

September 7, 2017

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**Subject: *Vendor/Contractor Suspension and Debarment
Report 2017-57***

The final report for Vendor/Contractor Suspension and Debarment, Report 2017-57, is attached. We would like to thank all members of the department for their cooperation and assistance during the review.

Because we were able to reach agreement regarding management action plans in response to the audit recommendations, a formal response to the report is not requested. The findings included in this report will be added to our follow-up system. We will contact you at the appropriate time to evaluate the status of the management action plans.

UC wide policy requires that all draft reports be destroyed after the final report is issued. We also request that draft reports not be photocopied or otherwise redistributed.

David Meier
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Attachment

cc: Todd Adams
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AUDIT & MANAGEMENT ADVISORY SERVICES

Vendor/Contractor Suspension and Debarment
Report No. 2017-57
September 2017

FINAL REPORT

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 3

II. BACKGROUND..... 5

III. AUDIT OBJECTIVE, SCOPE, AND PROCEDURES 6

IV. CONCLUSION..... 7

V. SUPPORTING COMMENTS 8

I. EXECUTIVE SUMMARY

Audit & Management Advisory Services (AMAS) has completed a review of vendor/contractor (supplier) suspension and debarment as a supplemental audit for the Fiscal Year 2016-17 audit plan, as requested by campus leadership. The primary objective of our review was to evaluate whether policies and procedures provided reasonable assurance that procurement of goods and services were made in conformance with policy requirements, and that efforts were made to avoid transactions with a debarred or suspended party. The secondary objective of our review was to evaluate whether there were any gaps in policy or practice regarding the debarment and suspension of suppliers/contractors. The scope of the review included both UC San Diego (UCSD) campus and UCSD Health (UCSDH) procurement practices.

We concluded that existing procurement practices generally conform to University and Federal policy and requirements. We noted no overarching UC or local policy that prevents the University from entering into an agreement with a supplier that has been suspended or debarred by a public agency. However, federal regulations and California Labor Code Section 1777.1, which apply to federal funding sources and public works projects respectively, provide guidance for handling debarred/suspended suppliers.

Procurement & Contracts (P&C), Office of Contract and Grant Administration (OCGA) Subaward Team, Facilities Design & Construction (FD&C), and UCSD Health (UCSDH) Supply Chain Management (Supply Chain) have delegated authority to execute contracts on behalf of the University, depending on the type and location of service. Facilities Management; Housing, Dining, Hospitality; and UCSDH Construction Planning may only initiate contracts and rely on their respective procurement departments (P&C, FD&C, and Supply Chain) to execute the contracts on their behalf. Although processes vary among the departments and each situation is assessed based on different variables, a concerted effort is made to appropriately evaluate the status of each supplier to avoid unallowable transactions with a debarred or suspended party.

Our review indicated a minor gap in policy regarding the use of a tracking mechanism for debarred and suspended suppliers at the University. P&C processes currently include inactivating their profile from the Integrated Financial Information System (IFIS) and Marketplace as needed. FD&C also updates the contractor's company registration and profile in e-Builder if they should no longer be used. However, we noted no UC or UCSD-wide infrastructure that maintains a database of University debarred/suspended suppliers or contractors for reference.

Given the rarity of debarring or suspending a vendor, this does not appear to be a high risk issue for the University. However, collaboration should be improved so that the various offices are aware of instances where a supplier or contractor has been suspended or debarred. The Management Action Plan to address this finding is summarized below:

Management Action Plan

The Associate Controller/Chief Procurement Officer will convene a work group of UCSD Contracting Officers to coordinate campus practices for the debarment/suspension of suppliers and contractors. Suggested topics may include best practices, information-

sharing on problematic suppliers and contractors, and a potential database for suppliers debarred/suspended from working for UCSD.

Observations and the related management action plan are described in greater detail in section V. of this report.

II. BACKGROUND

Audit & Management Advisory Services (AMAS) has completed a review of vendor/contractor (supplier) suspension and debarment as a supplemental audit for the Fiscal Year 2016-17 audit plan, as requested by campus leadership. This report summarizes the results of our review.

Suspension and debarment are actions taken to declare a supplier ineligible to provide goods or services under specific conditions and for a predetermined period of time. Suppliers may be suspended or debarred from doing business with public agencies for various reasons including the commission of fraud, embezzlement, theft, forgery, and bribery; violation of antitrust statutes; willful, or a history of, failure to perform; failure to provide requested certified payroll records; and other actions that affects their responsibility.

Government and local policy requirements define how the University selects suppliers to provide goods and services. Specifically, University of California (UC) BUS-43: Materiel Management identifies a responsible bidder (supplier) as having integrity, reliability, and the ability to ensure their performance is conducted in good faith. Various factors are used to evaluate bidder responsibility including financial resources, past performance, delivery capability, experience, organizational structure and personnel, and operational controls. University Materiel Managers are responsible for making the determination by requiring information to support the eligibility as well as establishing various processes to monitor the continued status of each bidder.

The Federal Government oversees a process to refer suppliers to the Suspension & Debarment Division of General Services Administration (GSA). The GSA Suspension and Debarment Official reviews recommendations, makes present responsibility determinations, and decides whether or not to take administrative actions relating to suspensions or debarments. Suppliers that have been suspended or debarred are listed on the System for Award Management (SAM) website, and are available for review by other agencies seeking to do business with the suppliers. For procurement transactions involving federal funds, Title 48 of the Code of Federal Regulations (CFR) 9.4 indicates that “contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors...”¹ The regulation also states that contracts existing when the contractor becomes debarred or suspended may continue unless otherwise directed.

Additionally, California Labor Code Section 1777.1 indicates that contractors and subcontractors performing a public works² project found to be in violation may be ineligible from bidding or being awarded a public works project contract or performing work on a public works project as a subcontractor for up to three years.

Suspension or debarment from one public agency (e.g. federal department) does not necessarily prevent a different public agency (e.g. state department) from doing business with the supplier. Rather, it is dependent on each agency’s experience with the supplier, and each agency’s evaluation

¹ Title 48 CFR Part 9, Subpart 9.4 – Debarment, Suspension, and Ineligibility.

² California Labor Code Section 1720 defines public works as “construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority.”

process may vary. With the exception of the federal regulations and California Labor Code Section 1777.1, there is no overarching UC or local policy that precludes the University from entering into an agreement with a supplier that has been suspended or debarred by any public agency. For instance, a contractor debarred from doing business with the City of San Diego may be used by the University if the project does not involve work on city-owned property (e.g. city street or leased space in a city-owned building) or funding provided by the city.

There are several departments across campus that have delegated authority to execute contracts on behalf of the University depending on the type and location of service. These departments include Procurement & Contracts (P&C), Office of Contract and Grant Administration (OCGA) Subaward Team, Facilities Design & Construction (FD&C), and UCSD Health (UCSDH) Supply Chain Management (Supply Chain). Facilities Management (FM); Housing, Dining, Hospitality (HDH); and UCSDH Construction Planning (Construction Planning) may only initiate contracts and rely on their respective procurement departments (P&C, FD&C, and Supply Chain) to execute the contracts on their behalf. The process for vetting suppliers varies between the departments, by dollar value, and by funding source.

III. AUDIT OBJECTIVE, SCOPE, AND PROCEDURES

The primary objective of our review was to evaluate whether policies and procedures provided reasonable assurance that procurement of goods and services were made in conformance with policy requirements, and that efforts were made to avoid transactions with a debarred or suspended party. The secondary objective of our review was to evaluate whether there were any gaps in policy or practice regarding the debarment and suspension of suppliers/contractors. The scope of the review included both UC San Diego (UCSD) campus and UCSD Health (UCSDH) procurement practices. In order to achieve our objectives, we performed the following:

- Reviewed University, state, and federal policies and guidelines, including:
 - UC BUS-43: Materiel Management,
 - UC Facilities Manual Volume 5, Chapter 4: Determining Bidder Responsibility,
 - UCOP List A: Items Requiring Special Monitoring,
 - UC Terms and Conditions of Purchase,
 - California Labor Code §1777.1,
 - California Public Contract Code Sections 10500-10507,
 - General Services Administration – Suspension & Debarment Division Guidance,
 - US Government Publishing Office (GPO) Federal Acquisition Regulation (FAR) Title 48, Subpart 9.4 *Debarment, Suspension, and Ineligibility*,
 - US GPO FAR Title 48, 52.209-6 *Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment*,
 - UCSD OCGA Subrecipient Commitment Form, and
 - UCSDH Medical Center Policy 550.1 - *Vendor Policy and Guidelines*;
- Interviewed the following personnel:
 - P&C:
 - Deputy Director,
 - Assistant Director,
 - Buyers,
 - FM Procurement Manager,
 - FM:

- Director,
- Assistant Director,
- FD&C:
 - Senior Director – Construction Services,
 - Contract Manager,
- HDH Property Operations and Planning (POP) Associate Director,
- Supply Chain:
 - Procurement Services Manager,
 - Admin Analyst,
 - Financial Services Manager,
- Construction Planning Director; and
- Reviewed system databases and related workflows, flowcharts, questionnaires, checklists, etc. as they relate to suppliers.

IV. CONCLUSION

Based on our review, we concluded that existing procurement practices generally conform to University and Federal policy and requirements. We noted no overarching UC or local policy that prevents the University from entering into an agreement with a supplier that has been suspended or debarred by a public agency. The campus does adhere to federal regulations and California Labor Code Section 1777.1, which apply to federal funding sources and public works projects, respectively. Although processes vary among the departments and each situation is assessed based on different variables, a concerted effort is made to appropriately evaluate the status of each supplier to avoid unallowable transactions with a debarred or suspended party.

UCSD has experienced limited activity with debarred or suspended suppliers. For instance, the P&C Deputy Director recalled one instance of a debarred or suspended supplier in nine years. For this reason, P&C and Supply Chain rely on the suppliers to inform them of changes in their status. While the OCGA Subaward Team and FD&C Contracts Team regularly evaluate and monitor subrecipient and contractor status, the University appears to have an overall low risk exposure for conducting business with a debarred or suspended supplier. Therefore, it does not appear necessary to require additional monitoring procedures.

Our review indicated a minor gap in policy regarding the use of a tracking mechanism for debarred and suspended suppliers at the University. P&C processes currently include inactivating suppliers from the Integrated Financial Information System (IFIS) and Marketplace as needed. FD&C also updates the contractor's company registration and profile in e-Builder if they should no longer be used. However, we noted no UC or UCSD-wide infrastructure that maintains a database of University debarred/suspended suppliers or contractors for reference. Given the rarity of debaring or suspending a vendor, this does not appear to be a high risk issue for the University.

Detailed information regarding each department's processes are discussed in the balance of this report.

V. SUPPORTING COMMENTS

P&C

P&C utilizes Marketplace, UCSD's one-stop shopping website, to manage the buy-to-pay needs of the University. They assess suppliers before they are made available to campus departments for selection. Department buyers receive the necessary training and are informed of the University's Purchasing Code of Ethics prior to obtaining authority to purchase certain goods and services. Once authority has been obtained, department buyers are granted access to search and procure goods and services available through Marketplace³. If a supplier does not exist in Marketplace, the department may submit a request through the system to add a new supplier. An e-mail is then automatically sent to the supplier to complete a questionnaire, which requests company information such as name, address, and tax identification number. P&C buyers process the request and determine if there are any conflicts of interest that would violate University policy and prevent UCSD from doing business with the supplier (e.g. employee-supplier relationship). Any exceptions to University policy must be approved by the Chief Procurement Officer. Although the current registration form does not require the supplier to disclose their federal debarment or suspension status, the form is being updated and will include a request for that information.

In July 2016, UC updated the Terms and Conditions of Purchase. Prior to July 2016, P&C buyers would check the SAM website for any exclusions when federal funds were involved. The updated terms and conditions now require the supplier to "warrant that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities." This relieves P&C buyers from checking a supplier's debarment/suspension status for each purchase, as the responsibility is on the supplier to disclose their status.

While most purchase orders apply the UC Terms and Conditions, there are cases when suppliers request to negotiate their own terms and conditions. The UC Terms and Conditions are required when federal funds are involved. Otherwise, the P&C buyer works with the supplier to execute a signed agreement with mutual terms, which may or may not include any language regarding debarment or suspension status.

OCGA Subaward Team

The OCGA Subaward Team is responsible for executing subaward agreements. An outgoing subaward is a legal "agreement between UCSD and a non-UCSD entity in which a defined portion of the UCSD work statement's intellectually significant activity is assigned to another entity (subrecipient) to fulfill and the award terms and conditions UCSD has accepted from the funding agency are 'flowed down' to the subrecipient, who must agree to comply with them⁴."

When executing a new subaward agreement involving federal funds (e.g. federal contracts, federal

³ Department buyers may also utilize the University's procurement card, the Express Card, which can be used to purchase most routine, low-cost goods and services without going through Marketplace. Restrictions and benefits apply to the use of the card.

⁴ "Subaward: Frequently Asked Questions." Blink.ucsd.edu. UC San Diego, 9 Jan. 2017. Web. 26 Apr 2017.

grants, federal flow-through), the Subward Team conducts a search for exclusion records on the SAM website. Subrecipients and agreements are managed within the Salesforce application, which contains information such as the subrecipient's name, tax identification number, audit reports, and the last date SAM was reviewed for exclusions. SAM is checked whenever a new subaward agreement involving federal funds is executed, regardless of when it was last reviewed. However, the exclusion search is not conducted for agreements involving non-federal funding sources, as it is not required by policy (state, local, or otherwise).

FD&C

FD&C is responsible for administering major construction projects, as well as large alterations and renovations for the University. This contract administration is managed by the FD&C Contracts Team. Interested contractors must complete a company registration form to provide relevant information such as their tax identification number and business category (e.g. disadvantaged business enterprise or women-owned business enterprise). The registration form also provides information to the contractor regarding the University's bonding and insurance requirements. FD&C's process includes hosting meet and greet events in order to familiarize themselves with the contractors' experiences and specialties. If appropriate, the new contractors are added to e-Builder⁵ and invited to bid on projects fitting their specialties.

For contracts that exceed \$640,000, bids are publicly advertised on FD&C's website. Contractors interested in applying are required to complete a pre-qualification questionnaire, which includes information regarding the contractor's license number, specific information regarding surety and insurance, and construction experience. It also provides the contractors with the opportunity to disclose any disqualification or debarment from public agencies.

Prior to executing any contracts, the FD&C Contract Team's practice is to obtain pre-contract documentation such as payment and performance bonds, certificates of insurance, as well as verify that the contractor's license is in good standing with the California State License Board. FD&C maintains the same vetting process regardless of the department that initiates the contract (i.e. whether it is FD&C, FM, HDH POP, or Construction Planning).

FM

FM provides the campus with routine maintenance of buildings and grounds, as well as performs renovations and alterations for campus projects under \$750,000. Because they do not have the delegated authority to execute contracts, they rely on P&C and FD&C to execute contracts on their behalf. FM has a separate instance of e-Builder to initiate contracts, which are then sent to FD&C's Contracts Team, who will vet the contractor through their process (e.g. obtaining and reviewing prequalification documents) prior to executing the contract for FM.

HDH POP

HDH POP is responsible for managing construction and renovation projects at HDH facilities, and receiving internal requests for projects from HDH supervisors and area managers. While some work is

⁵ e-Builder is a web-based construction management software which houses the University's pool of contractors and is used to manage projects (e.g. schedules, documentation, etc.).

performed by an internal team, most projects are contracted out to local construction companies. When applicable, HDH POP will interview new contractors who wish to work with the University to obtain an understanding of their qualifications. Although not required, they also check the California State License Board to verify the new contractor's license and whether it is in good standing. Once verified, the new contractor may be invited to bid on projects. Like FM, HDH POP depends on P&C and FD&C to execute contracts on their behalf. Regardless of the contractor selected (new vs. existing), HDH POP relies on FD&C's vetting process to ensure selected contractors are in good standing with the California State License Board and not disqualified or barred from working on the project.

UCSDH Supply Chain

Purchasing for UCSDH is conducted through the Supply Chain department. As part of the process, departments are required to complete a requisition form to indicate the needed goods/services and the requested supplier (if applicable). The form is then submitted to a buyer in Supply Chain for processing. If the supplier does not exist in the database (Aperk⁶), the buyer will then review existing suppliers to determine whether the goods/services can be fulfilled through an existing relationship. If not, the buyer follows the on-boarding process, which includes checking the SAM website and Office of Inspector General (OIG) databases for exclusions. If existing suppliers become debarred/suspended, they are expected to notify the buyers when their status changes. Supply Chain also periodically checks SAM/OIG for changes in a supplier's status. When this occurs, any purchase order activity is ceased until the exclusions are cleared.

While construction projects for UCSDH are either handled by FD&C or Construction Planning, Aperk is used to manage the requisitions and invoices for the Construction Planning projects.

Construction Planning

Constructing Planning is responsible for general construction and professional design services for UCSDH. When possible and depending on their availability, Construction Planning utilizes in-house construction staff (e.g. carpenters, and electricians). If a project needs to be expedited, a supplier will be solicited for their services.

Construction Planning maintains a list of suppliers who have worked for UCSDH before. When new suppliers are used, they ensure that the necessary requirements are met, such as having a valid business license and the suppliers are appropriately bonded. Additionally, Construction Planning maintains a list of previously vetted subcontractors (e.g. mechanical, electrical, plumbing) to be used by general contractors when needed. The Construction Planning Contracts Team initiates and approves the contract internally before it is sent to FD&C for execution, who then vets the contractors as part of their standard process. Because the requisitions and invoices for these projects are managed through Aperk, the contractors also go through Supply Chain's vetting process to be registered in Aperk (e.g. SAM/OIG database checks for exclusions).

⁶ Aperk is a materiel management information system and is used by Supply Chain to manage and process procurement transactions.

Instances Where UCSD May Debar/Suspend a Supplier (or Contractor)

UCSD does not currently have a single documented practice for debarment or suspension, or database of University debarred/suspended suppliers or contractors. This is, at least in part, because a number of offices across UCSD have contracting authority. Consequently, conversations about potentially debarring or suspending a supplier or contractor may take place in a number of areas. Given the rarity of debarring or suspending a vendor, this does not appear to be a high risk issue for the University or the UCSD campus. However, collaboration should be improved so that the various offices are aware of instances where a supplier or contractor has been suspended or debarred.

P&C

When the campus identifies a supplier for suspension/debarment, they are inactivated within IFIS and Marketplace as needed. If a blocked supplier attempts to register again through Marketplace, this will invoke the review process. Any associated notes in Marketplace regarding the suspension/debarment will be reviewed by the Marketplace Technology/Project Management Team and the supplier reactivation will be referred to a P&C buyer for vetting.

UCSDH Supply Chain

When the Director of Supply Chain determines a supplier should be suspended or debarred from doing business with UCSDH, the supplier's profile in Aperek is placed into a "Suspended" status. This prevents new POs from being issued and payments from being released. The supplier may not be unsuspended without the Director's approval.

OCGA Subaward Team

When the University identifies a subrecipient that should no longer be used, the OCGA Subaward Team updates the subrecipient's Salesforce account with the relevant information. They also work with P&C to modify and inactivate the supplier in Marketplace. This prevents new POs from being issued and future payments made to the subrecipient. If a department would like to work with a blocked subrecipient, the process would be to contact the OCGA Subaward Team and/or Disbursements for further instruction.

FD&C

When FD&C identifies a contractor that should be suspended/debarred, they update the contractor's company registration and profile notes in e-Builder indicating the company should not be used. Internal meetings and e-mail notices will also be used to notify members of the Contract team.

Management Action Plan

The Associate Controller/Chief Procurement Officer will convene a work group of UCSD Contracting Officers to coordinate campus practices for the debarment/suspension of suppliers and contractors. Suggested topics may include best practices, information-sharing on problematic suppliers and contractors, and a potential database for suppliers debarred/suspended from working for UCSD.