



# **COMPLIANCE REVIEW REPORT**

## **SECRETARY OF STATE**

Compliance Review Unit  
State Personnel Board  
January 26, 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 the Secretary of State (SOS) 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	Equal Employment Opportunity Questionnaires Were Not Separated From Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
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 SOS is dedicated to making government more transparent and accessible in the areas of elections, business, political campaigning, legislative advocacy, and historical treasures. The SOS's responsibilities include:

- Serving as the state's Chief Elections Officer
- Implementing electronic filing and Internet disclosure of campaign and lobbyist financial information
- Maintaining business filings
- Commissioning notaries public
- Operating the Safe at Home confidential address program
- Maintaining the Domestic Partners and Advance Health Care Directive Registries
- Safeguarding the State Archives
- Serving as a trustee of the California Museum

The SOS is headquartered in Sacramento with a regional office in Los Angeles. As of 2014, the SOS employed approximately 583 staff members; 48 exempt/management staff (this includes career executive assignments (CEA's), exempts and managers), 37 supervisory staff and 498 rank and file staff.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing SOS 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 SOS personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The CRU examined the documentation that the SOS 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 the SOS 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 SOS staff.

SOS PSC's were randomly selected to ensure that various types of contracted services and contract amounts were reviewed. The SOS contracted for information technology consultation, language interpretation/translation for voters, and testing services for notary publics, among others. It was beyond the scope of the compliance review to make conclusions as to whether SOS justifications for the contracts were legally sufficient. The review was limited to whether SOS practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On November 05, 2014, an exit conference was held with the SOS to explain and discuss the CRU's initial findings and recommendations, and to provide the SOS with a copy of the CRU's draft report. The SOS was given until December 5, 2014, to submit a written response to the CRU's draft report. On December 05, 2014, 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 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 SOS conducted seven examinations. The CRU reviewed four of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Accounting Officer Supervisor	Promotional	Qualification Appraisal Panel (QAP) <sup>1</sup>	2/15/2013	9
Archivist I	Open	QAP & Performance <sup>2</sup>	3/15/2013	36

<sup>1</sup> 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.

<sup>2</sup> A performance examination is a work-sample test which requires a competitor to demonstrate specific skills by performing actual segments of work using tools, materials, equipment, and methods characteristic of the job for which the test was designed.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment (CEA) II	Open	Statement of Qualifications (SOQ) <sup>3</sup>	8/20/2013	11
CEA IV	Open	SOQ	5/24/2013	4

**FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** For the Archivist I examination, 7 of the 36 applications had EEO questionnaires still attached to the applications at the time of the compliance review.

**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.

<sup>3</sup> 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, who are typically subject matter experts, evaluate the summaries according to a predetermined rating scale designed to assess an applicant's ability to perform the duties of the job classification for which he/she is testing. The raters also assign scores and rank the applicants on a list.

**Cause:** The SOS's procedure for processing EEO information for examination applications is:

- 1) Applications are opened and date stamped by the support staff and the envelope in which it was received is kept with the application.
- 2) The EEO Questionnaire ("App Flap") is removed from the applications by the exam analyst; the analyst will then input the information from the App Flap into the Legacy On-Line Exam System. Once the analyst has entered the information from the App Flap it is confidentially destroyed.

The process is learned through repetition. The exam analyst processed 36 applications for the Archivist I examination, but made an inadvertent oversight by not removing the App Flaps from seven of the applications.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SOS submit to the CRU a written corrective action plan that the department will implement to ensure that in the future, EEO questionnaires are separated from all applications prior to the examination. 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 SOS made 193 appointments. The CRU reviewed 95 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	2
Archivist I	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	4
Associate Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Half Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	1
Information Systems Technician Specialist I	Certification List	Limited Term	Full Time	1
Investigator	Certification List	Permanent	Full Time	1
Mail Machine Operator II	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Permanent	Full Time	8
Office Assistant (Typing) (Limited Term)	Certification List	Limited Term	Full Time	17
Office Technician (Typing)	Certification List	Permanent	Full Time	4
Program Technician	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	16
Program Technician III	Certification List	Permanent	Full Time	1
Senior Accounting Officer Supervisor	Certification List	Permanent	Full Time	2
Senior Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	5
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager II	Certification List	Permanent	Full Time	1
Supervising Program Technician I	Certification List	Limited Term	Full Time	3
Supervising Program Technician II	Certification List	Permanent	Full Time	10
Supervising Program Technician II	Certification List	Limited Term	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Supervising Program Technician III	Certification List	Limited Term	Intermittent	2
Training Officer I	Certification List	Permanent	Full Time	1
Training Officer II	Certification List	Permanent	Full Time	1
CEA IV	Information List	Permanent	Full Time	1
Office Assistant (Typing)	Permissive Reinstatement	Permanent	Full Time	1
Program Technician	Permissive Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Limited Term	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1

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

**Summary:** The SOS did not prepare, complete, and/or retain required probationary reports of performance for 30 of the 95 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Accounting Officer (Specialist)	Certification List	1	1
Associate Governmental Program Analyst	Certification List	3	6
Associate Programmer Analyst (Specialist)	Certification List	1	3
Attorney	Certification List	1	3
Investigator	Certification List	1	3
Office Assistant (Typing)	Certification List	4	10
Office Technician (Typing)	Certification List	2	4
Program Technician II	Certification List	6	16

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Senior Information Systems Analyst (Specialist)	Certification List	3	9
Staff Information Systems Analyst (Specialist)	Certification List	1	2
Staff Services Analyst	Certification List	1	3
Staff Services Manager II	Certification List	1	2
Supervising Program Technician II	Certification List	3	4
Office Assistant (Typing)	Permissive Reinstatement	1	3
Program Technician	Permissive Reinstatement	1	3
<b>Total</b>		<b>30</b>	<b>72</b>

**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 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 SOS did not have a system in place to track the completion of Probationary Evaluations.

**Action:** In September 2012, the SOS's Human Resources (HR) Office implemented an electronic tracking system to document every employee's probationary periods as follows:

- 1) On a monthly basis, HR references a tracking spreadsheet that utilizes formulas to automatically indicate (through color-coding) to the HR user of upcoming probationary periods (within two weeks) and probationary periods where HR did not receive reports for any individual employee.
- 2) Upon review of the aforementioned tracking spreadsheet, HR sends up to three notifications (including specific dates) to supervisors/managers of upcoming/delinquent probationary reports, which must be completed.

Despite establishing a tracking system and notification process, HR has yet to achieve full compliance from supervisory/managerial staff in meeting the requirement for the completing probationary reports.

It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SOS submit to the CRU a written corrective action plan that addresses how the SOS will ensure full compliance from supervisory/managerial staff to meet with the probationary requirements of Government Code § 19172.

## Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to 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.)

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 SOS's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate SOS 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 SOS 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. In addition, the SOS has an established DAC, that reports to the director on issues affecting persons with a disability. The SOS completed a workforce analysis, which was submitted to the CRU. The SOS 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 SOS had 18 PSC's that were in effect. Seven contracts were subject to Department of General Services (DGS) approval and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Total Amount	Justification Identified
Advanced Software Dynamics, Inc.	Study Report for Cal-ACCESS	6/26/2013 – 6/30/2014	\$236,600	Yes
Cooperative Personnel Services	Notary Public Testing	7/01/2013 – 6/30/2014	\$1,498,880	Yes
Infinite Solutions, Inc.	PowerBuilder Consulting	10/16/2013 – 6/30/2014	\$124,484	Yes
Natoma Technologies, Inc.	CalVoter System Maintenance	7/01/2013 – 6/30/2015	\$100,000	Yes
Objective Business Solutions, Inc.	IT Division Consulting	7/01/2013 – 6/30/2014	\$229,320	Yes
Objective Business Solutions, Inc.	Software Services	7/01/2013 – 6/30/2014	\$50,000	Yes
Transcend Translations	Translation Services	7/01/2013 - 6/30/2014	\$222,000	Yes

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

When a state agency requests approval from the Department of General Services 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 \$2,461,284. It was beyond the scope of the review to make conclusions as to whether the SOS’s justifications for the contracts were legally sufficient. For all PSC’s subject to DGS approval, the SOS provided specific and detailed factual information in the written justifications as to how each of the seven contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the SOS’s PSC’s complied with procedural requirements.



## **DEPARTMENTAL RESPONSE**

The Secretary of State's Office has taken into account the findings identified by the SPB's Compliance Review and subsequent action will be determined and documented in a Corrective Action Plan (within 60 days from the date the findings are published).

## **SPB REPLY**

Based upon the SOS's written response, the SOS will comply with the CRU recommendations and findings and provide the CRU a Corrective Action Plan.

It is further recommended that the SOS 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.