

September 27, 2019

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**Subject: *System Wide Review – Fair Wage / Fair Work
Report 2019-08***

Audit & Management Advisory Services (AMAS) has completed a review of the University of California (UC) Fair Wage / Fair Work plan at UCSD as part of a systemwide review included on the approved audit plan for Fiscal Year 2018-19. This report summarizes the results of our review.

Background

On July 22, 2015, the UC President announced the UC Fair Wage / Fair Work Plan (the plan), which required that all UC employees hired to work at least 20 hours a week be paid a minimum wage for its direct and service contracts above the State minimum wage. For covered services, the plan mandated a minimum wage of \$13 an hour beginning October 1, 2015, with planned increases to \$14 an hour on October 1, 2016, and to \$15 an hour on October 1, 2017. In addition to UC employees, the plan also covered anyone working for a third party who contracts with the University for services, including new contracts or contract renewals beginning October 1, 2015.

Under the plan, most services performed for the University at one or more UC Locations became subject to the new minimum wage. However, Fair Wage / Fair Work service requirements did not apply to: (i) contracts funded by extramural awards containing sponsor-mandated terms and conditions, or (ii) endowment or investment property where the purpose is to generate income from the general public, except to the extent such property is used by the University to further its mission. In addition, the plan would not significantly affect the overwhelming majority of UC direct and service contract workers who were already earning in excess of the newly adopted UC minimum wage.

Contracts with service providers must contain a provision in the UC Terms and Conditions of Purchase that reference the UC Fair Wage / Fair Work Article. Any exceptions to this Policy must be approved as follows: by the Chief Procurement Officer for a non-UC Health systemwide or Office of the President contract; by the Associate Vice President, UC Health Procurement for a UC Health systemwide contract; and otherwise by the senior procurement officer of the relevant campus or medical center, or laboratory.

The plan expanded UC's monitoring and compliance efforts related to service contractors' wages and working conditions. Several oversight measures to facilitate this plan were identified to include a telephone hotline and online complaint registration system for workers and contractors to report issues

of wages and working conditions, and annual and periodic audits for contractors to ensure compliance with UC's minimum wage rules and expectations for working conditions.

To assess the implementation of the plan, the UCOP Office of Ethics, Compliance and Audit Services (ECAS) began coordinating periodic systemwide internal audits beginning in fiscal year 2016-17. Each fiscal year UCOP Audit Services provided the audit program and scope for each location to follow, and reporting will be based on the audit results of the various campuses.

In April 2016, UCOP released guidelines for real property leased or licensed to or by the Regents of UC clarifying that, in addition to the exceptions noted in the plan, the plan only applies to (1) (A) UC as Landlord or Licensor: where tenants or licensees, in UC-owned or controlled space, provides a service or conducts a business that UC otherwise would provide or conduct, and the agreement is for a term of more than one year; (1)(B) UC as Tenant or Licensee: where UC as tenant or licensee effectively exercises, or has the power to exercise, control over the operations of a building for a term of more than one year (i.e., not in multitenant buildings where the building owner provides services to tenants including but not limited to UC); (2) (A) UC as Ground Lessor: Any building constructed on UC land pursuant to a ground lease or similar arrangement (e.g., Concession Agreement), where (i) UC leases back at least 50% of the space for the duration of the ground lease (or similar arrangement), or (ii) the building is constructed for a use that supports UC's mission and which could have been constructed and operated by UC (e.g., recreational facilities, student or faculty rental housing, and parking facilities); and (2) (B) UC as Ground Lessee: Any building or other facility constructed by UC or for UC's use. These guidelines went into effect May 1, 2016. Real Estate guidelines allow for hardship-based exceptions, which may be granted by "the Vice Chancellor or Vice President responsible for activity in a UC location as decision maker." Certifications must be provided on an annual basis. However, they do not need to be provided by an independent auditor.

Audit Objective, Scope and Procedures

The objective of our review was to evaluate UCSD activities for implementing the UC Fair Wage / Fair Work Plan, using the UCOP provided audit program. **Attachment A** provides a summary of the procedures, scope, and comments supporting our conclusions.

Conclusion

Based on our review procedures, we concluded that UCSD's Procurement & Contracts (Procurement) and UCSD Health Supply Chain Management (Supply Chain Management) processes were generally adequate to ensure compliance with the plan. Efforts to track verification requirements have been implemented, and verification collections seem to have increased over prior years. However, UCSD Real Estate processes were not consistently adequate to ensure timely compliance with the plan.

For Procurement, the terms and conditions for the plan were incorporated into all outgoing purchase orders. For Supply Chain Management, buyers indicated if the request was subject to the plan on purchase orders. Additionally, the plan was publicized on procurement websites and publications, and educational efforts had been provided to both UCSD external suppliers and internally for UCSD buyers. The appropriate authority, per the plan requirements, approved the Procurement exception request submitted by a relevant supplier. We noted that most of the verifications due for 2019 had been provided for both Procurement and Supply Chain Management. We noted limited exceptions of non-compliance, which are described further below.

UCSD Real Estate (Real Estate) received only 17 of 24 certification forms from service providers, tenants, and landlords. However, all 17 forms that had been received were untimely.

We also noted instances where Fair Wage / Fair Work language was not included as required in agreements. Real Estate incorporated the Fair Wage / Fair Work language into agreements in accordance with applicable date guidelines, with the exception of two agreements. We noted one agreement for cooperative space did not incorporate the full text of the required UC Fair Wage / Fair Work provisions, and one amendment for leased space did not include the provisions. Additionally, we noted one Supply Chain Management purchase order that did not include the Fair Wage / Fair Work provisions.

Observations and Recommendations

During our review, we noted that procurement processes could be improved to ensure that suppliers submit the required audit reports promptly, as required by the plan.

Suppliers with over \$100,000 in annual expenditures were required to obtain an independent annual audit of their plan compliance and to submit the results of the independent audits to UCSD via a verification form. Procurement sent reminder notices by March 31, 2019 to all suppliers with a total spend greater than \$100,000 in calendar year 2018. Supply Chain Management sent reminders to all suppliers based on the contract anniversary date.

Procurement required 16 verification forms for 2018. As of the completion of our audit fieldwork on June 26, 2019:

- Eight verifications were received.
- Four suppliers had received submission extensions.
- Four suppliers had not received submission extensions and had not submitted verifications.

Supply Chain Management required 36 verification forms:

- 31 verifications had been received.
- Five suppliers had not submitted verifications.

Two suppliers (one for Procurement and one for Supply Chain Management) did not submit verification forms; however, they both provided audit reports that indicated the engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Additionally, review of one Supply Chain Management verification form disclosed the annual audit and verification did not meet audit standards since the supplier's internal audit department did not report directly to an independent board, but an "ownership group." The plan requirement is that the verification be performed by either a licensed public accounting firm, with no affiliation with the supplier or the supplier's internal audit department that reports directly to an independent board. Supply Chain Management indicated that they did not address this issue with the supplier. The supplier did not respond to repeated efforts to clarify this statement during the review.

Three verification forms noted exceptions for failure to comply with the UC Fair Wage / Fair Work rate of \$15 per hour. One Procurement supplier noted a familial employee had been paid at a rate of \$14 per hour for four and a half hours of work, for a total underpayment of \$4.50. The supplier did not reimburse the employee; however, they indicated the occurrence was isolated and that they would monitor rates in the future to ensure any employees assigned to UCSD projects are paid at the correct

rate. One Supply Chain Management supplier disclosed an underpayment to a single employee totaling approximately \$700. The supplier provided documentation supporting a retroactive payment to the employee for the underpayment in October 2018. A second Supply Chain Management supplier disclosed an exception for underpayment of rates on both 2017 and 2018 verification forms, despite indicating in 2017 that they would meet the terms on “a go forward basis.” After the conclusion of fieldwork, we were notified that the contract with this supplier was terminated in May of 2018.

Both Procurement and Supply Chain Management were actively working to collect outstanding audit reports that were due from suppliers for 2018.

Real Estate guidelines issued in 2016 required annual certifications for any lease, license, or ground lease covered by the plan. For 2018, Real Estate¹ required 24 certification forms from two service providers², 11 tenants, and four landlords³. At the conclusion of fieldwork:

- 17 certifications were collected untimely:
 - Nine were the responsibility of Real Estate – Asset Management
 - Seven were the responsibility of University Centers
- Eight certifications were not collected:
 - One was the responsibility of Real Estate – Asset Management
 - Three were the responsibility of Real Estate Real Property Leasing
 - Three were the responsibility of University Centers

Real Estate indicated that staff reductions impacted compliance with the plan and that next year’s compliance will be better. Real Estate continued to request certifications that had not yet been received, and is in the process of implementing a new system and processes featuring automated reports and reminders to increase compliance in the future.

Management Action Plans:

Procurement, Supply Chain Management, and Real Estate will continue:

- Efforts to obtain 100% compliance with the UC Fair Wage / Fair Work plan from the relevant suppliers.
- To remind suppliers of the audit requirement and due date.

Procurement and Supply Chain Management will:

- Notify suppliers that contracts will be considered for termination if they fail to adhere to the requirements within 60 days.

Real Estate will:

¹ While Real Estate was ultimately responsible for the compliance with the plan as the designated delegator of authority for real estate contracts, responsibility for contract management was delegated to additional units including University Centers, Real Estate – Real Property Leasing, and Real Estate – Asset Management.

² One service provider operated at nine separate property locations, and submitted a separate certification form for each location.

- Remind all parties subject to the plan of the annual certification and due date before the lease anniversary date.
- Notify tenants, landlords, and vendors that contracts will be subject to default proceedings if they fail to adhere to the requirements.

The Fair Wage / Fair Work provision language was not always included in the purchase orders or agreements, and Supply Chain Management included a link to UC's Terms & Conditions that was inaccurate.

We judgmentally selected a sample of 25 purchase orders and agreements (11 Procurement, nine Supply Chain Management, and five Real Estate) to review in order to verify that the language was consistent with the language in the applicable version of the standard terms and conditions. Our review disclosed that links to Standard Terms & Conditions (which contained the Fair Wage / Fair Work provisions) embedded in Supply Chain Management's purchase orders were not active due to a typographical error in the link.

Our review of Supply Chain Management purchase orders also noted one instance in which a purchase order did not contain a reference to the Fair Wage / Fair Work provisions. The purchase order was for technician services at UC San Diego Health. Supply Chain Management was unable to provide an explanation for the provision exclusion as the buyer for that purchase order was not available.

Real Estate provided a list of 39 properties subject to fair wage requirements. We reviewed five of these agreements in greater detail. We noted one Real Estate agreement did not contain the full text of the required provisions, and an amendment to a lease agreement did not include the provision. The master space agreement⁴ we reviewed between the Co-ops at UCSD and the Regents of the University of California did not fully comply with the Real Estate guidelines listed in the *Fair Wage / Fair Work Plan Applicability to Real Property Leased or Licensed To or By The Regents of the University of California*. The "Requirements" section was included, which requires compliance with the plan, a posted notice, and annual certification of compliance; however, "Audit Rights" and "Remedies" sections were excluded. "Audit Rights" allows UC to audit compliance with the plan as well as access to records, while "Remedies" allows UC to terminate the agreement when an annual certification is not provided, or an audit has determined that the party did not comply with the plan. Real Estate was unable to provide an explanation for exclusion of the "Audit Rights" and "Remedies" sections, but indicated the agreement was extensively negotiated by University counsel.

Additionally, an amendment for a lease agreement where UC was a tenant did not include the Fair Wage / Fair Work provision. The amendment was signed in June 2016, and effective September 2016.

Management Action Plans:

Supply Chain Management will:

- Update the link to UC's Terms & Conditions included in purchase orders.

⁴ The agreement was fully executed on July 28, 2017, effective July 1, 2017.

- Ensure all applicable purchase orders include the Fair Wage / Fair Work provision.

Real Estate will:

- Ensure all applicable agreements include the full Fair Wage / Fair Work real estate provisions.

Audit & Management Advisory Services appreciates the cooperation and assistance provided during the review. We will contact you at the appropriate time to evaluate the status of the management action plans indicated in the report.

UC policy requires that all draft audit reports be destroyed after the final report is issued.

If you have any questions regarding this report, please call me at 534-1191.

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Attachment

cc: Todd Adams
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Step	Review Objective per UCOP Audit Program	AMAS Audit Procedures	Audit Conclusion ¹	Comments
1.	Obtain from Procurement the current list of all contracts with the Fair Wage/Fair Work provision and all Fair Wage/Fair Work policy exceptions that were granted.	Obtained Procurement, Supply Chain Management, and Real Estate lists of contracts subject to the Plan and exceptions granted.	Satisfactory	<p>We confirmed with Procurement that all outgoing purchase orders incorporated the UC Fair Wage / Fair Work policy as Article 25 of our standard purchase order terms and conditions.</p> <p>Supply Chain Management buyers were responsible for indicating whether a purchase order is subject to the Fair Wage / Fair Work policy.</p> <p>Real Estate provided a listing of all agreements subject to the UC Fair Wage / Fair Work policy.</p>
2.	Inquire about the process by which Procurement ensures the completeness of the list of contracts with the Fair Wage/Fair Work provision and all Fair Wage/Fair Work policy exceptions. Identify any opportunities for improvement in this process.	Reviewed Procurement and Supply Chain Management, and Real Estate processes, and examined supplier exceptions obtained to date.	Satisfactory	<p>Procurement and Supply Chain Management maintained and reviewed lists of Fair Wage/Fair Work contracts. Lists were over-inclusive as Procurement includes the Fair Wage / Fair Work policy in all purchase orders and some Supply Chain Management buyers may not know whether services are being provided off campus or not, so a purchase order may be marked as subject to the plan when it is not. For both Procurement and Supply Chain Management, the listings of contracts that exceeded \$100,000 per year were reviewed in greater detail to ensure the list is complete and accurate.</p> <p>Real Estate reviewed the listing of agreements signed by the Executive Director that included the Fair Wage/Fair Work provision.</p>

¹ Scale: Satisfactory - Improvement Suggested - Improvement Needed - Unsatisfactory

<p>3.</p>	<p>Identify the contracts with the Fair Wage/Fair Work provision executed in the last year (1/1/2018-12/31/2018). For a judgmental sample (lesser of 10% of the population or 25 contracts), verify that the Fair Wage/Fair Work provision language is consistent with the language in the applicable version of the standard terms and conditions.</p>	<p>Obtained and reviewed listings of all contracts relevant to the plan from Procurement, Supply Chain Management, and Real Estate.</p> <p>Selected a judgmental sample of 25 purchase orders and agreements (11 Procurement, nine Supply Chain Management, and five Real Estate).</p>	<p>Improvement Needed</p>	<p>Procurement purchase orders were in compliance with the Fair Wage/Fair Work provisions and the sample we reviewed contained active links to the full text of the Standard Terms & Conditions.</p> <p>Our review of Supply Chain Management purchase orders disclosed the link to UC’s Terms and Conditions included a typographical error and did not navigate to a valid page. Additionally, we noted one instance in which a Supply Chain Management purchase order did not include the Fair Wage/Fair Work provisions. The order included technician services at UC San Diego Health and did not appear to be exempt from the provisions.</p> <p>We noted one Real Estate agreement for UCSD cooperative space did not contain the full Fair Wage / Fair Work provision language. Sections were excluded that allowed UC to audit compliance with the plan as well as access to records and allowed UC to terminate the agreement when an annual certification was not provided or an audit determined that the party did not comply with the plan. Real Estate did not provide a reason for the exclusion, but indicated the agreement had been negotiated by University counsel.</p> <p>Another Real Estate agreement for an amendment where the UCSD was the tenant did not include the Fair Wage / Fair Work provision language. Real Estate guidelines were effective May 2, 2016. The amendment was effective as of September 1, 2016 and signed in June 2016.</p>
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Step	Review Objective per UCOP Audit Program	AMAS Audit Procedures	Audit Conclusion ¹	Comments
				<p>Recommendations include ensuring Fair Wage / Fair Work language included in purchase orders and agreements are consistent with provision language.</p>
4.	<p>Obtain and review the certification/verification forms for all contracts with services that exceed \$100,000 in the last year.</p>	<p>Obtained and reviewed the following forms:</p> <p>Procurement: Eight of 16 verifications and/or annual reports.</p> <p>Supply Chain Management: 28 of 36 verifications and/or annual reports.</p> <p>Real Estate: 17 of 24 certification forms, none of the 17 forms were submitted timely.</p>	Improvement Suggested	<p>Procurement incorporated a notice and extension process that increased submission results over prior years. Procurement had received eight of 16 required forms, four forms that had not been received had been granted an extension. Supply Chain Management dramatically increased compliance over prior years and had collected 31 of 36 required forms.</p> <p>Procurement and Supply Chain Management each had one supplier who not provide a verification form with their audit report. Additionally, one verification form submitted to Supply Chain Management by the supplier’s internal audit department indicated that it reported to an “ownership group” rather than directly to an independent board.</p> <p>Real Estate had collected 17 of 24 required forms. They were actively working to request certificates that had not yet been received. All 17 forms that had been received had not been received timely.</p> <p>We noted that the process should be improved to ensure that suppliers submit the required certifications in a timely manner, as required by the plan.</p>

Step	Review Objective per UCOP Audit Program	AMAS Audit Procedures	Audit Conclusion ¹	Comments
5.	At each campus, select one contract over \$100,000, as well as any contracts with reported exceptions from the annual audit/verification, for review. Notify the supplier that you are performing interim audit procedures.	Selected one Procurement supplier with over \$100,000 for review. Selected one Procurement contract and three Supply Chain Management purchase orders with reported exceptions. Notified the suppliers of the intent to perform interim audit procedures.	Satisfactory	Suppliers provided documents for review.
6.	Obtain the workpapers and audit report for the annual audit/verification.	The suppliers provided a description of their audit methodology and a copy of their workpapers.	Satisfactory	Reviewed documentation.
7.	Validate that the required audit procedures were followed correctly.	Reviewed supplier's workpapers and methodology.	Satisfactory	The suppliers confirmed that the audit procedures were performed in compliance with the audit standards.

Step	Review Objective per UCOP Audit Program	AMAS Audit Procedures	Audit Conclusion ¹	Comments
8.	<p>For any exceptions noted, verify that the supplier’s management corrective action plan has been implemented and appropriately addresses the risks associated with the exception, or that UC management has either canceled the agreement or the location’s senior procurement officer has approved a policy exception allowing the agreement to continue.</p>	<p>Reviewed all verification forms for exceptions noted.</p> <p>Exceptions were noted on three verification forms for failure to comply with the required hourly rate.</p> <p>Obtained and reviewed documentation for corrective management actions.</p>	<p>Improvement Suggested</p>	<p>One Procurement supplier noted an underpayment of \$4.50 to a familial employee. The supplier indicated they would monitor future rates to ensure compliance.</p> <p>One Supply Chain Management supplier provided documentation to confirm the underpayment was retroactively paid to the employee.</p> <p>One Supply Chain Management supplier noted an underpayment exception on their 2017 certification. The same exception was noted on their 2018 form. In 2017, the supplier noted that retroactive pay to meet the requirement would not be made because they would be adhering to the rate requirements going forward; however, the same exception was noted in 2018. Part of the underpaid rates was retroactively paid (approximately \$350). An amount of less than \$6,400 was not repaid. After the conclusion of fieldwork, Supply Chain Management indicated the contract with supplier was terminated in May 2018 and provided an after-the-fact exception.</p>

Step	Review Objective per UCOP Audit Program	AMAS Audit Procedures	Audit Conclusion ¹	Comments
9.	Review the list of exceptions granted to Fair Wage/Fair Work provision and validate that the documented approval form from the senior procurement official at the location is on file.	Reviewed on approved policy exception granted.	Satisfactory	Procurement provided the appropriate documentation for the approved exception by the Chief Procurement Officer.