



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)

**CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION**)

from the Executive Officer's March 26,
2010, Decision Disapproving the
Personal Services Contract for Clinical
Social Worker and Psychologist Services)
[SPB File No. 09-030(b)])

PSC No. 10-04

RESOLUTION

September 7, 2010

WHEREAS, the State Personnel Board (Board) has carefully considered the Decision issued by the Executive Officer in SPB File No. 09-030(b) on March 26, 2010, disapproving California Department of Corrections and Rehabilitation's (CDCR) personal service contract for clinical social worker and psychologist services (Contract), as well as the written and oral arguments presented by CDCR and the American Federation of State, County, and Municipal Employees Local 2620, AFL-CIO (AFSCME), during the Board's August 3, 2010, meeting.

IT IS RESOLVED AND ORDERED that:

1. CDCR has failed to demonstrate that the contracted services are a "new state function" under Government Code section 19130, subdivision (b)(2) because it did not prove, in addition to legislative authorization, that the service truly comprised a new

governmental activity and not merely expansion of an existing function (*In The Matter of the Appeal by California Department of Forestry and Fire Protection (CDF) (2001) PSC NO. 01-04*);

2. CDCR has failed to demonstrate that the contracted services cannot be performed satisfactorily by civil services employees under Government Code section 19130, subdivision (b)(3) because AFSCME adequately showed that the state employees in their current positions perform the same services provided under the contract;

3. CDCR has failed to demonstrate that the contracted services are justified under Government Code section 19130, subdivision (b)(8) because it did not provide credible evidence to show what specific equipment, materials, facilities, or support services the contractor will provide at specific locations that could not feasibly be provided by the state;

4. The Decision of the Executive Officer is hereby adopted by the State Personnel Board as its Decision in the case on the date set forth below;

5. 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;

6. CDCR is permitted to continue, if necessary, the current personal service contract for clinical social worker and psychologist services for no more than six months from the date of mailing of this Resolution so that the transition of the services from the private contractor to the civil service employees would not negatively impact the critical services to the mentally-ill parolees or the safety of public at large.

7. CDCR is not precluded from submitting similar future contracts for SPB to review under Government Code section 19130, subdivision (a), or entering into new contracts for similar services if CDCR finds specific grounds permissible under Government Code section 19130, subdivision (b).

8. 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. 10-04 at its meeting on September 7, 2010, as reflected in the record of the meeting and Board minutes.



March 26, 2010

Mr. Cliff L. Tillman, Jr.
Business Agent
AFSCME Local 2620, AFL-CIO
555 Capitol Mall, suite 1225
Sacramento, CA 95814

Ms. Clarisse J. Mateo, Staff Counsel
California Department of Corrections and Rehabilitation
Office of Legal Affairs
P.O. Box 942883
Sacramento, CA 94283

Re: Request for Review of Proposed Or Executed Personal Services Contracts for Clinical Social Worker and Psychologist Services Promulgated by the California Department of Corrections and Rehabilitation
[SPB File No. 09-030(b)]

Dear Ms. Mateo and Mr. Tillman:

By letter dated September 21, 2009, the American Federation of State, County, and Municipal Employees Local 2620, AFL-CIO (AFSCME) asked the State Personnel Board (SPB or Board) to review for compliance with Government Code section 19130, a Clinical Social Worker and Psychologist services contract (Request for Proposal (RFP) No. 080381) promulgated by California Department of Corrections and Rehabilitation (CDCR). The request for review is made under Government Code section 19132 and California Code of Regulations, title 2 (2 CCR), section 547.59 et seq.

On October 30, CDCR informed SPB that RFP No. 080381 “was pulled and no contract was awarded.” CDCR also informed SPB that it put out another RFP “with a different scope of work from RFP No. 080381 for Clinical Social Worker and Psychologist services” and that the contracts have been awarded. SPB in turn notified AFSCME of this information. On November 12, 2009, AFSCME requested that SPB review the executed CDCR contracts impacting Clinical Social Worker and Psychologist services.

On December 30, 2009, CDCR responded by requesting that AFSCME’s challenge to the contracts be dismissed. On January 14, 2010, AFSCME submitted its reply.

On February 9, 2010, SPB directed CDCR to provide copies of the contracts to AFSCME and SPB in accordance with 2 CCR section 547.62, and allowed AFSCME to file a supplemental

brief with SPB upon receipt of the contracts. CDCR subsequently provided the contracts. The seven contracts identified by CDCR are: Contract Nos. 5600000278, 5000000280, 5600000281, and 5600000583, with Telecare Corporation; Contract No. 5600000641 with Quality Group Homes, Inc.; Contract No. 5600000811 with Turning Point of Central California, Inc.; and Contract No. 5600000279 with San Francisco Department of Public Health. The AFSCME did not file a supplemental brief.

For the reasons set forth below, it is concluded that the contracts¹ are not permissible under Government Code section 19130, subdivision (b).

Position of AFSCME

AFSCME asserts that the duties and responsibilities performed by the private contractors are similar to those performed by Clinical Social Workers and Psychologists, and that the contractors performed the work in the same settings and under the same conditions as civil service employees as represented by AFSCME.

Position of CDCR

CDCR asserts that the contracted services to parolee-clients include but not limited to, obtaining an income, application for and appeal on denials for benefit entitlements, self manage their mental illness; coordination and access to mental health services, and provision for family support, and that these services do not specifically require the services of clinical social workers and psychologists.

Analysis

1. Whether the Contracts promulgated by CDCR are permitted pursuant to Government Code section 19130, subdivision (b).

In *Professional Engineers in California Government v. Department of Transportation* (1997) 15 Cal.4th 543, 547 (*PECG*), 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.

¹ As will be discussed *infra*, Contract No. 5600000279 is excluded from the disapproved contracts.

One of the seven contracts, Contract No. 5600000279, was awarded to San Francisco Department of Public Health, a public entity. SPB does not review a bona fide contract between a state agency and another public agency as a contract between two public entities does not violate the "civil service mandate." (See *In the Matter of the Request by International Union of Operating Engineers, Unit 12, Locals (IUOE), 12, 39 and 501(IUOE)*, (2004) PSC No. 04-0813A.) Therefore, SPB only asserts jurisdiction over the remaining six contracts (collectively, Contracts).

AFSCME asserts that the contracted services are similar to the duties and responsibilities of those performed by Clinical Social Workers and Psychologists, and the contractors performed the work in the same settings and under the same conditions as civil service employees as represented by AFSCME. AFSCME offered no evidence to show that the work "settings" and "conditions" of the employees represented by AFSCME are similar to those of the contractors. Nonetheless, it is necessary to examine whether AFSCME's assertion that contracted services are similar to the duties and responsibilities of those performed by Clinical Social Workers and Psychologists has factual support otherwise.

The scope of work delineated in the six Contracts is identical. The purpose of the Contracts is to provide individuals in CDCR's Division of Adult Parole Integrated Services for Mentally Ill Parolee-clients (ISMIP) project a safe, clean, drug free environment in order to facilitate rehabilitation, reduce homelessness, and reduce recidivism among the mentally ill parolee population. The specific requirements under the Contracts are described as follows:

1. Assess parolee-clients' needs and goals;
2. Develop parolee-client-driven personal services plan;
3. Link parolee-clients with all appropriate community services;
4. Make housing referrals;
5. Monitor the quality and follow through of services;
6. Provide necessary advocacy to ensure that each parolee-client receive those services in the personal services plan; and
7. Provide individualized coaching to achieve the goals identified in the personal services plan.

The "individual personal services plan" (Plan) is intended to identify the needs of each mentally ill parolee-client and the services appropriate to them based on their condition, age, gender, and unique cultural backgrounds. The Contracts identified the following specific services that must be addressed in the Plan:

1. Assist parolee-clients to find most independent and least restrictive and immediate, transitional, or permanent housing feasible in the local community;
2. Assist parolee-clients to engage in the highest level of work or productive activity appropriate to their abilities and experience, and obtain an income;
3. Apply for and appeal denials on behalf of parolee-clients their entitled benefit, such as Social Security, Medi-Cal, and Veterans Affairs' benefits;
4. Assist parolee-clients in self-managing their serious mental illness and exerting maximum control over both the day-to-day and long-term decisions that affect their lives;
5. Coordinate access to mental health services such as medications, psychiatric, and psychological services;
6. Provide parolee-client-directed services that employ psychosocial rehabilitation and recovery principles;
7. Provide substance abuse services;
8. Assist in securing parenting and family support and provide consultation services, peer group support, or self-help group support;
9. Create and maintain a support system consisting of friends, family, and assist parolee-clients in participating in community activities;
10. Assist in parolee-clients' access to an appropriate level of academic education, career-specific trade, or skill training; and
11. Assist in planning transition and link parolee-clients to continuation of services upon discharge from parole.

These services appear to be within the customary duties and responsibilities of civil service clinical social workers. According to Job Specifications prescribed by SPB, incumbents in the Clinical Social Worker classification are required to conduct assessments and summarize case information for use in diagnosis, treatment, and dispositional release of disabled inmates; develop, monitor, and modify treatment plans in collaboration with the interdisciplinary treatment team; identify and recommend appropriate services based on assessment; provide individual and group therapy as delineated in the treatment plan; provide suicide and crisis risk assessment and intervention; participate in risk assessment, evaluation, and recommendation for alternate level of care placement, for release to the community, or other case disposition; coordinate discharge planning activities and act as resource on accessing appropriate community

support and services to be utilized upon release; respond to requests from clients/patients, family members, courts, and community agencies; consult with colleagues and other staff on behavior management treatment issues; and prepare verbal and written social work reports. It is within CDCR's prerogative to assign Clinical Social Worker employees specific duties within their job specification such as assessing disabled parolee-clients' needs, devising detailed and individualized planning, assisting parolee-clients in obtaining appropriate community services, education, housing, eligible benefits, and trade or occupation, coordinating their access to health care, facilitating their effort to achieve or maintain a productive life, providing general advocacy for disabled parolee-clients, and preparing reports based on the information gathered in performing these functions. It is not difficult to see that these duties are the very tasks required under the Contracts.

The Contracts also imposed procedural requirements such as providing parolee-clients orientation within three calendar days of enrollment, performing a case history review to identify each parolee-client's specific program needs within seven days of the enrollment, and conducting case review upon a parolee-client's exit from the service. In addition, the contractors are required to collect program and participation data and maintain individual parolee-client records of participation of services or services denied. None of these requirements are outside the functions of civil service Clinical Social Worker classification.

CDCR argues that the contracted services *do not require* that civil service employees perform the work. CDCR's argument lacks merit. The inquiry here is not whether the contract, drafted by the state, *requires* civil services employees to perform the contracted services. If a state agency has such unfettered discretion, there will hardly be any restriction on state's ability to outsource contracts to private entities. Rather, the inquiry is whether civil service employees are capable of performing the work and if so, unless the Contracts are permissible under Government Code section 19130, subdivision (b), the state is prohibited from contracting out the services to private entities. CDCR failed to show that the civil service employees are not capable of performing the contracted services, or that the Contracts fall within the exceptions permitted by Government Code section 19130, subdivision (b).²

In addition, by arguing that the contracted services do not necessarily require clinical social workers and/or psychologists in state civil services, CDCR may be implying that it could be cost-saving by hiring contractors instead of using state employees. If that was the intention, CDCR could have requested SPB to review the Contracts *prior to* their execution under Government Code section 19130, subdivision (a). CDCR did not do so.

² Since it is satisfied that the contracted services can be performed by civil service Clinical Social Workers, there is no need to examine whether the contracted services are within the duties and responsibilities in the Psychologist classification.

CDCR's Clinical Social Worker and Psychologist Services Contracts

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Conclusion

CDCR failed to establish that the Contracts are permitted under the provisions of Government Code section 19130, subdivision (b).

The parties have a right to appeal this decision to the five-member State Personnel Board pursuant to California Code of Regulations, title 2, section 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