

**UNIVERSITY OF CALIFORNIA, DAVIS
AUDIT AND MANAGEMENT ADVISORY SERVICES**

**UC Davis Health
Contracting Out
Audit & Management Advisory Services Project #23-06**

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MANAGEMENT SUMMARY

Background

At the direction of Ethics Compliance and Audit Services (ECAS) at the Office of the President (OP), and as part of the fiscal year (FY) 2023 audit plan, Audit and Management Advisory Services (AMAS) reviewed the contracting out process. This process is subject to requirements contained in Article 5 of the two collective bargaining agreements (CBAs) with AFSCME¹ and Regents Policy 5402: Policy Generally Prohibiting Contracting for Services.

Article 5 generally prohibits contracting for services and functions that can be performed by University employees. Article 5 also contains limited exceptions to this general prohibition and requirements that are triggered when a university contracts out for Covered Services².

On November 14, 2019, the Regents approved Regents Policy 5402. This policy prioritizes the use of UC employees over contract workers whenever possible and ensures contracting for Covered Services is utilized sparingly to address specified needs - not as means to replace UC employees with lower-wage contract workers. The Regents have made clear that Article 5 takes precedence over Regents Policy 5402.

On February 15, 2020, the Office of the Chief Procurement Officer issued Implementation Guidelines that provide guidance to UC personnel with the implementation of Regents Policy 5402 and Article 5. In a situation where UC contracts out for Covered Services, these specific guidelines must be followed.

In addition, ECAS developed a Systemwide Contracting Out Audit report based on information gathered by each location's³ internal audit department. The report provides a consolidation of the systemwide findings and a set of corresponding recommendations to address these findings. A summary of the systemwide recommendations for the locations is included in **Appendix A**.

Purpose and Scope

The purpose of this audit was to evaluate processes and controls in place to facilitate compliance with contracting out guidelines and requirements.

To accomplish these objectives, we conducted interviews with Supply Chain Management and Contracting Services (SCM&CS) and Employee and Labor Relations (ELR) to gain understanding of the contracting process and reviewed:

- Procedures to identify covered services.

¹ **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

² Per Article 5 and Regents Policy 5402, Covered Services refers to work customarily performed by bargaining unit employees, 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 All UC Campuses and health systems, LNBL, UCOP, and ANR.

- 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 monitor contractor's compliance with wage and benefit parity (WBP) requirements.
- Procedures to track contractor hours and identify contract workers that meet the in-sourcing criteria.
- Procedures to comply with employee displacement requirements.
- Processes by which Qualified Individuals (QIs) are provided options of UC career employment.
- Processes to submit notices for contracting decisions.
- Tracking and reporting contract information to affected employee organizations and the Regents.
- Mechanisms to facilitate reporting violations and responding to reported violations.
- Processes for handling grievances.

The scope of the review covered activities in the Calendar Year (CY) 2022, including those reported in the CY 2021 AFSCME Report reported in February 2022.

Conclusion

While SCM&CS and ELR have internal controls and procedures in place to contract out covered services in accordance with Article 5 and Implementation Guidelines, there are opportunities for improvement in the following areas:

- I. Covered Services Identification
- II. Review and Evaluation of Decisions to Contract Out
- III. Monitoring Suppliers' Compliance with Wage and Benefit Parity Requirements
- IV. Identification of Qualified Individuals (QIs)/UC Career Employment Conversion
- V. Provision of Notice for Contracting Decisions
- VI. Tracking and Reporting Contract Information

Detailed observations, recommendations and management corrective actions are contained within the body of the report.

In addition, ECAS noted that additional guidance from OP is required to establish measurable standards and clarify UC's locations' compliance obligations for certain areas related to contracting out requirements, including:

- Monitoring lower value purchasing activity
- Contracting out terms and conditions
- QI monitoring and identification
- QI conversion to UC career employment
- Posting of notices on requirements for converting to UC career employment
- Procedures to comply with employee displacement requirements
- Handling of Article 5-related grievances
- Provision of employee notices to suppliers

A summary of the systemwide recommendations and associated management corrective actions is included in **Appendix A**.

Observations, Recommendations, and Management Corrective Actions

I. Covered Services Identification

Ref.	Observations	Recommendation	Management Corrective Actions
A	<p><i>Existing controls to identify covered services are not sufficient to capture all covered service contracts.</i></p> <p>Once a covered service need is identified, departments initiate a request to contract out that is routed to SCM&CS and ELR for evaluation and approval. This is the primary method by which covered services contracts are identified and processed at UC Davis Health. In addition, SCM&CS runs reporting to identify any covered services contracts not identified or processed using the standard process. These monitoring procedures are not documented in operating procedures used by SCM&CS.</p>	<p>SCM&CS should improve controls to manage risk surrounding identification of potential contracts for covered services, including enhanced compliance with contracting protocols such as documenting procedures to identify covered services contracts.</p>	<p>1) By 11/15/2023, SCM&CS will revise existing controls to identify purchases of covered services. The process will be documented and reviewed regularly for improvement.</p>
B	<p><i>Existing controls are not sufficient to ensure that change order dates on purchase orders are being updated to reflect the date on which the purchase order was amended.</i></p> <p>When updating purchase orders, buyers in SCM&CS are required to update the change order date, which is the date on which the purchase order is amended. Contracts are typically amended for the following reasons: to extend the term of the contract, add funds, or add WBP rates.</p> <p>There were several instances of change order dates indicated on purchase orders that did not correspond to the actual date of amendment or issuance. However, SCM&CS was able to retrieve accurate change order dates which were relied upon to complete the review of WBP rates.</p>	<p>SCM&CS should improve existing procedures for recording change order dates.</p>	<p>1) By 11/15/2023, SCM&CS will revise existing controls to enhance compliance with the process of updating change order dates.</p>

II. Review and Evaluation of Decisions to Contract Out

Ref.	Observations	Recommendation	Management Corrective Actions
C	<p><i>ELR does not document changes to departmental contracting out carve out justification forms.</i></p> <p>Per implementation guidelines, the rationale for contracting out - including justifiable carve outs⁴ - must be documented. At UC Davis Health, a justification form must be completed by a department requesting a carve out. These forms are then subject to review and approval by ELR, and become the official supporting documentation for carve outs reported in the annual AFSCME report and the notice to AFSCME.</p> <p>During its review process, ELR may amend information submitted by the department justifying the carve out; however, ELR does not follow a practice of documenting all such revisions in the original justification form. As a result, the contract information reported to AFSCME may not match the contract information in the justification form.</p> <p>We noted one case where this happened. There were two carve outs reported to AFSCME that were not documented in the justification form. For the same case, the notice did not include a carve out reported to AFSCME. Without proper documentation of the applicable carve outs, ELR may not be able to support the decision to contract out covered services.</p>	<p>ELR should enhance the contracting out process to ensure all applicable carve outs are documented.</p>	<p>1) By 7/15/2023, ELR will include a section in the justification form to note changes made based on the review performed including, but not limited to, applicable carve outs to be reported to AFSCME.</p>

⁴ Per Article 5.C, there lists a limited number of circumstances in which contracting for covered services is allowed.

III. Monitoring Suppliers' Compliance with Wage and Benefit Parity Requirements

Ref.	Observations	Recommendation	Management Corrective Actions
D	<p><i>Throughout 2020 and 2021, OP guidance and direction pertaining to compliance with WBP rate requirements was inconsistent and evolving; as a result, corresponding local procedures to comply with WBP rate requirements were equally inconsistent and evolving.</i></p> <p>For the scope of time under review (2020-2021), UCOP (Procurement/Legal) provided campuses with fluctuating guidance and expectations regarding compliance with WBP rate requirements⁵. This contributed to some of the findings indicated below. UCOP has since provided standard guidance and SCM&CS indicated local procedures have been amended accordingly to enhance accuracy and timeliness of compliance with WBP rate requirements.</p> <p>AMAS reviewed a judgmentally selected sample of five contracts for covered services to determine whether WBP rates were included or excluded from the contracts in accordance with requirements. AMAS reviewed original agreements or purchase orders and any amendments applicable from 2020 through 2021. Altogether, 21 individual contracts were reviewed.</p> <p>We observed that approximately 90% of contracts reviewed included or excluded WBP rates in compliance with requirements.</p> <p>The following was observed with respect to the remaining 10% of contracts:</p> <ul style="list-style-type: none"> • In at least a few cases, WBP rates were included in contracts despite the contracted services being performed <u>off-site</u>, which exempts the supplier from the requirement of paying its employees WBP rates. SCM&CS identified and corrected at least one of these instances prior to this AMAS review. • Contracts were not amended to include applicable WBP rates by the WBP rate effective date. 	<p>SCM&CS should implement procedures to increase compliance with WBP rate requirements.</p>	<ol style="list-style-type: none"> 1) By 7/15/2023, SCM&CS will review current active service contracts for off-site services and execute amendments to omit WBP rates if included in contracts. 2) By 11/15/2023, SCM&CS will revise existing procedures for adding WBP rates to new and existing contracts.

⁵ Per Article 5 B.1, contractor must provide its service employees with wages and benefits of equivalent value to those provided to bargaining employees performing same/similar duties at the work location or nearest University location if the work is being performed by non-bargaining unit employees. In determining equivalent value, the University shall determine the pay rate and composite benefits rate.

IV. Identification of Qualified Individuals (QIs) / UC Career Employment Conversion

Ref.	Observations	Recommendation	Management Corrective Actions
E	<p><i>ELR has not developed effective procedures to ensure all qualified individuals are identified and considered for UC career employment conversion.</i></p> <p>ELR developed a process in which departments monitor contractors' hours, and ELR identifies qualified individuals (QIs)⁶ and notifies departments to initiate the career conversion process with the Recruitment office. However,</p> <ul style="list-style-type: none"> • ELR does not collect and track contractors' hours to identify QIs, except for AYA Healthcare. AYA Healthcare contractors' hours are tracked through a dashboard system. • For AYA Healthcare contractors, ELR has not implemented a process to identify qualified individuals and notify departments. From the dashboard, as of November 2022, there were approximately 40 contractors who reached 1,000 hours in a rolling 12-month period. • ELR has not developed a monitoring process to ensure all departments initiate career conversion processes. <p>As a result, AMAS was not able to validate that all qualified individuals were identified and considered for a UC career employment offer.</p> <p>Additionally, for at least two individuals who were hired based on QI eligibility, supporting documentation was not readily available to validate that they met the conversion criteria.</p>	<p>ELR should implement a process to identify qualified individuals within the AYA Healthcare dashboard system, enhance the identification of qualified individuals process for all other contractors, and develop a monitoring process over the career conversion step.</p>	<ol style="list-style-type: none"> 1) By 7/15/2023, for applicable AYA Healthcare workers, including the 40 contractors identified during the audit, ELR will implement a process to identify qualified individuals for hours tracked and notify the department to initiate the career conversion process. 2) By 7/15/2023, ELR will develop and provide guidance to the department to report contractors' hours and retain readily accessible documentation supporting the eligibility of qualified individuals. 3) By 9/15/2023, ELR will develop a master list of accumulated hours to capture contractors' hours and identify qualified individuals. 4) By 11/15/2023, ELR will develop a monitoring process to ensure all qualified individuals were considered for the UC career employment conversion.

⁶ Per Article 5 F.2, a contract worker who perform the same services at the same UC location for 1,000 hours in a rolling 12-month period, or 35% time over a rolling 36-month period may be deemed a qualified individual for UC Career employment conversion.

V. Provision of Notice for Contracting Decisions

Ref.	Observations	Recommendation	Management Corrective Actions
F	<p><i>Noncompliance with Guidelines Requirement to Share Draft Notices with OP</i></p> <p>UC Davis must provide notice to AFSCME prior to entering into, extending or renewing a contract that includes Covered Services valued at over \$100,000.⁷ As part of the notification process, a <i>“draft of the notice should be shared with UCOP Labor Relations [LR] and the Office of the General Counsel [OGC] prior to issuing it to AFSCME.”</i> However, this step is not performed by ELR.</p>	<p>ELR should implement a process to submit draft notices to UCOP LR and the OGC.</p>	<p>1) By 7/15/2023, ELR will implement a process to submit draft notices to UCOP LR and the OGC.</p>
G	<p><i>A required holding period following notice to AFSCME is not established.</i></p> <p>AFSCME has 14 calendar days from the date of the notice to provide alternatives to the contract for covered services. These alternatives should be considered by the University prior to proceeding with the execution of the contract⁸.</p> <p>Per review of contracts with covered services, there were two instances in which the contracts were executed before or soon after (within three days) the notice was submitted to AFSCME.</p>	<p>ELR should develop and implement a process to ensure the University provides AFSCME 14 days to respond.</p>	<p>1) By 7/15/2023, ELR will develop and implement a process to ensure the University provides AFSCME fourteen days to respond.</p>

⁷ Per Article 5.D and Implementation Guidelines

⁸ Per Article 5 D.3-5.

VI. Tracking and Reporting Contract Information

Ref.	Observations	Recommendation	Management Corrective Actions
H	<p><i>Information reported to AFSCME is not always in alignment with information found in contracts or supporting documentation.</i></p> <p>AMAS reviewed 15 different report fields across a judgmentally selected sample of five contracts for covered services to determine whether the information reported to AFSCME was accurate.</p> <ul style="list-style-type: none"> We found that less than 10% of information reported in the CY 2021 AFSCME Report did not align with the corresponding contract. <p>The noted exceptions were typically due to using a prior version of an amended contract.</p> <p>Note: previously, locations were asked to enter information for the AFSCME Report at designated points in time. The process has changed, and locations can now enter contract information on a rolling basis. Due to the timing of fieldwork, AMAS did not review the accuracy of the CY 2022 AFSCME report.</p>	<p>SCM&CS should improve existing procedures to increase accuracy of information reported to AFSCME.</p> <p>SCM&CS should consult with OP to determine whether errors require disclosure to AFSCME.</p>	<p>1) By 11/15/2023, SCM&CS will develop written procedures to report information to AFSCME. Procedures must include quality assurance reviews to increase the accuracy of information reported.</p> <p>2) By 11/15/2023, SCM&CS will consult with OP to determine errors that require disclosure to AFSCME and act as needed.</p>
I	<p><i>Documentation supporting the decision to contract out services and notice to AFSCME was not available.</i></p> <p>AMAS reviewed five contracts for covered services. We noted 14 instances⁹ requiring an approved justification form and/or notice to AFSCME. For 11 of these instances, the required justification form and/or notice¹⁰ was not available.</p> <p>For most cases, ELR was unable to provide the information due to the department's turnover rate, loss of historical knowledge, and inadequate referencing within their retention system (Aggie Service). As a result, AMAS was not able to verify if the justification for contracting out services was reviewed and approved, or if the required notice was submitted to AFSCME.</p>	<p>ELR should document retention procedures to ensure the justification form and notices are securely retained and readily accessible.</p>	<p>1) By 9/15/2023, ELR will document retention procedures with respect to covered service justification form and notices such that information obtained and submitted to AFSCME is securely retained and readily accessible.</p>

⁹ Instances involve prior activity such as execution and extension of the contract.

¹⁰ For most cases, both documents were not available. For two instances, the contract value did not require a notice.

	Additionally, for two of these instances, the information supporting the final executed contract reported in CY 2021 was not available. As a result, AMAS was unable to verify the accuracy of carve outs reported in the CY 2021 AFSCME Report.		
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Appendix A

Systemwide Recommendations and Management Corrective Actions

Recommendation to UCOP	Recommendation to Locations	Management Corrective Action and Target Date
Procurement and Contracting Processes		
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: <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. 	1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.	1) SCM will implement processes to address OP guidance on contracting out compliance requirements for procurement and contracting by 4/1/2024.
Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment		
1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.	1.b.3 Locations 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.	1) ELR will implement the action plan regarding the systemwide QI tracking tool determined by UC Health by 9/1/2024. 2) ELR will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals by 9/1/2024.
1.b.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs: <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 • Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used 		

Recommendation to UCOP	Recommendation to Locations	Management Corrective Action and Target Date
Compliance with Employee Displacement Requirements		
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.	1.c.2 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.	1) ELR will implement processes to address OP guidance on requirements related to employee displacement by 9/1/2024.
Article 5 Grievances		
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: <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 	1.e.2 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.	1) ELR will implement processes to address OP guidance for Article 5-related grievances by 9/1/2024.
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 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.	1) ELR will implement processes to address OP guidance on provision of employee notices to supplier by 1/15/2024.