



COMPLIANCE REVIEW REPORT
CALIFORNIA TAX CREDIT ALLOCATION
COMMITTEE

Compliance Review Unit
State Personnel Board
February 17, 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 California Tax Credit Allocation Committee's (CTCAC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from January 1, 2013, through December 31, 2013. The following table summarizes the compliance review findings.

| Area | Finding | Severity |
|------------------------------|---|---------------|
| Examinations | Examinations Complied with Civil Service Laws and Board Rules | In Compliance |
| Appointments | Appointments Complied with Civil Service Laws and Board Rules | In Compliance |
| 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

BACKGROUND

The CTCAC administers the federal and state Low-Income Housing Tax Credit Programs. Both programs were created to encourage private investment in affordable rental housing for households meeting certain income requirements.

The CTCAC also administers a Farmworker Housing Assistance Program. Effective January 1, 2009, eliminated a separate state farmworker housing tax credit program, and instead established an annual set-aside of state low-income housing tax credits for farmworker housing development (Farmworker State Credits). The annual allocation is \$500,000.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CTCAC examinations, appointments, EEO program, and PSC's from January 1, 2013, through December 31, 2013. The primary objective of the review was to determine if CTCAC 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 the CTCAC 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 CTCAC 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 CTCAC 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 CTCAC staff.

CTCAC PSC's were also randomly selected to ensure that various types of contracted services and contract amounts were reviewed. The CTCAC executed PSC's for energy consulting and professional management services and California Utility Allowance Calculator (CUAC) review. It was beyond the scope of the compliance review to make conclusions as to whether CTCAC justifications for the contracts were legally sufficient.¹ The review was limited to whether CTCAC practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On January 30, 2015, the CTCAC was provided a copy of the CRU draft report. On February 17, 2015, the CTCAC determined an exit conference was not necessary to discuss the CRU's findings and recommendations. The CTCAC reviewed the draft report and had no department response to add.

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 a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be

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.

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 CTCAC conducted two examinations. The CRU reviewed both of these examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Applications |
|--|--------------------------|---|-----------------|---------------------|
| Associate Governmental Program Analyst | Departmental Promotional | Qualifications Appraisal Panel ² | 7/22/2013 | 12 |
| Staff Services Manager III | Departmental Promotional | Written ³ | 7/29/2013 | 20 |

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

The CTCAC administered two examinations to create eligible lists from which to make appointments. For all of the examinations, the CTCAC published and distributed examination bulletins containing the required information. Applications received by CTCAC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The CTCAC notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs 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.

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.

³ 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

The CRU found no deficiencies in the examinations that the CTCAC conducted during the compliance review period. Accordingly, the CTCAC fulfilled its responsibilities to administer these examinations 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 CTCAC made seven appointments. The CRU reviewed all 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 | 3 |
| Staff Services Analyst | Certification List | Permanent | Full Time | 2 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 1 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | 1 |

FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules

The CTCAC measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidate. The CTCAC made appointments to one position by transfer. The CTCAC verified the eligibility of each candidate to their appointed class, and thus complied with civil service laws and board rules in making the appointment (Cal. Code Regs., tit. 2, § 425, subd.(a).) For each of the six list appointments, the CTCAC ordered a certification list of candidates ranked competitively. After properly clearing the SROA⁴ list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification list. Accordingly, these appointments complied with civil service laws and board rules.

The CRU found no deficiencies in the appointments that the CTCAC conducted during the compliance review period. Accordingly, the CRU found that all the appointments the CTCAC made during the compliance review period satisfied civil service laws and Board rules.

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 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.)

⁴ The state restriction of appointments (SROA) program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

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

FINDING NO. 3 – 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 CTCAC'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, who is at a managerial level, reports directly to the executive director of the CTCAC. In addition, the CTCAC has an established DAC, that reports to the director on issues affecting persons with a disability. The CTCAC completed a workforce analysis, which was submitted to the CRU. The CTCAC also provided evidence of its efforts to promote equal employment opportunity in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A 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 CTCAC had three PSC's that were in effect. The CRU reviewed all of those contracts, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified |
|---------------------------------|--|----------------------|--------------------|--------------------------|
| Benningfield Group | Energy Consulting Service | 7/1/2012 – 6/30/2013 | \$36,000.00 | Yes |
| Boston Capital Asset Management | Professional Asset Management Services | 1/01/2012-1/01/2014 | \$1,315,000,000.00 | Yes |
| Build it Great | CUAC Review | 8/01/2013-8/01/2014 | \$18,000.00 | Yes |

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the Department of General Services 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 \$1,369,000.00. It was beyond the scope of the review to make conclusions as to whether CTCAC's justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CTCAC provided specific and detailed factual information in the written justifications as to how each of the three contracts met at least one condition set forth in Government Code section 19131,

subdivision (b). Accordingly, the CTCAC's PSC's complied with civil service laws and board rules.

DEPARTMENTAL RESPONSE

The CTCAC has no department response.

SPB REPLY

The SPB appreciates the cooperation of the CTCAC during the compliance review.