



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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October 17, 2016

TO: Connie Goff
Rules and Appeals Section Chief

FROM: Christa Biasi
Director's Review Specialist

SUBJECT: Phyllis Cole v. Department of Commerce (Commerce)
Allocation Review Request ALLO-16-026

Director's Determination

This position review is based on the work performed for the six-month period prior to February 11, 2016, the date Commerce Human Resources (Com - HR) received Phyllis Cole's request for reallocation. As the Director's Review Specialist, I carefully considered all the exhibits, any written communication provided and the information obtained during the Director's Review Conference. Based on my review and analysis of Ms. Cole's assigned job duties; I conclude her position is properly allocated to a Commerce Specialist 2 (CS 2).

Background

On February 11, 2016, Commerce Human Resources (Com-HR) received a Position Review Request submitted by Ms. Cole, (Exhibit A-2).

Com-HR conducted a position review and notified Ms. Cole on April 21, 2016, that her position was properly allocated to the CS 1 class. (Exhibit B-1)

On April 21, 2016, Office of Financial Management - State Human Resources (OFM-State HR) received Ms. Cole's request for a Director's review of Com-HR's allocation determination. (Exhibit A-1)

On September 22, 2016, I conducted a Director's review conference with Ms. Cole, Staci Leanos, Washington Federation of State Employees (WFSE); Ms. Burkheimer, Com-HR, Karen Roe, Supervisor and Amy Goodall Rasmussen, COM-HR Director.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

Organizational Structure

Ms. Cole's position is located within the Local Government Division. Her position supports the Community Development Block Grant (CDBG) program. She reports to Ms. Karen Roe, Commerce Specialist 5 (CDBG Program Manager).

Duties and Responsibilities

Ms. Cole's major job duties are described in exhibit A-2 as follows:

35% Assist with CDBG General Purpose program management

- Establishing program priorities, rating criteria, and application compliance with federal and state laws, regulations and policies with the CDBG .Program Manager
- Developing, marketing, and distributing application materials
- Developing, coordinating and delivering technical assistance, including tools and workshops for project and application development, and responding to ongoing inquiries from potential applicants
- Participating in technical assistance team activities and other funding assistance events
- Collaborating with internal and external stakeholders and funding partners
- Planning the competitive application review process and recommending awards
- Conducting award/not award correspondence and debriefing meetings with unsuccessful applicants
- Conducting research, including input from local stakeholders, regulatory agencies, funding partners and trends, related to many CDBG projects, and recommending solutions to common problems
- Serve as technical expert for CDBG citizen participation requirements and procedures
- Serve as technical expert for CDBG procurement of professional services requirements and procedures.
- Serve as technical expert for CDBG low-moderate-income requirements and procedures.

- Serve as technical expert for community facilities project requirements and procedures.
- Conduct professional level threshold reviews and application evaluations.
- Provide project development and contract management technical assistance
- Assist in program assessment and improvement initiatives.

30% Professional level management of assigned CDBG contracts

- Negotiating and executing contracts.
- Oversee and monitoring contract compliance and performance of complex contracts
- Manage accounts payable and receivable functions for all assigned contracts.
- Maintain cooperative relationships and communication with grant recipient clients and stakeholders, as appropriate.
- Notify supervisor of discrepancies or issues during contract period.
- Authorize resolution of findings and contract closeout.

20% Lead for the CDBG Planning-Only Grant program and funding of public facility activities

- Establishing program priorities, rating criteria and application compliance with federal and state laws, regulations and policies with the CDBG Program Manager
- Developing, marketing, and distributing application materials
- Developing, coordinating and delivering technical assistance, including tools and workshops for project and application development, and responding to ongoing inquiries from potential applicants
- Participating in technical assistance team activities and other funding assistance events
- Collaborating with internal and external stakeholders and funding partners
- Planning the competitive application review process and recommending awards
- Conducting award/not award correspondence and debriefing meetings with unsuccessful applicants
- Conducting research, including input from local stakeholders, regulatory agencies, funding partners and trends, related to many' CDBG projects, and recommending solutions to common problems.
- Facilitating application workshops portions and IACC workshops.
- Conduct professional level threshold reviews and application evaluations.
- Provide project development and contract management technical assistance.
- Lead POG program assessment and improvement initiatives.

10% Assist with Division and Unit Initiatives

- Assisting in development of units and division's strategic planning and performance management.
- Serving on cross-divisional teams like Commerce Resource Exchange, Commerce's Ideas Program Team, Commerce's Art Committee.

5% Other duties as assigned

- Developing complex Excel charts and forms for staff and client use.
- Assist Program Manager in developing formulas for various funding scenarios, collecting data and inputting in PER reports, collaborating with other division staff

Summary of Ms. Cole's Perspective

In her PRR, Ms. Cole stated the percentages of duties have changed as well as her complexity of work. She also indicates that she spends less than twenty-five (25%) of her time managing the Planning-Only Grant program and more than thirty-percent (30%) of her time assisting with the policy/procedure development of the General Purpose Grant Program. Ms. Cole further stated:

"I am spending more time as the team expert in Income Surveys/Block Group Data and Professional Services Procurement issues than originally expected. I provide technical assistance to prospective grant applicants and also answer questions from my peers (CS3 class) who consult me for my opinions in those areas. I spent much time updating our Income Survey Guide, as a result of new rules released from HUD. The new rules resulted in much complicated policy and procedure decisions that I had to make with little direction from my supervisor as she trusted me to interpret and implement the new federal rules."

Ms. Cole also states she conducts most of the threshold reviews of "all of our CDBG applications" in order to ensure applicants meet the CDBG eligibility requirement and HUD National Objective. She further stated that she spends more time on General Purpose Grant application materials than Planning-Only Grant materials, which is a more complex program.

During the course of the review conference, Ms. Cole further described her duties working with two various grants (Construction and Planning) and the differences between the two. Ms. Cole stated the construction grants are far more complex than planning grants. She iterated the complexity of the construction grants and the management of those grants take up more than fifty-percent (50%) of her time. When managing the construction grants, Ms. Cole stated she must ensure the grant recipients follow all applicable procurement laws, pay contractors prevailing wage, review environmental reviews and prepare management letters to grant recipients.

Ms. Cole also described that within her work unit there are currently sixty-five (65) open construction grants/contracts. Of those sixty-five (65) she is currently managing eighteen-percent (18%) of the grants/contracts. She said the amount of the grants/contracts she is currently managing was designed in order for her not to be performing duties above her current class of the CS 2; however, she is spending a significant amount of time managing those grants/contracts. She further stated that although she is spending more than fifty-percent (50%) of her time performing the more complex duties, it is the hope that as time goes on she will be able to perform those complex duties at a quicker rate and therefore her time performing such duties will drop below fifty-percent (50%).

Summary of Commerce's Position

In the determination letter (Exhibit B-1), Ms. Burkheimer, Human Resource Consultant, Com-HR determined the overall scope and breadth of Ms. Cole's duties closely aligned with those of the CS 2 class. In her determination, Ms. Burkheimer used the following information:

- The Position Review Request (PRR) submitted for consideration by your supervisor on February 11, 2016;
- The Position Review Request submitted for consideration by you on February 24, 2016;
- The PDF on file date stamped May 29, 2015;
- Information you provided during our meeting on March 9, 2016;
- The classification specifications for Commerce Specialist 2 and Commerce Specialist 3.

Ms. Burkheimer indicated in her determination letter (Exhibit B-1) that Ms. Cole did not demonstrate that she "negotiates complex contracts; have complex decision making authority; draft legislation, prepare or provide testimony at hearings; direct or oversee the daily work of lower level staff specific to the work of the program; exercise budgetary responsibility; you [Ms. Cole] are not designated in writing by the assistant director or the equivalent to act as a spokesperson for the agency at the professional, local, state, regional or national meetings" all of the aforementioned duties are those outlined in the CS 3 class.

Ms. Burkheimer continued by describing Ms. Cole's duties as being responsible for assisting with the CDBG General Purpose program. The duties include being responsible for leading the Planning-Only Grant which includes grant application development and review, program monitoring, tracking monitor program financials and communicating the Commerce Specialist 5 with any financial concerns. Ms. Burkheimer also stated that Ms. Cole provides technical assistance to grantees and communities, coordinates data collection and reports and makes recommendation to higher level staff and management regarding program funding concerns and potential risks. It is for these reasons that Ms. Burkheimer believes that Ms. Cole is properly allocated to CS 2.

Supervisor's Comments

During the course of the Director's Conference, Ms. Poe, Supervisor, stated that she assigned a low level of construction grants to Ms. Cole for the purpose of maintaining her CS 2 classification. She understood that in assigning the more complex construction grants to Ms. Cole that some of her duties would reach the level of a CS 3; however, because she only assigned a small number of such grants, the percentage of time that Ms. Cole worked on and performed duties at the higher level would not reach fifty-percent (50%) of her time.

Ms. Poe further stated that she agrees that Ms. Cole began managing CDBG construction and non-construction contracts with the April 2015 reorganization. These complex duties take up about thirty-percent (30%) of her time according to Ms. Poe.

Additionally, Ms. Poe also noted that during the 2015 Grants Program application cycle and into the 2016 cycle, "Phyllis provided Com3 level work such as development of new rating criteria and application policies with the current GP lead." These tasks, Ms. Poe indicated are listed on her PRR (Exhibit B-2) and are thirty-five-percent (35%) of her duties. Ms. Cole also notes that although Ms. Poe is not designated as the primary technical expert for CDBG LMI requirements other than LMI income surveys, Ms. Cole has significant experience and is depended on to provide expert advice on federal requirements.

Comparison of Duties

I carefully reviewed the exhibits submitted by the parties. Allocating criteria consists of the class specification's class series concept (if one exists), the definition and the distinguishing characteristics. Typical work is not an allocating criterion, but may be used to better understand the definition or distinguishing characteristics.¹

Comparison of Duties to the Commerce Specialist series

The Class Series Concept for this series states:

Positions in this series perform professional level work in developing, implementing and monitoring state, federal or local community, trade and/or economic enhancement or development programs or projects impacting communities, businesses and citizens of the state.

Comparison of Duties to Commerce Specialist 3 (CS 3)

¹ In *Norton-Nader v. Western Washington University*, PRB Case No. R-ALLO-08-020 (2008), the Personnel Resources Board (Board) stated that the following standards are the hierarchy of primary considerations in allocating positions: a) Category concept (if one exists); b) Definition or basic function of the class; c) Distinguishing characteristics of a class; and d) Class series concept, definition/basic function and distinguishing characteristics of other classes in the series in question.

The Definition for this class states:

Positions at this level function **as specialists in an assigned area** and work with little or no technical oversight.

Incumbents deal with complex and conflicting issues and/or portfolio management and **provide specialized expertise in areas such as contract negotiation and/or execution, growth management, housing, public works, community services programs, trade and economic development, historic preservation, or archeological planning.** Within their assigned area, incumbents establish program priorities, develop policies and are **designated in writing by the assistant director or equivalent to act as a spokesperson for the agency.**

There are no Distinguishing Characteristics for this class.

Ms. Cole's position does not fully reach the primary allocating requirements of this class.

For example, positions in this class function as specialists within an assigned area of responsibility. They work with little or no technical oversight and deal with complex issues and/or manage portfolios within a defined area of expertise. Incumbents establish program priorities, develop policies and are designated in writing by the assistant director or equivalent to act as a spokesperson for the specialty area at the agency level.

While a portion of her work reaches aspects of this class, her level of responsibility within her assigned program area and the overall focus and scope of her assigned duties as a whole do not reach the depth and breadth of responsibility for resolving complex issues and managing a portfolio at the level required by this class.

For example, Ms. Cole's position does not have primary responsibility for serving as a designated consultant in a specialized area of expertise. Rather, her duties more consistently align with providing independent, journey-level assistance, consultation and training to clients within a grants management program function consistent with the CS 2 level class definition.

Ms. Cole's duties also do not include responsibility for managing a portfolio within a designated specialty area at the level anticipated by this class. For example, her position does not align with planning, developing and fully managing a specialized program area. Program management responsibility for Ms. Cole's assigned program rests with her supervisor, Ms. Poe. Ms. Cole's duties do not include responsibility for establishing program priorities, developing policies and preparing program budgets at the level anticipated by this class. This is not to say that Ms. Cole does not assist with some of those duties listed, however, they are not her primary responsibility. Rather she performs these duties in a support role for the program.

Further, her position has not been designated in writing by the assistant director to act as a spokesperson for the agency. The PRB has discussed the importance of having written designation when that designation is required in a class specification.

For example, in *Eastern Washington University v. Akin*, PRB Case No. R-ALLO-09-004 (2009), the Board determined that allocation to the ITS/AS6 classification is not appropriate unless such a written designation has been given by information technology or information services management.

In total, Ms. Cole's position does not reach the primary allocating requirements of the definition of this class.

Typical work statements are not allocating criteria, however, they lend support to the work performed at this level. The scope and focus of Ms. Cole's position duties do not include performing specialized duties as follows:

Develops and maintains cooperative relationships with government, businesses, industry, community organizations and/or government officials;

Plans, develops, coordinates and manages a specialized program or programs;

Coordinates the state's role in community, trade and economic development programs, e.g., develops, prepares and monitors reports, proposals, grants and program budgets;

Develops, negotiates and monitors technical aspects of complex contracts with local governments, community organizations and public and private entities;

Assists with drafting legislation, preparing or providing testimony at hearings;

Develops policy positions related to a specialized program, service or technical area(s);

Organizes or leads service delivery teams;

The PRB has stated that most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See *Dudley v. Dept. of Labor and Industries*, PRB Case No. R-ALLO-07-007 (2007). In this matter, Ms. Cole does perform duties at the CS 3 level, however, I must look at the totality of the duties she performs when making an allocation determination. In this matter, Ms. Cole manages approximately sixteen-percent (16%) of the programs construction grants which are more complex in nature, however, she does not spend a majority of her time performing these more complex duties. This is outlined by her supervisor, Ms. Poe who indicated that about thirty-five-percent (35%) of Ms. Cole's time is spent performing such duties.

For each of these reasons, her position should not be allocated to the CS 3 class.

Comparison of Duties to Commerce Specialist 2 (CS 2)

The Definition for this class states:

Positions at this level independently perform a wide variety of professional, journey-level work such as developing and implementing program evaluation plans, developing and maintaining program-specific data tracking systems, designing and analyzing surveys, analyzing data to measure service and impact, performing economic analysis and integrating results into overall evaluation reports. Incumbents exercise decision-making authority, resolve issues, represent the agency within their assigned area of program responsibility and provide input into policy development. Incumbents independently provide assistance, consultation and training to clients in areas such as program planning, financing, grants management, contract development, market development, emergency preparedness, community revitalization, or other areas necessary to the success of program(s) or portions of a program(s) or project(s).

Ms. Cole's duties more accurately align with the primary allocating criteria of the definition of this class. Ms. Cole performs a variety of professional, journey-level work in support of her assigned program, which is the Community Development Block Grant program. This includes such tasks as developing program priorities, rating criteria and application compliance. She also oversees contract compliance, manages accounts payable, notifies supervisor of discrepancies or issues during contract period, etc.

Ms. Cole exercises decision-making authority, resolves issues and serves as the staff representative to program clients and stakeholders. She provides input into policy development to higher level management staff. She also provides technical assistance, consultation and training to clients within a grants management program function.

Her duties also align more closely to the examples of work performed at this level. For example, the typical work statements for this class include such duties as:

Utilizes a variety of data pertaining to varying situations to perform analysis or evaluation of problems;

Prepares program proposals, monthly summaries and quarterly reports;

Conducts or oversees workshops and seminars related to programs;

Develops and monitors contracts required to achieve program goals;

Makes technical recommendations on projects, programs, policies and plans;

Provides technical assistance and consultant services to public and private clients;

Collects data and assists in analysis and preparation of technical reports;

Represents agency at professional local, state and regional national meetings;

May manage one or more state, federal or local projects or programs and provide technical consultation and training to clients and/or others;

May coordinate the development and completion of projects and/or programs;

The scope and diversity of Ms. Cole's duties more consistently align with the level of work described by these statements.

The majority of Ms. Cole's time is spent performing program direction and oversight functions. Ms. Cole oversees the grant proposal process from receipt through execution. She evaluates grant applications, convenes and facilitates application review teams as needed and makes recommendations to her supervisor regarding assigned applications for program funds. She develops statements of work or work plans. She also prepares and reviews final contract documents.

Ms. Cole monitors the ongoing status of grants to ensure the achievement of the program's goals and objectives. She provides technical assistance to grantees regarding compliance requirements. She prepares monitoring reports and keeps her supervisor and unit manager apprised of grantee compliance issues. She develops and implements training and/or technical assistance plans.

She also coordinates the completion of program projects and she coordinates program advisory groups, workgroups and stakeholder meetings.

There is overlap in the description of duties for both the CS 2 and CS 3 classes. It is also acknowledged that there are aspects of Ms. Cole's duties that reach beyond the general scope of work performed at the CS 2 level. However, when considering the two classes, Ms. Cole's duties and level of responsibility more closely align with the CS 2 class. The CS 2 class more accurately describes the overall duties and level of decision making authority exercised by Ms. Cole in her position.

In *Salsberry v. Washington State Parks and Recreation Commission*, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of *best fit*. The Board referenced *Allegri v. Washington State University*, PAB Case No. ALLO-96-0026 (1998), in which the Personnel Appeals Board noted that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position.

Based on the level, scope and breadth of Ms. Cole's assigned duties and responsibilities, her position should remain allocated to the CS 2 classification.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

The agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is PO Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101 and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Phyllis Cole, Employee
 Stacie Leanos, WFSE
 Amy Goodall-Rasmussen, Com/HR

Enclosure: List of Exhibits

PHYLLIS COLE v COM

ALLO-16-026

LIST OF EXHIBITS

A. Phyllis Cole Exhibits

1. Date Stamped Request for Director's Review - Submitted to OFM on 4-21-16
2. Position Review Request Employee Portion - Submitted to Commerce on 2-11-16
3. Commerce's Denial of Reallocation - 4-21-16 from Theresa Burkheimer to Phyllis Cole
4. Employee's Rebuttal - 6-19-16 Letter from Phyllis Cole to Karen Wilcox
5. 2013 - 2014 Performance Review for Phyllis Cole
6. 2015 - 2016 Performance Review Phyllis Cole
7. Position Review Request Supervisor Portion - Submitted to Commerce on 2-11-16

B. COM Exhibits

1. Allocation determination letter
2. Position Description May 29, 2015
3. Notes from Position Review Meeting conducted by Theresa Burkheimer on March 9, 2016
4. State HR Class Specification for Commerce Specialist 2
5. State HR Class Specification for Commerce Specialist 3
6. Position Review Matrix
7. Organizational Chart

C. Class Specifications

1. Commerce Specialist 2
2. Commerce Specialist 3