

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt Section 547.60.2 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from June 26, 2020, through August 10, 2020. A public hearing was held on August 12, 2020. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Patrick J. Whalen, CASE General Counsel, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE).

Comment 1:

There needs to be a consequence for continuously failing to honor the notice obligation that already exist under state law. To that end, CASE proposes that if a contract is challenged under Government Code section 19130, subdivision (b), by an exclusive representative, the fact that the contracting agency did not provide the notice required under Government Code section 19132 shall create a rebuttable presumption that the contract is not permissible under Government Code section 19130, subdivision (b). The contracting agency may overcome that presumption by showing, by clear and convincing evidence, that the contract is permissible under one or more of the grounds listed in Government Code section 19130, subdivision (b).

In addition, CASE proposes if a department fails to provide the notice required under Government Code section 19132, it shall be prohibited from asserting any defense based on delay, laches, or untimeliness in any proceeding challenging the contract under section 19130, subdivision (b).

Response 1:

CASE's suggestion and remedy exceeds the permissible scope of Government Code section 19132, subdivision (b). The statutory provision does not provide for a rebuttable presumption as to the permissibility or impermissibility of the contract if the department fails to satisfy the notice requirement. In addition, the statutory

provision also does not provide for a remedy if notice is not provided to the unions. Therefore, no changes will be made.

Summary of Written Comments from Anne M. Giese, Chief Counsel, California Attorneys, Service Employees International Union, Local 1000 (SEIU, Local 1000).

Comment 1:

The requirements of the notice need to be specified as to the timing and type of notice that is required. Notice which provides a reasonable amount of time in advance of contract execution is the type of notice that presents a meaningful opportunity to review, and respond, when necessary. Based on the volume of state contracts, meaningful review warrants a minimum of 20 days' notice to the employee organizations.

In addition, meaningful notice requires that the contents be standardized in specified areas. The most important standards be: type of work, 19130(b) exception, value of the contract, term and extensions, as well as a brief description of the nature of the work expected to be performed.

Response 1:

SEIU's suggestions are reasonable; and therefore, will be incorporated into the regulation.

III.

Conclusion:

The Board appreciates the comments and feedback it received regarding this proposed regulation. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.

