

**THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

from the Executive Officer's April 7, 2023,  
Disapproval of Contract Between the  
California Department of Transportation and  
System One Holdings, LLC, dba Cimplifi, for  
Legal Services

**BOARD DECISION**

**PSC NO. 23-02**

November 9, 2023

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**APPEARANCES:** Alan M. Steinberg, Deputy Chief Counsel, on behalf of the California Department of Transportation; Patrick Whalen, General Counsel, on behalf of the California State Attorneys, Administrative Law Judges, and Hearing Officers in State Employment.

**BEFORE:** Kathy Baldree, President; Shawnda Westly, Vice President; Kimiko Burton, Ana Matosantos, and Dr. Gail Willis, Members.

**DECISION**

The California Department of Transportation (Caltrans) has appealed from the State Personnel Board (SPB or Board) Executive Officer's April 7, 2023, decision disapproving a contract for legal services between Caltrans and System One Holdings, LLC dba Cimplifi (Cimplifi) [Agreement #42B5058].<sup>1</sup> The five-member State Personnel Board (Board) finds that Caltrans has not shown that the contract is authorized under Government Code section 19130, subdivision (b)(3).<sup>2</sup> The Board, therefore, sustains the Executive Officer's decision disapproving the contract.

**BACKGROUND**

The contract at issue between Caltrans and Cimplifi was entered into in response to a scheduled 10-week long arbitration in the Shasta County Superior Court

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<sup>1</sup> Neither the Executive Officer nor the SPB's Chief Counsel's office participated in advising or assisting the Board in any manner with respect to the instant decision.

<sup>2</sup> Hereinafter, all statutory references are to the Government Code unless otherwise indicated.

concerning an alleged breach of contract related to the \$250 million Antlers Bridge replacement project. The arbitration was scheduled to commence in March 2023 and conclude in August 2023.

In October 2022, Caltrans contracted with Cimplifi to conduct electronic discovery (eDiscovery) document review and, if required, provide consultation and advice to Caltrans attorneys relating to the arbitration proceedings. The contract runs from September 18, 2022, through June 30, 2025, and has a value of \$450,000. When entering into the contract, Caltrans asserted the contract was permitted under Section 19130, subd. (b)(3), on the following grounds:

The work involved document review of client data in the matter of I-5 Antlers Bridge Replacement (Matter ID: 6B28904).

Pursuit [*sic*] to Government Code section 19130(b)(3) [footnote omitted], the attorney in charge of the matter reviewed the facts determined [*sic*] that the contracted services cannot be performed by an attorney within civil service. Due to confidentiality and Caltrans' need to maintain the attorney-client privilege, prevents [*sic*] Caltrans from providing a detailed description of facts. The nature of the issues involved lead to the conclusion that outside [*sic*] reviewer should independently perform the document review.

The requirement to obtain written consent from the Attorney General to retain counsel under Government Code § 11041(a), Caltrans is exempt pursuant to Government Code § 11041(a) [*sic*].

More specifically, the contract called for Cimplifi to assist Caltrans' litigation team, consisting of three full-time attorneys, several support attorneys, and paralegal and secretarial staff, with the eDiscovery process in the Antlers Bridge arbitration. According to Caltrans, there were over three million documents potentially subject to discovery and Caltrans, "does not have people trained on the use of the Relativity software,<sup>3</sup> particularly the input, management and review of information uploaded into

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<sup>3</sup> "Relativity" is a software program designed to assist attorneys in cases involving voluminous amounts of eDiscovery.

Relativity, nor does the Legal Division have the staff to complete such document management at such a large scale.” Further, expertise in the use of Relativity is necessary because “the use of this software is of a highly specialized and technical nature.” The Senior Review Manager for Cimplifi designated in the contract is Dan Degener (Degener), who reportedly “has worked in the eDiscovery field for 12 years” and “has extensive experience in Relativity, Axcelerate, and other review platforms.”

Caltrans timely notified the California State Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE) of its intent to enter into the contract with Cimplifi.

### **PROCEDURAL HISTORY**

Pursuant to California Code of Regulations (Cal. Code Regs.), title 2, section 547.61, CASE filed a challenge to the contract with the Board’s Executive Officer on or about January 30, 2023, asserting, in pertinent part:

These types of services can be and regularly are performed by civil service attorneys. The contracting of civil service work is prohibited, unless it complies with the merit principle found in Article VII of the Constitution and falls within the exceptions listed in Government Code, § 19130. Caltran [*sic*] has the burden to demonstrate a valid exception applies to this work.

The Executive Officer thereafter notified Caltrans of CASE’s challenge to the contract and afforded Caltrans an opportunity to file a Response to the challenge, pursuant to Cal. Code Regs., tit. 2, § 547.62. On or about February 22, 2023,<sup>4</sup> Caltrans filed a two-page Response asserting that Cimplifi would perform the following services to Caltrans under the contract:

- Assistance and training with creating and loading load files.
- Assistance with processing sets.
- Assistance with creating and exporting productions to properly load files per eDiscovery code.
- Assistance with analytical searches through Relativity instance in order to

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<sup>4</sup> Caltrans did not request an extension of time to file its Response.

- manage a workspace of over 3,000,000 documents and counting.
- Assistance with coding documents through the workspace for productions as well as review of incoming productions per eDiscovery code.
- Assistance with creating scripts in the Relativity instance for proper search term methods, reporting and persistent highlighting throughout the workspace for a more efficient workflow.
- Creating search term reports, batches, folders designs and pivot profiles.
- Assistance with correcting file/job/discover errors during processing, productions, importing and exporting.
- Review assistance with the aid of Review Attorneys to conduct first pass review coding/tagging of electronic documents for privileged, confidentiality and relevancy issues to prepare large amount of documents for production per case ESI Protocol as well as eDiscovery code.
- Assistance with eDiscovery management in order to stay within eDiscovery code.

As justification for the contract, Caltrans asserted the following:

- Cimplifi will provide litigation support services related to the document management of approximately 9 TB of information (approximately 3,339,789 documents) through the Relativity Legal Search software program.
- The litigation team already consists of three full time attorneys, several other support attorneys, as well as other support staff such as paralegal and secretarial staff. The amount of work is beyond what Caltrans attorneys have the capacity for and is beyond the training, knowledge and expertise in the use of the Relativity software as the use of this software is of a highly specialized and technical nature.
- Without the services of Cimplifi, the litigation team would not be able to meet the e-Discovery requirements and would not be able to sufficiently represent Caltrans in the \$250 million public works arbitration.

On or about February 27, 2023, CASE filed its Reply to Caltrans' Response, pursuant to Cal. Code Regs., tit. 2, § 547.63. In its Reply, CASE essentially asserted that: Caltrans failed to demonstrate that state civil service attorneys were not qualified to perform the type of work to be performed by Cimplifi; a high volume of work did not justify contracting out for legal services under Section 19130, subd. (b)(3); and, Caltrans failed to explain why it could not assign more of its approximately 119 attorneys to assist with the Antlers Bridge arbitration eDiscovery process or, failing that, why it did not seek assistance from the Office of the Attorney General prior to attempting to contract for those services outside of the state civil service.

On or about April 7, 2023, the Executive Officer issued a decision finding that the contract was not justified under the provisions of Section 19130, subd. (b)(3), as Caltrans failed to establish that no civil service job classification exists within the state civil service system that has the knowledge and skill to perform the work or, if such a classification exists, that Caltrans was unable to hire a qualified candidate to perform those duties. Although Caltrans asserted that expertise with the Relativity program was necessary, Caltrans failed to explain what about using Relativity requires special expertise. The simple circumstance that it is a software program did not establish that it is highly specialized or technical, particularly as most litigation attorneys are by now well-versed in the eDiscovery process. Furthermore, Caltrans offered no explanation as to why the Relativity eDiscovery software was required to be used, as opposed to another eDiscovery software program that its Legal Division staff may have been trained in, nor did Caltrans provide any declarations or documentary evidence (other than the contract itself) to substantiate its position.

The Executive Officer further found that, even assuming adequately representing Caltrans in the Antlers Bridge arbitration required utilizing the Relativity software program, and that Caltrans's Legal Division staff presently lack the ability to use Relativity due to a lack of training, those circumstances did not establish that the needed services were unavailable in the civil service. Instead, if Caltrans's Legal Division was unable to perform work that should properly be completed by the civil service, prior to contracting for outside legal services, Caltrans was required to first make good faith efforts to obtain attorneys elsewhere in the civil service who were familiar with the Relativity program and could assist Caltrans in the litigation.

Finally, the Executive Officer found that the mere fact that the Antlers Bridge litigation involved a very large workload was, standing alone, insufficient to justify contracting out for legal services. Instead, it is well established that a large workload is not a consideration

when determining whether a contract is justified under Section 19130, subd. (b)(3).

On or about July 19, 2023, Caltrans filed its Appeal with the Board of the Executive Officer's April 7, 2023, decision, pursuant to Cal. Code Regs., tit. 2, § 547.66.<sup>5</sup> Unlike the rather sparse, two-page Response that Caltrans filed with the Executive Officer when seeking to justify the contract, Caltrans' appeal consisted of a much more detailed, 20-page brief, accompanied by three sworn declarations, consisting of 6, 22, and 247 pages, respectively. A great deal of this newly added information from Caltrans concerned the complexities and difficulties involved with utilizing the Relativity eDiscovery program, particularly given the large volume of documents underlying the Antlers Bridge arbitration.

On or about August 9, 2023, CASE filed its Response to Caltrans' Appeal. In its Response, CASE, citing to the provisions of Cal. Code Regs., tit. 2, § 547.66, objected to any information contained within Caltrans' Appeal that was not part of Caltrans' Response to the Executive Officer. CASE also largely reiterated the arguments it previously made to the Executive Officer when asserting that Caltrans failed to meet its burden of establishing that the contract was justified under the provisions of Section 19130, subd. (b)(3).

Caltrans declined to file a Reply to CASE's Response.

During oral argument before the Board on September 14, 2023, Caltrans also raised for the first time the following arguments: (1) CASE's request for review of the contract to the Executive Officer failed to comply with the requirements of Cal. Code Regs., tit. 2, § 547.61, subd. (a)(1), in that it did not provide specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code § 19130(b); and (2) the Executive Officer failed to conduct an adequate investigation

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<sup>5</sup> The oral argument before the Board was originally scheduled for the Board's August 10, 2023, meeting; however, the hearing was continued until the Board's September 14, 2023, meeting at the request of the parties. The parties' briefing schedules were thereafter amended to reflect the later hearing date.

concerning the validity of the contract, and/or impermissibly failed to schedule the case for a hearing before either an Administrative Law Judge or the Board.

### **ISSUES**

The following issues are before the Board for consideration:

- (1) Should CASE's objection to the additional information submitted by Caltrans be sustained?
- (2) Was CASE's request for contract review deficient and, if so, what is the appropriate remedy?
- (3) Did the Executive Officer fail to conduct an adequate investigation or otherwise fail to comply with the requirements of Cal. Code Regs., tit. 2, §§ 547.64 and 547.65 and, if so, what is the appropriate remedy?
- (4) Is the Cimplifi contract for legal services authorized by Section 19130, subdivision (b)(3)?

### **PRELIMINARY DETERMINATIONS**

Prior to discussing the merits of whether the contract is justified under the provisions of Section 19130, subd. (b)(3), we will first address the following issues: CASE's objection to Caltrans' submission of information not provided to the Executive Officer; Caltrans' objection to CASE's initial contract review request; and, whether the Executive Officer failed to conduct and adequate investigation or otherwise failed to comply with the requirements of Cal. Code Regs., tit. 2, §§ 547.64 and 547.65.

#### **A. Caltrans' Submission of Additional Information.**

After being notified by the Executive Officer that CASE had filed a request for review of the Cimplifi contract and of its right to file a Response to that request, Caltrans submitted its two-page response, without reference to any sworn declarations, pursuant to the provisions of Cal. Code Regs., tit. 2, § 547.62. That regulation provides:

Within 7 days after the state agency receives a copy of the employee organization's request for review, the state agency shall serve a copy of that

request upon the contractor(s) to the disputed contract. Within 15 days after the state agency receives a copy of the employee organization's request for review, the state agency shall file with the board and serve upon the employee organization:

(a) a copy of the proposed or executed contract; and

(b) the state agency's written response to the employee organization's request for review, which shall include:

**(1) specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code § 19130(b); and**

**(2) documentary evidence and/or declarations in support of the state agency's position. (Emphasis added.)**

In its Appeal to the Board, however, Caltrans submitted a much more detailed 20-page brief, accompanied by three sworn declarations from Caltrans employees, consisting of 6, 22, and 247 pages, respectively. CASE objected to the vast majority of the information provided by Caltrans on the grounds that Caltrans had not previously provided that information to the Executive Officer prior to her rendering her decision concerning the contract. More specifically, CASE contends that pursuant to the provisions of Cal. Code Regs., tit. 2, § 547.66, the Board cannot consider any information not previously provided to the Executive Officer if that additional information would be unduly prejudicial to CASE's position.

Cal. Code Regs., tit. 2, § 547.66 provides:

Any party may appeal the executive officer's decision to the board by filing a written request with the board within 30 days after issuance of the executive officer's decision. (See § 547.64(b).) Upon receipt of a timely appeal, the executive officer shall schedule the matter for briefing and oral arguments before the board. **The board will decide the appeal upon the factual information, documentary evidence, and declarations submitted to the executive officer before he or she issued his or her decision. Upon the objection of a party, the board will not accept additional factual information, documentary evidence, or declarations that were not previously filed with the executive officer if the board finds that the submission of this additional factual information, documentary evidence, or declarations would be unduly prejudicial to the objecting**



**party.** (Emphasis added.)

When read together, the provisions of Cal. Code Regs., tit. 2, §§ 547.62 and 547.66 make clear that in order for the Executive Officer's decision to actually be meaningful, the parties are required to provide the Executive Officer with all pertinent information they possess concerning the validity of the disputed contract. That is particularly important for the state entity seeking to enter into the contract, as the contracting entity ultimately bears the burden of establishing that the contract is justified under one or more of the provisions of Section 19130. (*State Compensation Ins. Fund v. Riley* (1937) 9 Cal.2d 126, 134–135; Cal. Code Regs., tit. 2, § 547.60.)

Caltrans failed to establish that the much more detailed information it submitted to the Board in its Appeal was not available to Caltrans at the time that it filed its Response with the Executive Officer, or that good cause otherwise exists for the Board to consider the additional information. As such, the Board will consider only that information originally provided to the Executive Officer by Caltrans, as well as only that additional information Caltrans submitted to the Board that is not unduly prejudicial to CASE's position.

**B. CASE's Initial Request for Contract Review.**

In neither its Response to the Executive Officer, nor its Appeal to the Board, did Caltrans contend that CASE's initial request for contract review was deficient under the provisions of Cal. Code Regs., tit. 2, § 547.61. Instead, Caltrans elected to make that argument for the first time during oral argument before the Board. In short, Caltrans failed to place either CASE or the Board on notice that it would be seeking to raise that issue during oral argument before the Board. As a result of this fundamental lack of prior notice to either CASE, the Executive Officer or the Board, Caltrans' contention that CASE's request for contract review was deficient is dismissed. (*see Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 [finding that, "An elementary and

fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

**C. Executive Officer Compliance with Contract Review Requirements.**

Likewise, Caltrans did not raise the issue of the Executive Officer’s alleged failure to adequately investigate the facts underlying the contract, or the Executive Officer’s alleged failure to comply with the requirements of Cal. Code Regs., tit. 2, §§ 547.64 and 547.65, in either its Appeal to the Board or at any other time prior to oral argument commencing before the Board. Again, this fundamental lack of prior notice to both CASE and the Board results in a finding that Caltrans waived its right to have those issues adjudicated by the Board. (*Ibid.*)

Moreover, to the extent Caltrans contends that the Executive Officer failed to comply with the requirements of Cal. Code Regs., tit. 2, §§ 547.64 and 547.65, it is noted that Section 547.64 provides:

Within 30 days after receiving a copy of the proposed or executed contract, the executive officer shall do one of the following:

(a) ***If the employee organization has shown that good cause exists*** for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer, in accordance with § 547.65, shall refer the matter to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision; or

(b) ***If the employee organization has not shown that good cause exists*** for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer shall issue a written decision either approving or disapproving the contract and explaining the reasons for the decision. The executive officer shall promptly give notice of his decision to all parties. (Emphasis added.)

In addition, Cal. Code Regs., tit. 2, § 547.65, subd. (a) provides:

(a) Request for a Board Hearing. ***The employee organization may request*** that, in lieu of the executive officer making a decision approving or disapproving the disputed contract, the disputed contract be referred to the board for a hearing. To make such a request, the employee organization shall include with its request for review written arguments, evidence, and/or declarations that show good cause exists for scheduling a hearing for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. (Emphasis added.)

Here, CASE, as the employee organization, never requested that the Executive Officer schedule the contract review for a hearing before either an Administrative Law Judge or the Board, rather than rendering her own decision concerning the dispute. Moreover, it is readily apparent that, in conformance with the requirements of Cal. Code Regs., tit. 2, § 547.64, subd. (b), after reviewing all information submitted by the parties, the Executive Officer issued a written decision disapproving the contract, explained the reasons for the decision, and promptly gave notice of her decision to all parties. As such, Caltrans' argument that the Executive Officer failed to comply with applicable contract review regulations is without merit and is, therefore, dismissed.

### **DISCUSSION**

The California Supreme Court has acknowledged that Article VII of the California Constitution provides for an implied "civil service mandate" that requires work that has historically and customarily been adequately and competently performed by civil service employees to not be performed by private contractors. (*Professional Engineers in California Government v. Department of Transportation* (1997) 15 Cal.4th 543, 547.) This mandate "emanates from an implicit necessity for protecting the policy of the organic civil service mandate against dissolution and destruction." (*California State Employees Ass'n v. Williams* (1970) 7 Cal.App.3d 390, 397.)

The implied civil service mandate is not, however, without exceptions. Instead, in Section

19130, the Legislature has set forth approximately 11 exceptions to the implied civil service mandate that permit state entities to enter into personal services contracts with outside organizations. Under Section 19130, subdivision (a), personal services contracts are permissible to achieve cost savings if certain stringent criteria are satisfied. Section 19130, subdivision (b) also provides ten non-cost-savings situations where personal services contracts are permissible. The provision at issue in this matter is Section 19130, subd. (b)(3).

An employee organization may request that the Board review a personal services contract for compliance with Section 19130. (Gov. Code, § 19132; Cal. Code Regs., tit. 2 §§ 547.61, 547.70.) The Board has delegated such review to the Executive Officer, subject to appeal to the Board. (Pub. Contract Code, § 10337, subd. (c); Cal. Code Regs., tit. 2, § 547.66; *In the Matter of Dep't of Personnel Admin.* (2000) PSC No. 00-01, p. 6.) The scope of the review of contracts under Section 19130 is to determine whether, consistent with Article VII and its implied civil service mandate, state work may legally be contracted to private entities or whether it must be performed by state employees. (*In the Matter of Cal. Atty., Admin. Law Judges, and Hearing Officers in State Employment* (2005) PSC 05-01, p. 4.)

The agency seeking the personal services contract bears the burden of establishing the applicability of the exception. (*State Compensation Ins. Fund v. Riley, supra*, 9 Cal.2d at pp. 134–135; Cal. Code Regs., tit. 2, § 547.60.) To meet that burden, a department must provide specific and detailed factual information demonstrating that one or more of the statutory exceptions within the subdivisions of Section 19130 apply. (Cal. Code Regs., tit. 2, § 547.62, subd. (b)(1).)

Section 19130, subd. (b)(3) permits state entities to enter into personal services contracts when, “The services contracted are [1] not available within civil service, [2] cannot be performed satisfactorily by civil service employees, or [3] 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.” Therefore, it must be determined whether the Cimplifi contract

satisfies any of the three enumerated criteria.

**A. The Services are Available Within Civil Service.**

The evidence provided by the parties established that Caltrans purchased the Relativity e-Discovery software program in September 2019 and has been using it since that time. Caltrans currently has 26 on-premises servers to support the program and is currently using the Relativity program to respond to eDiscovery requirements in approximately 32 separate cases. As such, Caltrans' approximately 119 rank-and-file attorneys and legal support staff are, or by this time reasonably should be, sufficiently conversant with the Relativity program and its limitations to be able to respond to the eDiscovery process in the Antlers Bridge arbitration.

In short, Caltrans failed to establish that the services performed by Cimplifi are not available within the state civil service. The contract terms essentially require Cimplifi to assist Caltrans attorneys with navigating the Relativity software program when responding to the eDiscovery process. Other than the fact that the Antlers Bridge arbitration may have involved a much larger number of documents than other litigation involving Caltrans, no information was provided to establish that the eDiscovery process in the Antlers Bridge case was substantially different from the eDiscovery process in any of Caltrans' other litigation. Because Caltrans attorneys are evidently able to properly respond to the eDiscovery process in other litigation matters utilizing the Relativity software, it cannot reasonably be concluded that responding to eDiscovery utilizing the Relativity program constitutes a service that is not available within the state civil service.

**B. The Service Can be Satisfactorily Performed by Civil Service Employees.**

Caltrans is one of the handful of state organizations that are authorized to conduct its own litigation instead of first seeking representation from the Office of the Attorney General. As such, Caltrans has a robust Legal Division consisting of approximately 119 rank-and-file attorneys at the Deputy Attorney III and IV level, as well as various support staff, including paralegals who assist with the eDiscovery process. According to the SPB classification

specifications, a Caltrans Deputy Attorney III has “developed the expertise necessary to capably perform the most complex and sensitive legal work of the Department ... on an independent basis,” including “tort liability, construction contract, or other cases which involve a substantial sum.” A Caltrans Deputy Attorney IV is responsible for the most complex, sensitive, and important legal work, including “tort liability, construction contract, or other cases which involve a very substantial sum.” It is, therefore, readily apparent that Caltrans employs attorneys in classifications that are, or reasonably should be, capable of utilizing eDiscovery software, such as Relativity. Indeed, the fact that Caltrans purchased and has been utilizing that software since 2019 and is currently utilizing that software in 32 other cases, severely undercuts any assertion that Caltrans attorneys are incapable of satisfactorily performing the work contemplated under the contract.

Moreover, as found by the Executive Officer, it is well established that the large workload associated with the Antlers Bridge arbitration is not a factor for consideration under Section 19130, subd. (b)(3). The plain language of subdivision (b)(3) is unambiguous, and must be applied as written. (*Cal. Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) The Board has previously found, “[Section] 19130(b)(3) does not apply when the services could be performed through the civil service system, but not enough civil service employees are currently employed to perform those services.” (*State Compensation Ins. Fund* (2003) PSC Nos. 03-06, 03-07 & 03-08, p. 10.) In short, a large workload does not justify a contract under subdivision (b)(3).

To the extent Caltrans contends that it does not possess sufficient staff to adequately respond to the eDiscovery process in the Antlers Bridge arbitration, despite having three attorneys assigned on a full-time basis, as well as “several” other attorneys and several paralegals and/or other litigation support staff assigned to the matter, Caltrans made no showing that it was unable to assign any of its other 119 rank-and-file attorneys, or any other paralegal support staff, to assist with the voluminous eDiscovery requirements underlying the

Antlers Bridge arbitration.

Nor did Caltrans provide any information demonstrating why, after having determined that it did not have sufficient existing staff to perform the needed services, it did not attempt to, at a minimum, contact the Office of the Attorney General to determine if that organization had attorneys who would be available to assist Caltrans with the Antlers Bridge eDiscovery process. Given the implied civil service mandate set forth in Article VII of the California Constitution, it was incumbent upon Caltrans to first attempt to keep the contracted-for work within the state civil service prior to seeking to contract for those services with a non-civil service entity. (*Professional Engineers in California Government v. Department of Transportation, supra*, 15 Cal.4th at p. 547.) That is particularly so because the contracted-for services are of the type that have historically and customarily been performed by civil service attorneys (*California State Employees Ass'n v. Williams, supra*, 7 Cal.App.3d at p. 397.)

**C. The Services are Not of Such a Highly Specialized or Technical Nature that the Necessary Expert Knowledge, Experience, and Ability are not Available Through the Civil Service System.**

As discussed above, Caltrans is one of the handful of state organizations that are authorized to conduct their own litigation instead of first seeking representation from the Office of the Attorney General and, as such, possesses a relatively large Legal Division to represent its interests. Additionally, it is readily apparent that Caltrans employs attorneys in classifications that are, or reasonably should be, capable of utilizing eDiscovery software, such as Relativity, particularly as most litigators by now should be well-versed in the eDiscovery process. Although in its Appeal to the Board Caltrans submitted a great deal of information seeking to describe how the eDiscovery process in the Antlers Bridge arbitration was much more involved and complicated than the eDiscovery process in other litigation matters, for those reasons previously discussed, that evidence will not be considered here as it was not presented to the Executive Officer for consideration. Accordingly, Caltrans failed to establish that the work to be performed by Cimplifi was of such a highly specialized or technical nature that the necessary expert

knowledge, experience, and ability are not available through the civil service system.

**CONCLUSION**

The Board finds that Caltrans has not submitted adequate information to show that the contract entered into between Caltrans and Cimplifi for legal services is authorized by Section 19130, subdivision (b)(3). The Board, therefore, sustains the Executive Officer's decision disapproving the contract.

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**STATE PERSONNEL BOARD**

Kathy Baldree, President  
Shawnda Westly, Vice President  
Kimiko Burton, Member  
Ana Matosantos, Member  
Dr. Gail Willis, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision at its meeting on November 9, 2023.

*Bruce Monfross*

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Bruce Monfross  
Chief Administrative Law Judge  
State Personnel Board



## PROOF OF SERVICE BY E-MAIL

Re: *CASE v. California Department of Transportation*  
SPB Case No.: 23-0005(b)-PSC  
Board Decision PSC No. 23-02

I, Caroline Molumby, declare:

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, 801 Capitol Mall, Sacramento, California 95814.

On November 27, 2023, I caused the following document to be served on the addressees:

**BOARD DECISION IN THE APPEAL OF THE EXECUTIVE OFFICERS' APRIL 7, 2023  
DISAPPROVAL OF THE CONTRACT BETWEEN THE CALIFORNIA DEPARTMENT  
OF TRANSPORTATION AND SYSTEM ONE HOLDINGS, LLC, dba CIMPLIFI, FOR  
LEGAL SERVICES**

**By Electronic mail** I caused such document(s), in electronic format, to be sent to the e-mail addresses listed below:

Erin Holbrook  
Chief Counsel  
Department of Transportation  
Email: [Erin.Holbrook@dot.ca.gov](mailto:Erin.Holbrook@dot.ca.gov)

Patrick Whalen  
CASE  
Email: [patrick@patrickjwhalenlaw.com](mailto:patrick@patrickjwhalenlaw.com)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 27, 2023, at Sacramento, California.

*Caroline Molumby*  
Caroline Molumby  
Legal Analyst  
SPB Legal Division