

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)	PSC No. 09-01
)	
DEPARTMENT OF GENERAL)	RESOLUTION
SERVICES)	
)	May 14, 2009
from the Executive Officer's December)	
19, 2008, Disapproval of a Personal)	
Services Contract for Security Guard)	
Services at the San Francisco Civic)	
Center)	
)	

WHEREAS, the State Personnel Board (Board) has considered carefully the findings of fact and Decision issued by the Executive Officer in SPB File No. 08-009(b) on December 19, 2008, concerning the above-entitled matter, as well as the written and oral arguments presented by the Department of General Services (Department) and Service Employees International Union, Local 1000 (SEIU), during the Board's April 14, 2009, meeting; and

WHEREAS, by said Decision the personal services contract for Security Guard services proposed or executed by the Department was disapproved; and

WHEREAS, although the Board finds that the Executive Officer's decision was correctly decided, the Board also recognizes that significant harm could occur to the state service if the contract for Security Guard services at the San Francisco Civic Center is immediately terminated. As a result, the Board finds that the appropriate result in this case is to permit the contract to continue for 120 days after the date of this Decision in order to afford the Department an opportunity to hire civil service employees to perform its Security

Guard functions at the San Francisco Civic Center, and to disapprove the contract at the expiration of that 120 days period.

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. The Board authorizes the Department of General Services to utilize the contract for 120 days from the date of this Decision in order to afford the Department an opportunity to hire civil service employees to perform those duties required under the Contract. This provisional approval shall expire 120 days after the date of this Decision, at which time the contract is disapproved.
3. 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; and
4. Adoption of this Resolution shall be reflected in the record of the meeting and the Board's minutes.

STATE PERSONNEL BOARD¹

Anne Sheehan, President
Richard Costigan, Vice-President
Patricia Clarey, Member
Maeley Tom, Member

* * * * *

¹ Member Sean Harrigan did not participate in this Decision.

The foregoing Resolution was made and adopted by the State Personnel Board in PSC No. 09-01 at its meeting on May 14, 2009, as reflected in the record of the meeting and Board minutes.



December 19, 2008

Anne M. Giese, Esq.
Service Employees International Union, Local 1000
1808 14th Street
Sacramento, CA 95811

Kathleen H. Yamamoto, Chief
Business Operations, Policy and Planning Branch
Department of General Services
707 Third Street, 1st Floor
West Sacramento, CA 95605

RE: Request for Review of Proposed or Executed Personal Services Contract
for Security Guard Services—San Francisco Civic Center (BPM-800)
[SPB File No. 08-009(b)]

Dear Mr. Stern and Mr. Van Santen:

By letter dated October 24, 2008, the Service Employees International Union, Local 1000 (SEIU) requested, pursuant to Gov. Code § 19132 and Title 2, Cal. Code Regs., §§ 547.59, *et seq.*, that the State Personnel Board (SPB) review for compliance with Gov. Code § 19130(b) a proposed contract for security guard services (Contract) to be entered into between the Department of General Services (Department) and a private firm, to be performed at the San Francisco Civic Center.

On October 27, 2008, the SPB notified the Department that SEIU had requested that SPB review the Contract. On November 17, 2008, September 30, 2008, the Department filed its response. SEIU filed its reply on November 24, 2008, after which the matter was deemed submitted for review by the Executive Officer.

For the reasons set forth below, I find that the Department has failed to establish that the Contract is permissible under Gov. Code § 19130(b)(3) and, therefore, the Contract is disapproved.

Legal Standard

In *Professional Engineers in California 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 constitutional mandate, state work may legally be contracted to private entities or whether it must be performed by state employees.

Positions of the Parties

The proposed Contract² provides for the contractor to provide all management, supervision, uniformed labor and incidental clerical supplies necessary for unarmed security services at the Civic Center Complex, located at 455 Golden Gate Avenue, San Francisco.

The Department contends that the Contract is justified under Government Code section 19130(b)(3) for the following reasons:

1. There is no current list available for the Department in the Security Guard (SG) or Lead Security Guard (LSG) classifications.
2. The civil service class specifications for SG and LSG do not include certain requirements of the contract, including the requirement to operate x-ray, magnetometer and wand screening equipment and use of other complex computer equipment; registration cards issued by the Department of Consumer Affairs; training and experience in emergency procedures, crowd control and public relations; and the ability to perform work requiring moderate to arduous physical exertion.
3. The hourly rate of pay for contract employees exceeds existing civil service compensation by an average of \$10 per hour.
4. “The issue of recruitment and retention of civil service classifications in larger metropolitan areas, especially the San Francisco Bay Area.”³

The Department also contends that neither DGS nor the California Highway Patrol currently use civil service employees to perform this work, but instead utilize a Master

¹ (1997) 15 Cal.4th 543, 547.

² Because the contract has not yet been awarded, the Department provided the Executive Officer with a sample contract.

³ The Department has not provided any further explanation of this argument.

Services Agreement awarded under the authority of Government Code section 19130(a).⁴ In addition, the Department contends that it has not used civil service employees in this classification in over 20 years, and that significant restructuring of the State Police program and security requirements since September 11, 2001, have impacted the level of security required in state facilities.

SEIU contends that the Department has failed to establish that the contracted services are not available through the civil service; i.e., that there are no existing civil service job classifications through which the agency could appoint or retain employees with the knowledge, skills, expertise, experience or ability to perform the required work. SEIU contends that civil service classes exist in which civil service employees could be retained to perform the services in question.

Analysis

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 it clear that, in asserting the exemption contained in Section 19130(b)(3), the burden is on the 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.⁵

The Department has failed to present sufficient facts to establish that there were no civil service job classifications to which it could appoint employees with the requisite experience needed to perform the work required under the Contract. The fact that the Department has no current list available to it does not relieve it of the obligation to make reasonable, good faith efforts to obtain such a list or establish its own list. Moreover, the fact that the requirements of the particular jobs in question may exceed the minimum qualifications set forth in the class specifications for Security Guard and Lead Security Guard does not preclude the Department from hiring employees in those classifications who have the necessary skills to perform the job. The Department has provided no evidence whatsoever to establish that it made reasonable, good faith efforts to recruit civil service employees or that, despite having done so, it has been unable to

⁴ Government Code section 19130(a) authorizes the use of personal services contracts based upon a showing of a substantial cost savings to the State. The Department has not sought approval of the Contract in this case under Government Code section 19130(a).

⁵ PSC No. 05-03, at p. 8.

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find suitable candidates to perform the Contract functions due to state wage rates or any other reason. Accordingly, the Department has failed to establish sufficient justification for an exception to the civil service mandate.

This letter constitutes my decision to disapprove the Contract. 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