FACILITIES MANAGEMENT

NEGOTIATED CONTRACTING REVIEW

AUDIT REPORT #20-2005

Audit & Advisory Services

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# Background

In accordance with the UCLA Administration fiscal year 2019-20 audit plan, Audit & Advisory Services (A&AS) conducted an audit of the negotiated contracting process conducted by the Maintenance and Alterations (M&A) division of the Facilities Management (FM) department.

As defined by the University of California Office of the President’s (UCOP) Construction Services Facilities Manual (Facilities Manual) Vol. 5, Chap. 1, Sec. 1.3, a construction contract may be negotiated between the University and a contractor if the construction cost of the project does not exceed $50,000. For negotiated contracts, the contractors must be selected on a rotating basis from a pool of contractors able to perform the type of project work required. A memorandum stating the conditions warranting such an award, and a justification for the accepted price as reasonable, must be documented by the University’s Designated Administrator and placed in the project file.

Under Facilities Manual Section 1.2, an informal competitive bidding process can be used for construction projects that do not exceed $300,000. Informal competitive bidding is a direct bid solicitation to three or more contracts able to perform the applicable work. The contract is awarded to the lowest responsible bidder submitting a responsive bid, or all bids are rejected. An impartial method must be used for selecting contractors who are to receive bid solicitations and may include (1) regular solicited bids from all responsive contractors who have expressed interest in receiving formal bids, or (2) select contractors on a rotating basis from a pool of responsible contractors able to perform such work.

From July 2018 to December 2019, there were 14 negotiated contracts (under $50,000) totaling $352,900 and one informal bidding contract totaling $101,500 that were executed by the M&A division within FM.

# Purpose and Scope

The primary purpose of the audit was to ensure that M&A’s organizational structure and controls, and the related systems and procedures surrounding negotiated and informal bidding contracts are conducive to accomplishing its business objectives. The secondary purpose of the review was to evaluate the adequacy and efficiency of internal controls. Where applicable, compliance with campus and University requirements was also evaluated.

Another FM division, Design and Project Management, also uses negotiated and informal bidding as contracting methods; however, the focus of this audit were those administered by M&A.

The scope of the audit included the following activities:

* Contractor Selection Method
* Contract Awards and Supporting Documentation
* Separation of Duties

The review was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* and included interviews, tests of records, and other procedures considered necessary to achieve the audit purpose.

Summary Opinion

Based on the results of the work performed within the scope of the audit, FM’s organizational structure and internal controls, and the related systems and procedures governing “negotiated contracts under $50,000” and “informal competitive bidding contracts” are generally conducive to accomplishing its business objectives. However, management could further strengthen controls and improve operations by implementing the following:

* Management should ensure that proper and complete documentation is maintained in each project file to substantiate that contractors were selected from the Rotating Bidders List, including support for any appropriate exceptions granted by UCLA Capital Programs Contracts Administration.
* Management should ensure that there is a mechanism in place, such as a record retention checklist and/or central repository (e.g., Box, SharePoint site), to ensure that all required documentation is maintained in each project file in accordance with UC Facilities Manual record retention requirements.
* Management should work with UCLA Capital Programs Contracts Administration to develop written procedures for emergency situations/contracts to ensure that requirements are clearly defined and well understood by FM Project Managers.

The audit results and corresponding recommendations are detailed in the following sections of the report.

Audit Results and Recommendations

Contractor Selection Method

Discussions were held with key personnel and management within the M&A division and Contracts Administration unit within the UCLA Capital Programs department to obtain an understanding of the contractor selection process for negotiated contracts for projects under $50,000 and informal bid contracts for projects $300,000 and less. The evaluation and selection of contractors was also assessed for compliance with the UC Facilities Manual and applicable University procedures.

Facilities Management project managers serve as the University representative to evaluate and select contractors using negotiated contracting or informal competitive bidding procedures. These project managers work with Contracts Administration staff to ensure that contractors are selected on a rotating basis from the Rotating Bidders List. The rotating pool of contractors is maintained and updated by the Capital Programs Contract Administration unit. Available contractors must meet University, state, and local license and certification requirements. Contractors placed on this list may also specialize in construction-related areas. The purpose of the list is to avoid favoritism, bid tailoring, and sole source providers.

Negotiated contracts involve direct negotiation with one contractor able to perform the applicable work. If the University and contractor fail to agree on price, negotiations are ended with that contractor and another contractor is selected from the Rotating Bidders List until agreement on price is reached. For informal bid contracts, project managers work with Contracts Administration to solicit bids from three or more contractors, with the bid being awarded to the lowest responsible bidder submitting a bid. An impartial method must be used for selecting contractors who receive bid solicitations, and contractors must be selected on a rotating basis from the Rotating Bidder’s list.

For a sample of 10 completed contracts (nine negotiated and one informally bid), A&AS reviewed supporting documentation obtained from the FM project manager to ensure that contractors were evaluated and selected in accordance with the UC Facilities Manual and University procedures. A&AS verified that contract questionnaires were properly completed in the CapSTAR System to initiate the contractor selection process with Contracts Administration. Contract award documentation was also reviewed to ensure that bidding requirements were met and approval was obtained by the appropriate University Authority. Based on our review, the following was noted:

1. Rotating Contractors List

For three of the 10 sample contracts tested, A&AS was unable to confirm that the awarded contractor was properly selected using Contract Administration’s Rotating Bidders List. One of the three items was related to emergency contracts, which required an immediate selection of a contractor to protect public health, safety, and welfare. The other two remaining items were because of the project manager being unable to provide supporting documents to substantiate that the contractor was selected from the Rotating Bidders List.

Contracts Administration indicated that there are times when deviations from the rotating bidders list is permitted due to the specialty nature of the work that a specific contractor possesses; however, A&AS was unable to locate documentation in the FM Project Manager’s project file for any appropriate exceptions granted by Contracts Administration.

Recommendation: Management should ensure that proper and complete documentation is maintained in each project file to substantiate that contractors were selected from the Rotating Bidders List, including support for any appropriate exceptions granted by UCLA Capital Programs Contracts Administration.

Response: Agree. We will keep the list of vendors that is emailed to us by Capital Programs in the project file. We will create a checklist of all documents that are required for each project file. We expect to have this implemented by January 2021.

Contract Awards and Supporting Documentation

Interviews were conducted with FM management, project managers, and Contracts Administration management to obtain an overview of contract award procedures and key supporting documents required to be maintained in project files for negotiated and informally bid contracts. Processing activities related to the project workflow and maintenance of supporting documentation was also assessed for conformity with the UC Facilities Manual.

A&AS reviewed a sample of 10 contracts to determine whether adequate documentation was being maintained in project files to substantiate accepted contract pricing, contract negotiations, and project budgets in accordance with Facilities Manual requirements. Project files were evaluatedon a sample basis, which included, but was not limited to, recommendation for award memoranda, justifications, various types of notices, change orders, and other required documents for adequacy, appropriateness, proper approvals, and timeliness.

Based on the work performed, the following was noted:

1. Incomplete Supporting Documentation

For two of 10 contracts selected for audit testing (20%), project files for the contract did not include all core supporting documentation in accordance with UC Facilities Manual requirements. Project Managers are required to maintain documentation for up to 10 years after the contract is completed. Specifically, the following was noted:

* Project #5886149 had no supporting documentation for the notice to proceed, complete contract agreement, insurance and bond documents, application for payment (vendor invoice), and the final distribution of contract dollars.
* Project #5720817 had no project file available for review (missing all documents) since the Project Manager responsible for the contract is no longer with the University.

Recommendation: Management should ensure that there is a mechanism in place, such as a record retention checklist and/or central repository (e.g., Box, SharePoint site), to ensure that all required documentation is maintained in each project file in accordance with UC Facilities Manual record retention requirements.

Response: Agree. M&A will create a checklist of all documents required for each project file. A process will be established where we store all project files in Box. We expect to have this implemented by January 2021.

1. Emergency Contracts

For one of the 10 sample items tested, the contract documents were prepared over three months after construction work had already been performed by the Contractor. The M&A Project Manager indicated that the contract documents were prepared “after the fact” since this was an emergency contract in which the job had to be performed immediately to prevent a raw sewage spill.

The Facilities Manual requires Contracts Administration and Office of the General Counsel to be involved in emergency contracts prior to having any work performed. Discussions with Contract Administration indicated that contractors can begin emergency work without a contract in place if the University obtains proof of insurance. However, for the sample item selected, A&AS noted that proof of insurance was not obtained prior to the start of emergency work on October 24, 2018, and Contracts Administration was not notified of the emergency contract until January 25, 2019. In addition, contract documents, including proof of insurance, were not executed until the middle of February 2019 (over three months after work was completed).

Recommendation: Management should work with UCLA Capital Programs Contracts Administration to develop written procedures for emergency situations/contracts to ensure that requirements are clearly defined and well understood by FM Project Managers.

Response: Agree. The M&A PMs are working with Brian Willems at Capital Programs to create a SOP that defines the requirements for emergency contracts. We expect to have this implemented by January 2021.

Separation of Duties

A&AS personnel conducted interviews with FM management and project managers, and Contract Administration management to obtain an overview of negotiated contracting functions and processes. Key processing activities within FM’s project workflow were reviewed to determine whether individual duties and processing functions are adequately separated to optimize internal controls. Our review included the CapSTAR system’s contract administration module and its utilization as related to FM construction projects. The Facilities Manual was referenced, as necessary, to assess conformance with published guidelines. Available supporting documentation from our test sample was evaluated for proper authorization. Adequate segregation of duties was assessed from the initiation to completion of the contractor selection method to the end of the contracting process.

There were no significant control weaknesses noted in this area.

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