

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF ETHICS, COMPLIANCE AND AUDIT SERVICES



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Alexander Bustamante
SENIOR VICE PRESIDENT
CHIEF COMPLIANCE AND AUDIT OFFICER

June 26, 2023

ASSOCIATE VICE PRESIDENT TRAN

RE: Final Report Project No. P23A002d: Contracting Out Agriculture and Natural Resources (ANR)

Attached is a copy of the final report for: Audit Services Project No. P23A002d Contracting Out Agriculture and Natural Resources (ANR). With the issuance of this final report, please destroy any previous draft versions. We very much appreciate the assistance provided to us by you and members of your staff during our review. If you should have any questions please feel free to contact me at 510-987-9646 (email: matthew.hicks@ucop.edu).

A handwritten signature in black ink, appearing to read "Matt Hicks".

Matt Hicks
Systemwide Deputy Audit Officer

Attachment

cc: Senior Vice President Bustamante
Interim Executive Director Brown
Associate Director Roman
Employee and Labor Relations Manager Smith
Systemwide Associate Audit Director Bishin

UNIVERSITY OF CALIFORNIA
ETHICS, COMPLIANCE AND AUDIT SERVICES
OFFICE OF THE PRESIDENT
INTERNAL AUDIT SERVICES

CONTRACTING OUT
AGRICULTURE AND NATURAL RESOURCES (ANR)
Audit No. P23A002d
June 2023

Work Performed by:
Deloitte, Contract Auditor

Work Reviewed by:
Systemwide Associate Audit Director Bishin
Systemwide Deputy Audit Officer Hicks

Executive Summary

Introduction

In accordance with the University of California (UC) audit plan, the systemwide Office of Ethics, Compliance and Audit Services (ECAS) oversaw a systemwide audit of compliance with contracting out requirements, including Regents Policy 5402: Policy Generally Prohibiting Contracting for Services and Article 5 of the Collective Bargaining Agreements (CBAs) with the American Federation of State, County and Municipal Employees (AFSCME). ECAS performed this audit of Agriculture and Natural Resources (ANR) using the standard audit program developed for the systemwide audit.

ECAS developed this report based on information gathered from ANR. It provides findings and a set of corresponding recommendations to address these findings.

Objective and Scope

Objective: The objective of this assessment was to evaluate processes and controls in place to facilitate compliance with contracting out requirements.

Scope: The scope of this audit included evaluation of the design and implementation of the processes and controls that facilitate compliance with contracting out requirements under Regents Policy 5402 and Article 5. While the audit focused on current processes, the evaluation of internal controls included review of documentation supporting implementation of contracting out requirements for the period of February 15, 2020¹ through December 31, 2022. The areas of focus included the following:

- Adequacy and consistency of guidance, training, and communication to ensure contracting out requirements are understood and implemented at all organizational levels.
- Processes and controls to comply with policy and contractual requirements, including:
 - Procedures to identify Covered Services and amend/terminate existing contracts with Covered Services providers
 - Processes to review and evaluate decisions to contract out to ensure the University is contracting for services only when permitted by policy and contractual requirements
 - Processes to update supplier contracts with required wage and benefit parity language and amendments
 - Procedures to track contractor hours and identify contract workers that meet the insourcing criteria
 - Procedures to comply with employee displacement requirements
 - Processes by which Qualified Individuals (QIs) are provided options for UC career employment
 - Provision of notice for contracting out decisions

¹ Effective date of the Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services. Audit periods for tests of internal controls varied. For example, testing of Covered Services identification involved sample selections from active contracts as of December 31, 2021, while testing of QIs involved selection of supplier employees for all Covered Services contracts dating back to February 15, 2020.

- Tracking and reporting contract information to affected employee organizations and the Regents
- Mechanisms to facilitate reporting violations and respond to reported violations
- Processes for handling grievances
- Supplier audits

The audit scope did not include an assessment of controls and processes related to compliance with California Senate Bill 820, which imposed additional restrictions for contracting out for services performed in buildings that have received state capital funding.

Background

On November 14, 2019, the Regents approved Regents Policy 5402: Regents Policy Generally Prohibiting Contracting for Services. This policy prioritizes the use of UC employees over contract workers to provide Covered Services² whenever possible. According to the policy, contracting for Covered Services should be used sparingly and treated as an option of last resort to address specified operational needs rather than as a means to replace UC employees with lower-wage contract workers.

Article 5 of the two CBAs with AFSCME³ addresses contractual requirements associated with the University contracting out for Covered Services. The Regents have clarified that Article 5 takes precedence over their policy.

Per Regents Policy 5402, the actual job titles of supplier employees performing Covered Services do not need to match ASFCME titles. Rather, if a supplier employee provides a Covered Service that is the same as the work done by Bargaining Unit employees, then that position is covered under the Regents Policy and Article 5 of the CBA. In addition, the service must be currently performed (or have been performed in the immediate past) by union employees somewhere in the UC system.

Regents Policy 5402 and Article 5 apply to Covered Services performed at a UC location.⁴ However, neither the Regents Policy nor Article 5 applies to construction or work typically performed by a member of a skilled crafts or trades bargaining unit such as a plumber, electrician, or facilities mechanic.

If UC determines that it needs to contract for Covered Services, then the suppliers providing such services must pay their employees rates equivalent to the sum of the wages and benefits received by Bargaining Unit employees performing the same work.

Collectively, the requirements in Regents Policy 5402 and Article 5 include, but are not limited to the following:

² **Covered Services:** This is work customarily performed by bargaining unit employees at the University, whether in whole or in part, including but not necessarily limited to the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; groundskeeping; building maintenance (excluding skilled crafts); transportation and parking services; security services, billing and coding services, sterile processing, hospital or nursing assistant services, and medical imaging or other medical technician services.

³ **AFSCME:** American Federation of State, County and Municipal Employees is a labor union that represents two University bargaining units, the Service (SX) unit and the Patient Care Technical (EX) unit. AFSCME-represented employees perform the majority of Covered Services.

⁴ Current guidance is that UC location means all locations within the UC system (campuses, medical centers, Office of the President, the Lawrence Berkeley Lab, etc.) as well as properties that the University has leased from or to a third party.

- To the fullest extent possible, insource Covered Services work. As part of insourcing, use best efforts to identify supplier employees who meet the criteria for becoming a Qualified Individual (QI).⁵ The University location must offer QIs career employment when insourcing Covered Services work.
- Contracting for Covered Services is permitted where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders, or limited circumstances (carve outs) established in the policy.
- University locations must provide advance notice to affected employee organizations prior to entering into, extending, or renewing a contract for Covered Services over \$100,000. University locations must also notify affected employee organizations when issuing an RFP with Covered Services estimated to be over \$100,000.
- Provide an opportunity to those affected employee organizations, upon receiving a notice, to request review of a proposed contract for Covered Services to determine whether the contract complies with policy requirements.
- Contracts for Covered Services must include provisions requiring the contractor to provide its employees the equivalent of wages and benefits provided to University employees performing the same work. This requirement, referred to as Wage and Benefit Parity (WBP), only applies to the contractor's employees providing services to the University under the Covered Service contract.
- Contracts for Covered Services must not displace University employees.
- Individuals providing services to the University under a Covered Service contract may request career employment when they meet the QI criteria.
- Produce an annual report of all contracts for Covered Services, regardless of amount or duration, and provide the report to affected employee organizations and the Regents.

On February 15, 2020, the Office of the Chief Procurement Officer issued Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services (Implementation Guidelines), which provide guidance to UC personnel on implementing Regents Policy 5402 and Article 5. Since then, UCOP has provided new guidance on contracting out requirements to UC locations in other forms.

Overall Conclusion

We identified three observations that have the potential to impact the management of risks related to contracting out. A summary of these observations is listed below:

1. There is not a formal process to track ANR supplier employee hours for QI monitoring.
2. There are inadequate controls over data integrity for information reported in the AFSCME report.
3. UC contracting out guidance does not take the ANR business model into consideration.

For a detailed discussion of these issues, including the management action plans, please refer to the subsequent pages of this report.

Recommendations in this report are focused on addressing non-compliance areas at the local level and recommendations coming from the report *Systemwide Contracting Out Audit*⁶ that require local implementation of systemwide guidance. Recommendations, management corrective action (MCA)

⁵ QIs are individuals who have provided Covered Services to the University for 1,000 hours in a rolling 12-month period or 35% (~2,200 hours) in a rolling 36-month period.

⁶ *Systemwide Contracting Out Audit*, Project No. P23A002, released in April 2023.

plans, responsible owner, and target implementation dates are presented in the Appendix A of this report.

Opportunities for Improvement and Action Plans

1. There is not a formal process to track ANR supplier employee hours for QI monitoring.

Throughout interviews and walkthroughs with ANR personnel, it was noted that there is not a formal process to track supplier employee hours to identify QIs. Per Article 5, QI thresholds of 1,000 hours over a rolling 12-month period or 35% of total working hours over a rolling 36-month period should be monitored to effectively designate supplier employees as QIs and subsequently offer employment.

Currently, ANR supplier employee hours are provided on handwritten notes or verbally, and in certain cases, were not provided. Additionally, ANR does not receive hours reports for supplier employees that are not deemed to be QIs by the supplier.

Per ANR management, throughout the UC ANR system there are only three locations that have the potential to yield QIs based on the requisite hours-worked threshold. To validate whether QI status is met, ANR management contacts vendors on a regular basis and holds quarterly meetings to determine if they have employees that are QIs. Due to the nature of the work (farm labor) the vendors do not utilize technology in the same way other vendors might in the hospital/campus setting. As such, information on hours worked is exchanged verbally. However, according to ANR management, the vendors have been compliant and reported QIs when they identify them. After the vendor notifies ANR of an employee attaining QI status, ANR notifies the QI of their rights.

In October 2022, Systemwide HR partnered with Systemwide Procurement to initiate a request for proposal (RFP) to identify a supplier to provide a managed compliance tool with service support to facilitate tracking and reporting of QIs for suppliers of Covered Services at UC locations. The RFP also outlined that the identified supplier would be responsible for assisting with onboarding and management of Covered Services suppliers, communicating policy and reporting requirements to suppliers and supplier employees, managing the QI vetting and onboarding process, and managing communications regarding UC requests for supplier WBP audits. A supplier was selected in January 2023 and a plan has been developed to implement this tool systemwide by the end of calendar year 2023. QI thresholds are defined in AFSCME Article 5 as 1,000 hours over a rolling 12-month period or 35% of total working hours over a rolling 36-month period. Once this tool has been rolled out systemwide, ANR management should ensure that it is implemented locally.

Recommended Action Plan (Ref Appendix A, 1.b.4):

Since ANR covered services vendors do not utilize technology in the same way other vendors might (e.g. hospital/campus settings), ANR management should request guidance from Systemwide Labor Relations to seek additional clarification regarding requirements for tracking supplier employees and incorporate/implement that guidance into a formal process to monitor QI hours.

2. There are inadequate controls over data integrity for information reported in the AFSCME report.

Internal Audit selected 5 samples of service contracts and compared the information in

each signed contract to what was reported in the 2021 AFSCME report on covered services contracts. Upon review, it was noted that:

- One covered services contract was incorrectly excluded from the 2021 AFSCME report.
- One covered services contract had start and end dates that did not match the dates reported in the 2021 AFSCME report.

There is a lack of defined review procedures to ensure the accuracy of information submitted for the AFSCME report.

Per ANR management, there may be discrepancies with contract dates on the initial contract obtained by management and the final contracts received by procurement. As such, the information entered into the AFSCME report does not match the contracts held by procurement. Going forward, ANR management will collaborate with procurement to ensure the most up-to-date contract information is entered into the AFSCME report.

Recommended Action Plan (Ref Appendix A, 1.g.1):

After aggregating covered services contract information, ANR should review the information to be submitted to Systemwide Labor Relations. This review should consist of an inquiry with the source of the information at year-end to review for any changes in the information provided throughout the year. As part of this review, stakeholders should document their signoff to evidence their approval and obtain guidance on how to correct any errors and make those corrections. These steps should be updated in documented procedures.

3. UC contracting out guidance does not take the ANR business model into consideration.

ANR was not involved in negotiations for Article 5. As such, the unique characteristics of ANR's business model were not taken into account in defining the requirements for Article 5 compliance. Per ANR management, due to the seasonal nature of work in the agricultural industry, the need for labor is often only for a few days at a time sporadically throughout the year. There may never be the opportunity for an individual meeting QI requirements to be hired on a full-time basis as ANR would not have enough work for the employee(s). Additionally, there are some special circumstances in which ANR uses contract labor on sites that are not owned by UC which are not accounted for in existing guidance on requirements specific to work being performed on "UC locations."

Recommended Action Plan (Ref Appendix A, 1.f.1):

ANR should meet with Systemwide Labor Relations and AFSCME to discuss how Article 5 should be addressed for ANR specifically. Systemwide Labor Relations should provide ANR with updated guidance that would reflect any allowable deviations from UC-wide guidance specific to ANR.

Appendix A: Recommendations and Management Corrective Actions

Systemwide Recommendation to UCOP	Recommendation to ANR	ANR Management Corrective Action, Owner, and Target Date
Procurement and Contracting Processes		
<p>1.a.1 Systemwide Procurement should issue guidance to provide clear direction to UC locations on the following contracting out compliance requirements related to procurement and contracting:</p> <ul style="list-style-type: none"> Requirements for monitoring lower-value purchasing activity (such as purchase orders, automatic purchase orders, purchasing cards, and travel and entertainment reimbursements) to identify procurement of Covered Services Acceptable practices for documenting Covered Services-related terms and conditions in supplier contracts and purchase orders. 	<p>1.a.2 ANR should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>Employee and Labor Relations will implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: October 31, 2023*</p>
Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment		
<p>1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.</p>	<p>1.b.3 ANR should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p>	<p>Human Resources in collaboration with Procurement Services will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: March 31, 2024*</p>
<p>1.b.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs:</p> <ul style="list-style-type: none"> QI monitoring and identification, including appropriate protocols for instances in which a location determines that a supplier employee reached QI eligibility in the past but has since stopped providing services to the University for an extended period of time QI conversion to UC career employment, including the timeframe in which QIs must be notified of an option for employment and procedures for non-responsive QIs Any allowable exceptions to required timeframes for QI conversion, such as certain categories of employees that require additional background checks 		

Systemwide Recommendation to UCOP	Recommendation to ANR	ANR Management Corrective Action, Owner, and Target Date
<ul style="list-style-type: none"> Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used 		
	<p>1.b.4 ANR management should request guidance from Systemwide Labor Relations to seek additional clarification regarding requirements for tracking supplier employees and incorporate/implement that guidance into a formal process to monitor QI hours.</p>	<p>Since ANR covered services vendors do not utilize technology in the same way other vendors might (e.g. hospital/campus settings), ANR Management will request guidance from Systemwide Labor Relations to seek additional clarification regarding tracking supplier employees and requirements for what suppliers need to provide and incorporate/implement that into a formal processes to monitor QI hours.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: April 30, 2024</p>
Compliance with Employee Displacement Requirements		
<p>1.c.1 Systemwide HR should issue guidance to provide clear direction to UC locations on required procedures to comply with employee displacement requirements when contracting out for covered services.</p>	<p>1.c.2 ANR should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>Human Resources will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: October 1, 2024*</p>
Article 5 Grievances		
<p>1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances:</p> <ul style="list-style-type: none"> Requirements for recordkeeping Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration Criteria for notifying Systemwide Labor Relations regarding locally filed grievances Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process 	<p>1.e.2 ANR should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p>	<p>Human Resources will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: March 31, 2024*</p>

Systemwide Recommendation to UCOP	Recommendation to ANR	ANR Management Corrective Action, Owner, and Target Date
Reporting Violations of Contracting Out Requirements		
1.f.1 Systemwide HR should issue guidance to provide clear direction to UC locations on requirements for provision of required employee notices to suppliers, including the appropriate template(s) to be used.	1.f.2 ANR should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.	<p>Human Resources in collaboration with Procurement Services will implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: August 15, 2023*</p>
Preparation of Annual Report to AFSCME		
	1.g.1 After aggregating covered services contract information, ANR should review the information to be submitted to Systemwide Labor Relations. This review should consist of an inquiry with the source of the information at year-end to review for any changes in the information provided throughout the year. As part of this review, stakeholders should document their signoff to evidence their approval and obtain guidance on how to correct any errors and make those corrections.	<p>After aggregating Covered Service contract information, ANR will review the information to be submitted to Systemwide Labor Relations. This review will consist of an inquiry with the source of the information at year-end to review for any changes in the information provided throughout the year. As part of this review, stakeholders should document their signoff to evidence their approval and obtain guidance on how to correct any errors and make those corrections. These steps should be updated in documented procedures.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p> <p>Target Date: October 31, 2023</p>
ANR Business Model Considerations		
	1.f.1 ANR should meet with Systemwide Labor Relations and AFSCME to discuss how Article 5 should be addressed for ANR specifically. Systemwide Labor Relations should provide ANR with updated guidance that would reflect any allowable	<p>ANR will meet with Systemwide Labor Relations and AFSCME to discuss how Article 5 should be addressed for ANR specifically. Systemwide Labor Relations should provide ANR with updated guidance that would reflect any allowable non-standard practices specific to ANR.</p> <p>Owner: Employee and Labor Relations Manager - UCANR</p>

Systemwide Recommendation to UCOP	Recommendation to ANR	ANR Management Corrective Action, Owner, and Target Date
	deviations from UC-wide guidance specific to ANR.	Target Date: February 28, 2024

Source: Systemwide recommendation with associated location recommendations from report Systemwide Contracting Out Audit.
* 3 months after implementation of systemwide recommendation.