if you have questions.

Attachments

cc: Carlos Ramos, Director
Andrea Wallin-Rohmann, Chief Deputy Director, Policy
Chris Cruz, Chief Deputy Director, Operations