



COMPLIANCE REVIEW REPORT

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Compliance Review Unit
State Personnel Board
August 25, 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 Commission on Peace Officer Standards and Training (POST) personnel practices in the areas of examinations, appointments, EEO, and PSC's from October 1, 2013, through September 30, 2014.

The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious
Personal Service 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 POST was established by the Legislature in 1959, to set minimum selection and training standards for California law enforcement. The POST organization has more than 118 staff members and functions under the direction of an Executive Director appointed by the Commission. The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce, and no tax dollars are used to fund the POST program. The POST program is voluntary and incentive-based. Participating agencies agree to abide by the standards established by the POST, and more than 600 agencies participate in the POST program and are eligible to receive the Commission's services. The POST also awards professional certificates to recognize peace officer achievement and proficiency.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing POST examinations, appointments, EEO program, and PSC's from October 1, 2013, through September 30, 2014. The primary objective of the review was to determine if POST 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 POST 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 POST 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 POST's 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 POST staff.

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

On August 11, 2015, an exit conference was held with the POST to explain and discuss the CRU's initial findings and recommendations. The CRU reviewed and carefully reviewed the POST's written response on August 20, 2015, which is attached to this final compliance review 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 with the department or a designated appointing authority 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

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.

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 POST conducted three examinations. The CRU reviewed all three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Governmental Program Analyst	Promotional	Written ²	5/19/2014	8
Law Enforcement Consultant II	Open	Education and Experience (E&E) ³	2/5/2014	30
Program Technician III	Promotional	Education and Experience (E&E)	12/23/2013	4

FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process

Summary: Although the POST submitted a job analysis for the Associate Governmental Program Analyst examination, they were unable to provide a job analyses for two the classifications listed below:

Classification	List Active Date	List Expiration Date	No. of Eligibles
Law Enforcement Consultant II	11/20/2013 & 2/10/2014	6/20/2014 & 9/4/2014	30
Program Technician III	12/31/2013	12/31/2014	1

Criteria: The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations (CCR), title 2, section 50, mandates the development and use of a job analysis for the examination process. A "job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within

² A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

³ In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience

the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM and that certain elements must be included in the job analysis studies. (Ibid.) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examinations may not have been job-related or legally defensible.

Cause: The POST states that they were not able to provide job analyses for examinations during the review period.

Action: The POST examination lists have expired. Prior to administering any future examinations, the POST must create and develop each examination based upon a job analysis that meets the requirements of the MSM. The POST must submit to the CRU a written corrective action plan within 60 days that describes the steps that will be taken to ensure job analyses are developed for any new examinations conducted. Furthermore, the CRU finds that the appointments made from the examinations that were administered without a job analysis were made in good faith, were not the fault of the appointed employees, and do not merit being voided.

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 based on 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 POST made 25 appointments. The CRU reviewed all 25 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Law Enforcement Consultant II	Certification List	Permanent	Full Time	10
Program Technician III	Certification List	Permanent	Full Time	1
Research Analyst I (General)	Certification List	Permanent	Full Time	1
Staff Informational Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Program Technician II	Transfer	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Senior Instructional Systems Engineer, POST	Mandatory Reinstatement	Permanent	Full Time	1
Business Service Officer I (Specialist)	Permissive Reinstatement	Permanent	Full Time	1
Research Specialist III (Various)	Reinstatement	Permanent	Full Time	1
Law Enforcement Consultant II	Reinstatement	Permanent	Full Time	1
Law Enforcement Consultant I	Retired Annuitant	Temporary	Intermittent	1

FINDING NO. 2 – Appointment Documentation Was Not Kept For the Appropriate Amount of Time

Summary: The POST was unable to provide and/or locate one Law Enforcement Consultant I appointment file, and one Law Enforcement Consultant II appointment file.

- 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 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, the CRU could not verify if the appointments were conducted properly.
- Cause:** The POST states that they were unable to locate the two missing appointment files and believe that they were misplaced.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the POST submit to the CRU a written corrective action plan that the department will implement to ensure conformity with the record retention requirements of Government Code section 12946.

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 POST EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate POST staff.

FINDING NO. 4 – A Disability Advisory Committee Has Not Been Established

Summary: The POST has not yet formed a 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 POST states that they have had a difficult time create a DAC committee due to the minimal staff they have in their office.

Action: The POST must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the POST must establish a DAC and submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes.

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 POST had one PSC that was in effect. The contract was subject to Department of General Services (DGS) approval, and thus CRU procedural review, and is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Rosanna McKinney	Instructor Development Program Training	9/1/2013 – 8/31/2014	\$78,800	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 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 amount of the PSC reviewed was \$78,800. It was beyond the scope of the review to make conclusions as to whether POST justifications for the contract were legally sufficient. POST provided specific and detailed 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 POST PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

The POST's departmental response is attached as Attachment 1.

SPB REPLY

Based upon the POST written response, the POST will comply with the CRU recommendations and findings.

It is further recommended that the POST 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.

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING



POST

EDMUND G. BROWN JR.
GOVERNOR

KAMALA D. HARRIS
ATTORNEY GENERAL

August 20, 2015

Mr. Alton Ford
Compliance Review Manager
Policy and Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, California 95814

Subject: Response to Compliance Review Findings

Dear Mr. Ford:

Thank you for the Compliance Review Report provided to the Commission on Peace Officer Standards and Training (POST) on August 17, 2015. POST agrees with the findings and thanks the Policy and Compliance Review Division (PCRD) for the opportunity to respond.

PCRD found that POST was not able to provide a job analysis for examinations administered during the period under review. Specifically, PCRD reviewed three examinations that were administered during the period of October 1, 2013 through September 30, 2014. It was found that two of the three exams reviewed were administered without benefit of a job analysis. The Merit Selection Manual (MSM), which is incorporated in the California Code of Regulations, Title 2, Section 50, mandates the development and use of a job analysis for the examination process. As stated in our response to the previous review, dated February 14, 2014, POST committed to accomplishing job analyses for all examinations administered, from that point forward. POST maintains this commitment and since February 14, 2014, job analyses have been accomplished for each examination administered.

During this review, PCRD found that POST was unable to provide two appointment files; one for a Law Enforcement Consultant I and one for a Law Enforcement Consultant II. After an exhaustive search of all of our personnel records, we are not able to find the missing documents and believe they may have been misplaced during our relocation in February 2015. However, in response to the finding, POST is reviewing its records retention processes to ensure our recordkeeping is complete and to mitigate the possibility of losing or misplacing documents.

PCRD also found that POST has not yet created a Disability Advisory Committee (DAC). Establishing this committee has been difficult due to minimal HR staffing. Although POST has not had a DAC, our annual Workforce Analysis Report reflects that POST has been above parity for disabled employment for more than seven years. In response to this finding, POST is currently reviewing the DAC information provided by CalHR, will be attending the next statewide committee meeting on September 24, 2015, and is committed to forming the committee.

Letter to: Alton Ford
State Personnel Board
August 20, 2015
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Thank you for the opportunity to respond to the findings identified in this compliance review. Should you have any questions, please do not hesitate to contact me at (916) 227-3907 or darla.engler@post.ca.gov.



Darla Engler, Chief
Administrative Services Bureau
Commission on Peace Officer Standards and Training