

Office of Audit Services



CalPERS

Public Agency Review

Exposition Metro Line Construction Authority

**Employer Code: 1960
CalPERS ID: 2730792123
Job Number: P12-004**

July 2013



California Public Employees' Retirement System
Office of Audit Services
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July 26, 2013

Employer Code: 1960
CalPERS ID: 2730792123
Job Number: P12-004

Exposition Metro Line Construction Authority
Richard D. Thorpe, Chief Executive Officer
707 Wilshire Boulevard, 34th Floor
Los Angeles, CA 90017

Dear Mr. Thorpe:

Enclosed is our final report on the results of the public agency review completed for the Exposition Metro Line Construction Authority. Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate division at CalPERS. Please work with this division to address the recommendations specified in our report. It was our pleasure to work with your Authority and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed By Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Exposition Metro Line Construction Authority
Kevin Tvedt, Finance Manager, Exposition Metro Line Construction Authority
Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

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RESULTS IN BRIEF

The California Public Employees' Retirement System (CalPERS) Office of Audit Services (OAS) reviewed the Exposition Metro Line Construction Authority's (Authority) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Employees that worked through a temporary employment agency were not enrolled timely.
- Provision for paying EPMC was not contained in a written labor policy or agreement.
- Pay schedules did not meet requirements for publicly available pay schedules.

AUTHORITY BACKGROUND

The Authority was created through legislation for the purpose of awarding and overseeing final design and construction contracts for completion of the LA-Expo Metro Line light rail project from the Metro Rail Station in the City of Los Angeles to the downtown area of the City of Santa Monica. The Authority is governed by a Board of Directors. Personnel Policy and Employee Manual and employment agreements outline Authority employees' salaries and benefits and state the terms of employment agreed upon between the Authority and its employees. The Authority contracted with CalPERS effective July 15, 2007 to provide retirement benefits for local miscellaneous employees.

All contracting public agencies, including the Authority, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.

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- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

SCOPE

As part of the Board approved plan for fiscal year 2012/2013, the OAS reviewed the Authority's payroll reporting and member enrollment processes as these processes relate to the Authority's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from the Authority's inception through August 2012. The on-site fieldwork for this review was conducted from August 13, 2012 through August 16, 2012.

This review did not include a determination as to whether the Authority is a "public agency" (as that term is used in the California Public Employees' Retirement Law), and OAS therefore expresses no opinion or finding with respect to whether the Authority is a public agency or whether its employees are employed by a public agency. The review objectives and a summary of the procedures performed are listed in Appendix B.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: Employees that worked through a temporary employment agency were not enrolled timely.

Recommendations:

The Authority should implement procedures to review and monitor the number of hours worked in a fiscal year by all employees hired through a temporary employment agency and enroll all eligible employees into CalPERS membership when membership eligibility requirements are met pursuant to Government Code Section 20305.

The Authority should work with CalPERS Customer Account Services Division (CASD) to assess the impact of this membership eligibility issue and make all necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

The Authority did not timely enroll eligible employees that worked through a temporary employment agency. OAS reviewed documentation provided for four individuals that worked for the Authority through a temporary employment agency. OAS determined that two of the individuals worked in an employer/employee relationship and both met CalPERS eligibility by completing 1,000 hours within a fiscal year. Specifically, OAS noted the following:

- One employee worked a total of 1,069.50 hours in fiscal year 2010/2011 and should have been enrolled into CalPERS membership in June 2011.
- A second employee worked a total of 1,184.00 hours in fiscal year 2011/2012 and should have been enrolled into CalPERS membership in May 2012.

The Authority hired both employees into permanent positions on November 26, 2012 and then enrolled them in CalPERS membership. OAS determined that these were late enrollments.

Criteria:

Government Code: § 20028, § 20160, § 20305

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Finding 2: Provision for EPMC was not contained in a written labor policy or agreement.

Recommendation:

The Authority should work with CASD to ensure the provision for paying EPMC is authorized in a written labor policy or agreement pursuant to the requirements of California Code of Regulations Section 569.

The Authority should work with CASD to make all necessary adjustments, if any, to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

The Authority did not have the provision for paying EPMC in a written labor policy or agreement. The Authority paid its employee member contributions and reported the contributions as tax deferred during the pay period reviewed, June 10, 2012 through June 23, 2012. However, the provision for paying EPMC was not authorized in a written labor policy or agreement pursuant to the requirements of California Code of Regulations Section 569.

Criteria:

Government Code: § 20049, § 20160, § 20691

California Code of Regulations: § 569

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Finding 3: Pay schedule did not meet requirements of a publicly available pay schedule.

Recommendation:

Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The Authority must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the Public Employees' Retirement Law (PERL). Additionally, the Authority must ensure that all payrates are properly reviewed, authorized and approved by the Authority Board in accordance with public meeting laws. Furthermore, calculation of retirement benefits should be limited to a member's last authorized payrate listed in a publicly available pay schedule.

The Authority should work with CASD to make all necessary adjustments, if any, to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

The Authority did not have a pay schedule that complied with the requirements defined in the California Code of Regulations Section 570.5. Specifically, the Authority did not have a pay schedule until April 2012. OAS determined the pay schedule was not duly approved and adopted by the governing body in accordance with requirements of applicable public meeting laws, and the pay schedule did not specify the time base or effective date.

Criteria:

Government Code: § 20160, § 20636 (b)(1), § 20636 (d)

California Code of Regulations: § 570.5

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Observation 1: Credit for same service in two retirement systems.
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The Chief Executive Officer (CEO) of the Authority received service credit for the same service in two retirement systems, CalPERS and the Public Agency Retirement Services (PARS) systems. The CEO should have been excluded from the CalPERS system for that same service pursuant to Government Code Sections 20303 and 20894.

In August 2005, the Authority's current CEO was employed as the Metro Chief Capitol Management Officer with an affiliated entity and CalPERS employer, the Public Transportation Service Corporation (PTSC), who reported him as a CalPERS member. As the Authority began to take shape, the PTSC Metro Chief Capitol Management Officer was appointed Interim CEO of the Authority in August 2005, and was appointed permanent CEO as of July 6, 2006 under an employment agreement. He retired from PTSC on December 31, 2006 and received a retirement allowance from CalPERS.

In the October 2005 Authority Board meeting, the CEO proposed the development of an employee benefits plan. The CEO's proposal stated that an employee benefits plan was required prior to hiring and mobilizing an executive management team and supporting staff. The CEO's proposal did not recommend a specific pension plan but proposed utilizing CalPERS or another similar program for pension benefits. The Authority Board unanimously approved the proposal.

In the January 2006 Authority Board meeting, the CEO proposed an employee benefits plan to include both PARS and CalPERS. The CEO's proposal stated that utilizing both providers of these services would achieve the greatest flexibility for initially attracting prospective employees with varying types of prior government and non-government experience. The CEO's proposal also stated that at the point when CalPERS goes into effect, all new employees hired after the effective date would be required to participate in the CalPERS program. The Board unanimously approved the proposal.

The PARS plan was adopted by the Authority Board in November 2006, effective July 1, 2006. Then in July 2007, the Authority adopted the CalPERS Pension plan, which became effective July 15, 2007. Pursuant to Government Code Section 20484, a provision in the contract between the Authority and CalPERS allowed employees hired prior to July 15, 2007 the option to remain in PARS or "waive" their rights to PARS and become members of CalPERS. The CEO elected to remain in PARS rather than to reinstate to CalPERS membership.

In September 2006, the Authority entered into an employment agreement with the Interim CEO to serve as the CEO with an effective date retroactive to July 6, 2006.

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The CEO received service credit in the PARS retirement system as of July 6, 2006. The CEO also received service credit for the same service in the CalPERS as he continued to be reported by PTSC from July 6, 2006 until October 21, 2006. Persons who are members of any other retirement or pension system are, as to that service, excluded from CalPERS under Government Code Sections 20303 and 20894. The CEO should have been excluded from CalPERS effective July 6, 2006.

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Observation 2: CalPERS contract membership exclusion.
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In addition to the CEO mentioned in Observation 1, three other PTSC staff retired under the CalPERS pension plan. The three retirees were subsequently hired by the Authority to work on a full-time basis, in permanent Authority positions and became PARS members. Like the CEO, these three individuals elected to remain in PARS rather than to reinstate to CalPERS membership when the Authority contracted with CalPERS in July 2007. As a result, they continue to receive a CalPERS retirement allowance while working for the Authority. The following sections of the Government Code apply to the stated observation.

Government Code Section 20482, states, “Subject to the approval of the board as in the case of all other employees, the contracting agency may elect to continue the local system and to place under this system only a portion of the members of the local system.”

Government Code Section 21220, states, in part, “(a) A person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency,...unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article.”

The Authority’s contract with CalPERS excludes, among others, “Employees who are members of the Public Agency Retirement System who did not waive their rights under that system as of the effective date of the contract.”

Generally, Government Code Section 21220 requires that a CalPERS retiree reinstate to CalPERS membership upon employment by a CalPERS employer. The Authority utilized Government Code Section 20482 and the exclusion in the CalPERS contract to allow four employees who retired from CalPERS, the option to remain in PARS rather than to reinstate to CalPERS membership. The Authority worked with CalPERS staff to include the exclusion “waiver” language in the contract, and informed CalPERS about the intention to allow these four retirees to remain in PARS.

OAS recommends that the Authority work with CASD and CalPERS Benefit Services Division (BNSD) to clearly define the Authority’s application of the exclusion for those employees retired from CalPERS.

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Observation 3: The Authority's salary ranges in the pay schedule were broad.

OAS reviewed the Authority's April 2012 pay schedule and noted that the minimum to the maximum payrate range was as low as 37.4 percent and as high as 100 percent with an average of 64.6 percent for the positions listed.

Per Government Code Section 20636(d), pay schedules must be available for public scrutiny. A payrate range cannot be so broad as to render the range unhelpful to the public when inspecting a pay schedule. The broad payrate ranges cause a lack of transparency resulting in insufficient information available to the public. In addition, the payrate is limited to the amount listed on a pay schedule that, among other things, is stated as either a single amount or multiple amounts within a range. CASD, in its sole discretion, will make a final determination in regard to this observation.

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the Authority's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted. Since OAS did not review whether the Authority is a "public agency" (as that term is used in the California Public Employees' Retirement Law), this report expresses no opinion or finding with respect to whether the Authority is a public agency or whether its employees are employed by a public agency.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Authority of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original Signed By Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: July 2013
Staff: Cheryl Dietz, CPA, Assistant Division Chief
Michael Dutil, CIA, CRMA, Manager
Alan Feblowitz, CFE, Manager
Jodi Brunner, Auditor
Terry Heffelfinger, Auditor

APPENDIX A

BACKGROUND

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BACKGROUND

California Public Employees' Retirement System

CalPERS provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CASD manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

APPENDIX B

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Authority complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Authority's retirement contract with CalPERS were followed.

This review covers the period from the Authority's inception through August 2012. This review did not include a determination as to whether the Authority is a "public agency" and expresses no opinion or finding with respect to whether the Authority is a public agency or whether its employees are employed by a public agency.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Authority's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the Contract and contract amendments between the Authority and CalPERS
 - Correspondence files maintained at CalPERS
 - Board minutes and Authority Board resolutions
 - Authority written labor policies and agreements
 - Authority salary, wage and benefit agreements including applicable resolutions
 - Authority personnel records and employee hours worked records
 - Authority payroll information including Summary Reports and CalPERS listings
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other documents as necessary
- ✓ Reviewed Authority payroll records and compared the records to data reported to CalPERS to determine whether the Authority correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Authority public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the

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Authority's governing body in accordance with requirements of applicable public meeting laws.

- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Authority's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Authority's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Authority's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Authority's affiliated entities to determine if the Authority shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Authority or by the affiliated entity.
- ✓ Reviewed the Authority's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

APPENDIX C

AUTHORITY'S RESPONSE



Expo

July 19, 2013

EXPO-11221
File Code: CA112

Ms. Margaret Junker, Chief
Office of Audit Services
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, California 94229-2701

Subject: California Public Employee's Retirement System (CalPERS) compliance
review of the Exposition Metro Construction Authority

Employer Code: 1960
CalPERS ID: 2730792123
Job Number: P12-004

Dear Ms. Junker:

The Exposition Metro Construction Authority (Authority) has reviewed the California Public Employee's Retirement System Office of Audit Services (CalPERS) Draft Compliance Review Report of the Exposition Metro Construction Authority dated June, 2013. The Authority agrees with the representations made in the draft report and the recommendations. However, while the Authority agrees with the materiality of the report, we would like to comment on the specific findings.

The Authority's comments are as follows:

Finding #1: Employees that worked through a temporary employment agency were not enrolled timely.

Response: Two identified individuals have now been enrolled in CalPERS. The Authority understands that additional fees will be due to cover the time they were eligible but not enrolled in CalPERS. The Authority now closely monitors hours worked by temporary workers to ensure that any worker over the threshold will be enrolled in CalPERS. .

Finding #2: Provisions for Employer Paid Member Contributions (EMPC) was not contained in a written labor policy or agreement.

Response: Provision for paying EMPC in the Authority's written labor policy will need to be ratified by the Authority Board. We would like assistance on the language for the provision to conform with CalPERS requirements. It is

our understanding that we can reach out to CalPERS for that assistance.

Finding #3: Pay schedule did not meet requirements of a publicly available pay schedule

Response: The Authority's published pay schedule and incorporated salary ranges have been approved by the Authority's Board and LACMTA Inspector General. The published pay schedule is similar to LACMTA's ranges, which they were based upon. The Authority will incorporate a time base and effective date on the published pay schedule.

The Authority requests that all the above comments be incorporated before the final audit report is published.

If there are any questions regarding this response please contact Eric O'Connor at 213-243-5618.

Sincerely,



Richard D. Thorpe, P.E.
Chief Executive Officer

RDT/eoc

cc: Samantha Bricker
Eric O'Connor
Kevin Tvedt
Document Control