

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)
)
American Federation of State, County,)
and Municipal Employees Local 2620,)
AFL-CIO (AFSCME))
)
from the Executive Officer's May 4, 2009,)
Approval of Personal Services Contracts)
for Social Worker Services by the)
Department of Social Services)

PSC No. 09-06

RESOLUTION

August 11, 2009

WHEREAS, the State Personnel Board (Board) has considered carefully the findings of fact and Decision issued by the Executive Officer in SPB File No. 09-002(b) on May 4, 2009, approving the above-entitled matter, as well as the written and oral arguments presented by AFSCME and the California Department of Social Services (Department) during the Board's August 11, 2009, meeting.

IT IS RESOLVED AND ORDERED that:

1. The findings of fact and conclusions of law of the Executive Officer in said matter are hereby adopted by the State Personnel Board as its Decision in the case on the date set forth below.
2. A true copy of the Executive Officer's Decision shall be attached to this Resolution for delivery to the parties in accordance with the law.
3. The Department is urged to communicate and join efforts with AFSCME in recruiting civil service employees to perform social worker services.
4. Adoption of this Resolution shall be reflected in the record of the meeting and the Board's minutes.

* * * * *

The foregoing Resolution was made and adopted by the State Personnel Board in PSC No. 09-06 at its meeting on August 11, 2009, as reflected in the record of the meeting and Board minutes.



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



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May 4, 2009

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Pam Manwiller
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Re: Request for Review of Proposed or Executed Personal Services Contract for Social Worker Services (Contract Nos. 08-3005 – Medical Workforces Solutions, Inc.)
[SPB File No. 09-002(b)]

Dear Mr. Burton and Ms. Manwiller:

By letter dated January 5, 2009, the American Federation of State, County, and Municipal Employees Local 2620, AFL-CIO (AFSCME) asked, pursuant to Gov. Code § 19132 and Title 2, Cal. Code Regs., § 547.59 *et seq.*, the State Personnel Board (SPB) to review for compliance with Gov. Code § 19130(b), a contract entered into by the Department of Social Services (Department) for social worker services (Contract Nos. 08-3005 – Medical Workforces Solutions, Inc.) (hereinafter “Contract”). The term of the contract is from July 1, 2008 through June 30, 2009.

On January 12, 2009, the SPB notified the Department that AFSCME had requested that SPB review the Contracts, and informed the Department that it had until February 2, 2009, to submit its response to the SPB. The Department thereafter requested, and received, a continuance until April 14, 2009, to file its response. The SPB received the Department’s response on April 14, 2009. AFSCME thereafter had until April 24, 2009, to submit its reply to the Department’s response. To date, no reply has been received from AFSCME. As a result, the matter was deemed submitted for review by the Executive Officer with no reply having been filed by AFSCME.

For those reasons set forth below, I find that Contract No. 08-3005 is justified under the provisions of Government Code section 19130(b)(3), as existing civil service classifications are inadequate to meet the Department’s social worker needs. Consequently, the Contract is approved.

Legal Standard

In *Professional Engineers in California Government v. Department of Transportation*,¹ the California Supreme Court recognized that, emanating from Article VII of the California Constitution, is an implied “civil service mandate” that prohibits state agencies from contracting with private entities to perform work that the state has historically and customarily performed and can perform adequately and competently. Government Code section 19130 codifies the exceptions to the civil service mandate recognized in various court decisions. The purpose of SPB’s review of contracts under Government Code section 19130 is to determine whether, consistent with Article VII and its implied civil service mandate, state work may legally be contracted to private entities or whether it must be performed by state employees.

Government Code section 19130(b)(3)

Government Code section 19130(b)(3) authorizes a state agency to enter into a personal services contract when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

The Board’s decision, *In the Matter of the Appeal by SEIU*, made clear that, in asserting the exemption contained in section 19130(b)(3), the burden is on the contracting department to establish either: (1) that there are no civil service job classifications to which it could appoint employees with the requisite expertise needed to perform the required work; or (2) that it was unable to successfully hire suitable candidates for any of the applicable classifications.²

Government Code section 19130(b)(10)

Government Code section 19130(b)(10) authorizes a state agency to enter into a personal services contract when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

In order to justify a personal services contract under section 19130(b)(10), the contracting department must provide sufficient information to show: (1) the urgent, temporary, or occasional

¹ (1997) 15 Cal.4th 543, 547.

² PSC No. 05-03, at p. 8.

nature of the services; and (2) the reasons why a delay in implementation under the civil service would frustrate the very purpose of those services.³

Position of the Parties

Department Position:

The Department asserts that the Contract is justified under the provisions of Government Code section 19130(b)(3) and (10) because there is no current civil service classification for the needed services. The Department further asserts the services are intermittent in nature.

The Department is required to seek professional social worker consultations related to residential care and licensed facilities, with emphasis on the special needs of children, adults, and elderly clients. Social workers employed by the Department are required to participate in interdisciplinary team reviews of adult and elderly clients who have been issued health condition relocation orders. The social worker also makes recommendations as to continued placement in various licensed facilities, and must participate in complaint investigations of alleged violations of licensing laws and regulations. As such, the social worker must submit written reports, findings and recommendations, and must provide expert testimony at various administrative hearings and in court. Additionally, the social worker is required to provide consultation to Department staff for possible facility evaluations, and provides consultation services related to the development of Department regulations, policies and procedures. The social worker is required to fulfill all assigned tasks within five days from the date of request and, in emergency situations, within 24 hours of the time of request.

The anticipated amount of time for social worker consultations would not justify either a half or full-time position. [WHY NOT??] The Department has previously attempted to utilize the services of a Licensing Program Analyst (LPA) to perform duties similar to those performed by a social worker; however, LPAs are not social workers and are not trained to perform evaluations and consultations related to deficiency of quality of care provided by various care facilities. LPAs are tasked with ensuring licensed care facilities are compliant with various licensing requirements; they are not specialists in determining the most appropriate care and possible relocation of residence. Such endeavors require education and experience as a social worker.

The Department does not currently have an employment class titled "Social Worker," and the Department has no other employment classification that can provide the duties requested. Moreover, the duties are needed on an intermittent basis as, to date, just \$237.51 has been billed to the Contract.

³ PSN No. 05-04, at p. 7.

AFSCME Position:

AFSCME did not file a reply disputing any information contained in the Department's response. Instead, AFSCME asserted the following in challenging the propriety of each Contract:

- The contracts were executed pursuant to Government Code section 19130(b)(10), but do not include specific and detailed factual information as justification for their use as required by Title 2, Cal. Code Regs., section 547.60; rather, they merely restate the language of section 19130(b)(10) which permits personal services when, "The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose."
- There is nothing urgent, temporary, or occasional about the use of the contracts. Instead, the contracts are being used to fill vacant civil service positions that the Department has been unable to fill through its normal recruitment efforts. The contractors perform the same work, in the same settings, and under the same conditions as civil service employees and many of these contractors have worked in this capacity for several years.

Analysis

A review of existing civil service classifications reveals that there are currently three specific Social Worker classifications: Clinical Social Worker (Health Facility); Clinical Social Worker (Health/Correctional Facility) – Safety; and Psychiatric Social Worker. None of the above-listed classifications appear to contemplate the type of duties required under the Contract. Instead, the civil service Social Worker classifications generally require the performance of duties related to actual individual client assessment and treatment programs within a health facility, such as developing, monitoring and modifying treatment plans, whereas the Department utilizes social workers to assess whether a client has been appropriately placed within a particular type of facility, and to assist the Department in formulating policies and regulations related to the appropriate placement of clients within various facilities monitored by the Department. Therefore, the Department is correct that existing civil service classifications are inadequate to serve the Department's needs. Moreover, because only \$237.51 has been expended on Contract services since July 1, 2008, it does not appear that the Department has such a significant need for the services so as to warrant the Department seeking the creation of a new civil service classification that meets the Department's needs. As a result, I find that the Contract is justified under the provisions of section 19130(b)(3).

Conclusion

The Department presented sufficient information to demonstrate that existing civil service classifications are insufficient to meet the Department's social worker needs, and that the Department does not possess such a need for social worker services so as to justify the creation of a new civil service classification that would meet the Department's social worker needs. Consequently, I find that the Contract is justified under the provisions of Government Code section 19130(b)(3).

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Consequently, I find that the Contract is justified under the provisions of Government Code Section 19130(b)(3).

This letter constitutes my decision to approve Contract No. 08-3005. Any party has the right to appeal this decision to the five-member State Personnel Board pursuant to SPB Rule 547.66. Any appeal should be filed no later than 30 days following receipt of this letter in order to be considered by the Board.

Sincerely,

/s/ SUZANNE M. AMBROSE

Suzanne M. Ambrose
Executive Officer