COMPLIANCE REVIEW REPORT

OFFICE OF THE INSPECTOR GENERAL

Compliance Review Unit
State Personnel Board
May 18, 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 SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Office of the Inspector General (OIG) personnel practices in the areas of examinations, appointments, EEO, and PSC's from July 1, 2013, through March 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	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
- Blue = Recommended Best Practice

BACKGROUND

The OIG conducts independent reviews of policies, practices, and procedures of the California Department of Corrections and Rehabilitation (CDCR) and its associates, including adult operations and programs, Division of Juvenile Justice, the Board of Parole Hearings and Parole Operations, and the Prison Industry Authority. The OIG is responsible for contemporaneous oversight and monitoring of internal affairs investigations, use of force, and the disciplinary process of the CDCR for conducting reviews of the delivery of medical care at each state institution and for determining the qualifications of candidates submitted by the Governor for the position of warden. The OIG also monitors the CDCR's adherence to its Future of California Corrections Blueprint and is mandated to regularly examine rehabilitation programs, including: mental health, substance abuse, educational, and employment programs for inmates and parolees via the California Rehabilitation Oversight Board. The OIG maintains a statewide intake process to receive communications from anyone regarding allegations of improper activity within the CDCR. The OIG responds on scene at any time to critical incidents occurring within the state prisons, including deaths in custody, large-scale riots, and uses of deadly force. The OIG conducts authorized reviews of any policy or practice as requested by the Governor or Legislature. OIG staff, consisting of attorneys, inspectors, analysts, and medical personnel, visit prisons and work with staff of all the CDCR facilities on a daily basis. The OIG has regional offices located in Bakersfield, Rancho Cucamonga, and Sacramento, with 99 employees in 29 classifications.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing OIG examinations, appointments, EEO program, and PSC's from July 1, 2013, through March 31, 2014. The primary objective of the review was to determine if the OIG 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 examination and appointment documentation that the OIG provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, vacancy posting advertisements, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the OIG 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 OIG staff.

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

On April 23, 2015, an exit conference was held with the OIG to explain and discuss the CRU's initial findings and recommendations. The OIG was given until April 25, 2015 to submit a written response to the CRU's draft report. On April 25, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

[1]If 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 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 OIG conducted eight examinations. The CRU reviewed all eight of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Chief Assistant Inspector General	Promotional	Qualification Appraisal Panel (QAP)[2]	06/28/2013	1
Deputy Inspector General	Spot Promotional	QAP	11/20/2013	8
Deputy Inspector General, Senior	Promotional	QAP	11/20/2013	10
Senior Assistant Inspector General	Promotional	QAP	05/31/2013	4

[2] 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.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Special Assistant Inspector General	Open	QAP	Continuous	1
Special Assistant Inspector General	Open	QAP	Continuous	12
Special Assistant Inspector General	Open	QAP	Continuous	17
Special Assistant Inspector General	Open	QAP	Continuous	1

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

The OIG administered eight examinations to create an eligible list from which to make appointments. For the examinations, the OIG published and distributed an examination bulletin containing the required information. Applications received by the OIG were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ's) for admittance to the examination. The OIG notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ's 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 examination that the OIG conducted during the compliance review period. Accordingly, the OIG fulfilled its responsibilities to administer the examination 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 OIG made 34 appointments. The CRU reviewed 30 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
Chief Assistant Inspector General	Certification List	Permanent	Full Time	1
Deputy Inspector General	Certification List	Permanent	Full Time	1
Deputy Inspector General, Senior	Certification List	Permanent	Full Time	2
Nursing Consultant, Program Review	Certification List	Permanent	Full Time	1
Office Assistant	Certification List	Permanent	Part Time	1
Office Technician (General)	Certification List	Permanent	Full Time	1
Physician and Surgeon, Correctional Facility	Certification List	Permanent	Full Time	1
Senior Assistant Inspector General	Certification List	Limited Term	Full Time	1
Special Assistant Inspector General	Certification List	Limited Term	Full Time	1
Special Assistant Inspector General	Certification List	Permanent	Full Time	3
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Systems Software Specialist II (Technical)	Certification List	Permanent	Full Time	1
Special Assistant Inspector General	Permissive Reinstatement	Permanent	Full Time	1
Associate Deputy Inspector General	Transfer	Limited Term	Full Time	1
Associate Deputy Inspector General	Transfer	Permanent	Full Time	1
Attorney	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Business Service Assistant (Specialist)	Transfer	Permanent	Full Time	1
Deputy Inspector General	Transfer	Permanent	Full Time	4
Executive Assistant	Transfer	Permanent	Full Time	1
Personnel Specialist	Transfer	Permanent	Full Time	1
Physician and Surgeon, Correctional Facility (Internal Medicine/FA)	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Limited Term	Full Time	1
Special Advisor, Policy and Programs, Career Executive Assignment (CEA)	Permissive Reinstatement	Permanent	Full Time	1

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

Summary: For 26 of the 667 applications reviewed, EEO questionnaires were not separated from the STD 678 employment application.

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, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by 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.

Cause: The OIG states that there was a lack of policy and audit tools in place during the time of the review to ensure that EEO questionnaires were removed from all applications.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OIG submit to the CRU a written corrective action plan that 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**.**

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: Of the 30 appointments reviewed, the OIG did not retain 2 job bulletins and was unable to provide any applications (including the appointee's application) for the Senior Assistant Inspector General recruitment.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (Ibid.)

Severity: Serious. Without documentation, CRU could not verify if the appointments were merit based.

Cause: The OIG states that they had a lack of policy and audit tools in place to ensure that all required documentation was kept for the appropriate amount of time.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OIG submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of Government Code section 12946. Copies of any relevant documentation should be included with the plan**.**

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 (CalHR) 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 OIG's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate OIG 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 OIG'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 is at a managerial level and reports directly to the Inspector General. The OIG completed a workforce analysis, which was submitted to the CRU. In addition, the OIG has an established DAC that reports to the director on issues affecting persons with a disability. The OIG also provided evidence of its efforts to promote equal employment opportunity in its hiring and employment practices, to increase its hiring of disabled persons, 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 OIG had one PSC that was in effect. The contract was subject to Department of General Services (DGS) approval, and thus our procedural review, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Sufficient Justification
Rankins	Legal Counsel	07/01/2013 - 06/30/2015	$120,000.00	Yes

FINDING NO. 5 – 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 all the PSCs reviewed was $120,000.00. It was beyond the scope of the review to make conclusions as to whether OIG justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the OIG provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, OIG's PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

The OIG agrees with the findings and has taken actions to ensure compliance in future reviews. (Attachment 1)

SPB REPLY

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

It is further recommended that the OIG 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.

Robert A. Barton, Inspector General

Office of the Inspector General

April 24, 2015

Suzanne Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento.CA 95742

RE: RESPONSE TO COMPLIANCE REVIEW REPORT

Dear Ms. Ambrose:

In response to the State Personnel Board (SPB), "Compliance Review Report" the Office of the Inspector General has prepared the below responses:

Findings 1, 4 and 5 were found to be "In Compliance" and no further action required.

Finding 2:

Equal Employment Opportunity Questionnaires (EEO) Were Not Separated from Applications

Cause: Lack of audit tools

Response:
The Office of the Inspector General (OIG) acknowledges the oversight and failure to remove EEO Questionnaires in 26 of the 667 reviewed applications. Process improvements were noted and implemented by the new Chief of Administration in September 2014. The Chief of Administration provided direction and supporting documentation to Personnel staff to ensure all applications (STD 678) were processed with removal of the Equal Employment Opportunity Questionnaires prior to processing for Examination or Vacancy.

The Chief of Administration implemented an "Audit Checklist" to be included in all hiring and examination packets. All packets are forwarded to the Chief of Administration for audit to ensure Personnel accounts for all required documentation (Attachment 1) and EEO Questionnaires are not included in packets.

The Chief of Administration will be conducting random pre-examination and pre-interview audits to ensure removal of EEO Questionnaires are conducted.

However, the OIG Examination and Hiring panels did not review nor consider the Equal Employment Opportunity Questionnaires during these processes.

Finding 3:

Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Cause: Lack of audit tools

Response:
January 2015, the Chief of Administration implemented an "Audit Checklist" to be included in all hiring and examination packets. All packets are forwarded to the Chief of Administration for audit to ensure Personnel accounts for all required documentation (Attachment 1). After review the Chief of Administration will return packets for filing according to Delegation Guidelines.

The OIG Administrative Policy Manual (APM) has been updated to reflect the required retention to ensure all records conform to laws and rules.

The OIG takes reported deficiencies very seriously. Personnel Analysts have attended "Best Practices" training and the OIG has implemented corrective actions to strengthen oversight and conformance to all delegation requirements.

We appreciate your insight and guidance during this review.

If you have additional questions please contact my Chief of Administration at (916) 255-1415.

Sincerely,

Robert Barton
Inspector General

Attachment

cc: Sandra Maynard, Chief of Administration