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May 31, 2023

Marc Fisher
Vice Chancellor
Administration

Dear Vice Chancellor Fisher:

The University of California Systemwide Contracting Out Audit (Project P23A002) has been completed and a systemwide audit report issued by the University of California Office of Ethics, Compliance, and Audit Services (ECAS) at the UC Office of the President in April 2023. The audit report contained observations applicable to all UC campuses, including Berkeley.

In addition, UC Berkeley's Audit and Advisory Services has issued a supplemental report which is enclosed. This supplemental report contains no additional observations in that all of Berkeley's observations related to compliance were incorporated into the systemwide audit report. Instead, the supplemental report serves to detail specific findings related to the systemwide audit program and campus management's action plans to address both the recommendations in the ECAS report that pertain to UC Berkeley as well as campus specific findings.

Our audit work was conducted in accordance with the Institute of Internal Auditors' Standards for the Professional Practice of Internal Auditing and the University of California Internal Audit Charter. Please destroy all copies of draft reports and related documents.

Thank you to the staff of People & Culture and Supply Chain Management for their cooperative efforts throughout this audit. Please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Jaime Jue

Jaime Jue
Director
Audit and Advisory Services

cc: Associate Vice Chancellor Eugene Whitlock
Chief Procurement Officer Russell K. Chung

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UC Berkeley - Contracting Out
Audit
Project No. 23-778

May 31, 2023

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**University of California, Berkeley
Audit and Advisory Services
UC Berkeley – Contracting Out Audit**

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OVERVIEW

Executive Summary

This report supplements the UC systemwide audit report (Systemwide Contracting Out Audit Project No. P23A002) issued by the Office of Ethics, Compliance, and Audit Services (ECAS) at the UC Office of the President in April 2023. The campus' management action plans in response to the recommendations of the systemwide report are included as Appendix A. The systemwide audit report from ECAS is also attached to this report.

The objective of the audit was to assess processes and controls that facilitate compliance with contracting out requirements as established in *Regents Policy 5402 - Regents Policy Generally Prohibiting Contracting for Services* and Article 5 of the American Federation of State, County and Municipal Employees (AFSCME) bargaining agreement. The scope of the audit included procedures from a systemwide audit program developed by ECAS. Our audit procedures included a walkthrough and assessment of management's processes, testing of process administration, review of related documentation, and interviews with key individuals within Employee & Labor Relations, Supply Chain Management, and other campus units.

Based on our work performed using the systemwide audit program developed by ECAS, we conclude that, while the campus has internal controls and procedures in place to contract out covered services in accordance with Regents Policy 5402 and Article 5, there are opportunities for improvement. Not all of the conditions underlying the observations made in the systemwide report were found to be present at the Berkeley campus. The specific observations that were relevant to Berkeley relate to:

- Addressing potential risk associated with non-BearBuy procurement or reimbursement transactions;
- Ensuring consistency and adequacy of documentation justifying decisions to contract out;
- Ensuring current wage and benefit parity requirements are communicated;
- Monitoring for potential qualified individual (QI) eligibility;
- Hiring qualified individuals within prescribed timeframes;
- Posting notices to contract workers;
- Enhancing processes to mitigate the risk of displacement due to contracting out;
- Providing notice of decisions to contract out within prescribed timeframes;
- Consistent routing of draft notices to relevant UCOP human resources and legal units; and
- Ensuring completeness of annual reports of covered services contracts.

Related to these observations, we note an opportunity to enhance campuswide coordination where compliance is dependent on shared accountability and timely communication between campus departments. We further note that recommendations in the systemwide report direct UCOP to further enhance implementation guidance to campus locations with respect to contracting out requirements. If and when such guidance is implemented locally, the resulting process changes would likely reduce the risk of the specific observations being observed again locally if designed and implemented appropriately.

Source and Purpose of the Audit

The purpose of the audit was to assess processes and controls in place to facilitate compliance with contracting out requirements, as established in *Regents Policy 5402 - Regents Policy Generally Prohibiting Contracting for Services* and Article 5 of the American Federation of State, County and Municipal Employees (AFSCME) bargaining agreement.

Scope of the Audit

Our audit was part of a UC systemwide audit conducted simultaneously at all campuses. A common audit program was developed by the University of California Office of Ethics, Compliance and Audit Services. UC Berkeley's portion of the audit was limited to functions performed by the campus. Following the systemwide audit program, our audit procedures included a walkthrough and assessment of management's processes, testing of process administration, review of related documentation, and interviews with key individuals within Employee & Labor Relations, Supply Chain Management, and other campus units. Fieldwork was conducted during the period November 2022 through March 2023.

Background Information

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 services, whenever possible. The AFSCME collective bargaining agreement contains additional contractual requirements related to contracting out. Each UC campus is required to implement processes to bring it into compliance with contracting out requirements identified in these documents. UC Berkeley prepared to implement contracting out requirements during the COVID-19 pandemic and implemented them on or about January 2021. The campus implementation entailed a cross-functional and coordinated effort overseen by the campus responsible executive and led jointly by Supply Chain Management (Procurement) and Employee & Labor Relations management, in consultation with the Office of the President. Key elements of the implementation included the development of campus processes and tools to enable initial and ongoing compliance, the development of campus websites to broadly inform campus stakeholders, engagement with campus suppliers, and training of campus unit management, as well as central and department purchasing staff, regarding contracting out requirements and their respective responsibilities.

At UC Berkeley, contracting out processes are primarily performed or coordinated by Employee & Labor Relations and Supply Chain Management.

Summary Conclusion

Based on the results of the audit work performed, we conclude that, while the campus has internal controls and procedures in place to contract out covered services in accordance with Regents Policy 5402 and Article 5, there are opportunities for improvement. Not all of the conditions underlying the observations made in the systemwide report were found to be present at the Berkeley campus. The specific observations that were relevant to Berkeley relate to:

- Addressing potential risk associated with non-BearBuy procurement or reimbursement transactions;
- Ensuring consistency and adequacy of documentation justifying decisions to contract out;
- Ensuring current wage and benefit parity requirements are communicated;
- Monitoring for potential qualified individual (QI) eligibility;
- Hiring qualified individuals within prescribed timeframes;
- Posting notices to contract workers;
- Enhancing processes to mitigate the risk of displacement due to contracting out;
- Providing notice of decisions to contract out within prescribed timeframes;
- Consistent routing of draft notices to relevant UCOP human resources and legal units; and
- Ensuring completeness of annual reports of covered services contracts.

Related to these observations, we note an opportunity to enhance campuswide coordination where Contracting Out compliance is dependent on shared accountability and timely communication between campus departments.

Management has provided required responses to recommendations in the systemwide report in Appendix A. More detail on campus-specific observations is provided in Appendix B, also along with the associated required management responses. We further note that recommendations in the systemwide report direct UCOP to enhance implementation guidance to campus locations with respect to contracting out requirements. If and when such guidance is implemented locally, the resulting process changes will likely reduce the risk of the specific observations being again observed locally if designed and implemented appropriately.

APPENDIX A - Systemwide Recommendations Directed to Campus Locations and Corresponding Management Action Plans

Recommendation to UCOP	Recommendation to Locations	Management Action Plans 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 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>Management will implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting. Target date: April 30, 2024.</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 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.</p>	<p>Management will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and will implement the QI tracking tool procured by UCOP. Target dates: February 29, 2024, and September 30, 2024, respectively.</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 		

Recommendation to UCOP	Recommendation to Locations	Management Action Plans and Target Date
<p>conversion, such as certain categories of employees that require additional background checks</p> <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 		
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 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>Management will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement. Target date: March 31, 2025.</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 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p>	<p>Management will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5 – related grievances. Target date: September 30, 2024.</p>
Reporting Violations of Contracting Out Requirements		
<p>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.</p>	<p>1.f.2 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.</p>	<p>Management will implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers. Target date: February 29, 2024.</p>

APPENDIX B – Local Campus Audit Observations and Management Action Plans

Systemwide Audit Report Section 1a - Procurement and Contracting Processes

Internal Audit identified instances of noncompliance related to procurement and contracting processes for Covered Services.

Obs #	Systemwide Report Section	Systemwide Report Observation	Applicable Local Campus Observation	Management Action Plan
1	<i>1a - Processes to identify Covered Services purchasing activity require improvement</i>	<p>Internal Audit identified opportunities to improve most locations' existing processes for identifying Covered Services purchasing activity. Further, Internal Audit identified contracts that were not appropriately identified as Covered Services contracts in sample testing at some locations. Failure to have effective and reliable processes in place to identify Covered Services contracts at all locations increases the risk that the University is not in compliance with policy requirements for Covered Services contracts. Examples of process deficiencies that Internal Audit identified included the following:</p> <ul style="list-style-type: none"> • Some locations either lacked a formal process to identify Covered Services contracts as part of the procurement process or had deficiencies in their process • Several locations either did not have processes or had inadequate processes to identify potential Covered Services in those purchasing channels typically reserved for lower-value activity, such as low-value purchase orders, purchasing cards, and travel and entertainment reimbursements. 	<p>We observed that management has processes in place to identify Covered Services contracts as part of the BearBuy procurement process and that campus policy requires services to be procured through the BearBuy process. However, lower-value purchasing activity and other types of purchasing mechanisms such as procurement cards, are not covered by the current Contracting Out work processes. We also observed that subsequent periodic monitoring and review of purchase orders and suppliers currently is not performed.</p>	<p>Consistent with completion of systemwide audit report recommendation 1.a.1 by the Office of the President, Supply Chain Management will implement any updated requirements for monitoring purchasing activity. Target date: April 30, 2024.</p>
2	<i>1a - Instances of missing or incomplete documentation</i>	<p>Internal Audit noted instances of missing or incomplete documentation supporting decisions to contract out for Covered Services in sample testing at several locations.</p>	<p>Campus units are initially responsible to document the justification supporting decisions</p>	<p>Supply Chain Management, in consultation with Employee & Labor Relations, will work with</p>

	<i>supporting decisions to contract out for Covered Services were identified</i>	Maintaining clear and complete documentation of the justification for decisions to contract out for Covered Services helps ensure and demonstrate that the university is in compliance with Regents Policy and Article 5, which only permit contracting out for Covered Services in certain specific circumstances. Typically, locations require that a designated form be completed to document appropriate justification of the decision to contract out for Covered Services, but it was not available for some sampled contracts.	to contract out for Covered Services when submitting requests to Supply Chain Management. Although we did not note any instances of missing justifications, we observed that the degree of justification documentation varied across submitting campus units, including those where the requested service was considered a specialized service.	campus units to implement any updated requirements for documentation to support decisions to contract out for Covered Services. Target date: February 29, 2024.
3	<i>1a - Instances of noncompliance with an Implementation Guideline specific to the Wage and Benefit Parity amendment were identified.</i>	The Implementation Guidelines require that contracts for Covered Services be updated each year with a WBP amendment that includes the current WBP rates. Internal Audit observed instances of noncompliance with this requirement at several locations. Failure to accurately update Covered Services contracts with the required WBP amendment in a timely manner increases the risk that suppliers providing covered service are not appropriately notified of current WBP requirements and could limit their enforceability.	During our testing, we found one instance of a purchase order where the WBP rates were not specified. However, we note that management disclosed this condition on the 2021 AFSCME report.	This contract has expired. Consistent with existing UCOP guidance, Supply Chain Management will ensure that WBP requirements are adhered to going forward. Target date: June 30, 2023.

APPENDIX B – Local Campus Audit Observations and Management Action Plans

Systemwide Report Section 1b - Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment

Internal Audit identified instances of noncompliance related to tracking of supplier employee hours, identification of QIs, and providing QIs with UC career employment options. Additionally, clearer guidance from UCOP is needed.

Obs #	Systemwide Report Section	Systemwide Report Observation	Applicable Local Campus Observation	Management Action Plan
4	<i>1b - Processes to track and identify QIs require improvement</i>	<p>Article 5 of the CBAs with AFSCME outline a process by which a supplier employee may submit a request for UC employment if they have met the QI eligibility requirements. However, it also states that the University will exercise its best efforts to determine individuals who meet these criteria. Internal Audit observed that most locations either had significant process deficiencies or did not have a process for identifying QIs through tracking of supplier employee hours. Examples of process deficiencies included:</p> <ul style="list-style-type: none"> • Lack of a process to monitor QIs for certain suppliers or most suppliers • Lack of a process to monitor QI eligibility based on the rolling three-year period requirement (noted in the “Background” section) • Failure to identify QIs that met the eligibility criteria • Insufficient documentation supporting attainment of QI eligibility • Errors in data and/or calculations for determining QI eligibility <p>Additionally, some locations reported challenges in obtaining information necessary to track contractor hours from suppliers or internal sources.</p>	<p>We observed that Employee & Labor Relations does not consistently monitor the rolling three-year periods for potential QI eligibility. However, we noted that UCOP has not detailed minimum monitoring requirements.</p> <p>We also observed challenges in obtaining information from suppliers necessary to track contractor hours.</p>	<p>Employee & Labor Relations states it is in compliance with the rolling 36-month period eligibility requirement and that no QIs have failed to be identified under this criteria. Monitoring guidelines will be updated to include specific terms of the method or frequency of monitoring now that the 36-month rolling eligibility requirement is applicable. Target date: February 29, 2024.</p>

		Based on the process deficiencies that Internal Audit observed, it is possible that a number of QIs meeting the eligibility criteria have not been identified by the University, unless suppliers themselves or the union have identified these individuals as QIs or supplier employees have self-reported attaining the eligibility criteria. The latter two mechanism are contemplated by the CBAs as viable ways that QIs would be identified.		
5	1b - <i>Processes to convert QIs to UC career employment require improvement</i>	<p>Similarly, Internal Audit noted significant deficiencies in location processes for providing QIs with UC career employment options. Most locations either lacked a process to convert identified QIs to career employment or their processes were deficient. Examples of process deficiencies included:</p> <ul style="list-style-type: none"> • Failure to designate an individual responsible for tracking the progress of QIs requesting career employment • Instances of failure to meet the 120-day requirement for hiring QIs • Inadequate recordkeeping to support compliance with the University’s obligations for converting QIs <p>Internal Audit further observed that some of the instances in which QIs were not hired within 120 days involved certain employee categories that require extensive background checks (e.g., security positions). For these positions, some locations reported difficulty completing the hiring process within the required timeframe.</p>	During our testing, we found one instance of an individual who appeared to meet the qualifications of a qualified individual but was not hired within 120 days.	Employee & Labor Relations is aware of the situation and management is taking steps to hire the individual. Target date: 06/30/2023.
6	1b - <i>Locations are not posting notices visible to contract workers as required by the Implementation Guidelines</i>	The Implementation Guidelines state that “departments contracting for covered services must post a notice to contract workers with the requirements for converting to a UC career employee, and the notice must be in a place where the contract workers are likely to see it.” Internal Audit observed that several locations have not implemented adequate processes for posting these notices as required by the guidelines. Several locations reported that they were either unaware of this requirement or that clearer guidance from UCOP on specific expectations for posting these notices,	We observed that the process for administering contracting out posters is not clearly defined and communicated to affected parties. Management represented that UCOP has not issued specific guidance or requirements for posting such notices.	Consistent with completion of systemwide audit report recommendation 1.b.2 by the Office of the President, Berkeley Employee & Labor Relations will implement updated requirements for posting notices to contract workers. In addition, Employee & Labor Relations will develop and implement an interim process to notice contract workers. Target date: December 31, 2023.

		including required templates, is needed.		
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APPENDIX B – Local Campus Audit Observations and Management Action Plans

Systemwide Report Section 1c - Compliance with Employee Displacement Requirements

Several locations lack defined processes to ensure employees are not displaced due to contracting out for Covered Services. Additionally, clearer guidance from UCOP is needed.

Obs #	Systemwide Report Section	Systemwide Report Observation	Applicable Local Campus Observation	Management Action Plan
7	<i>1c - Several locations lack defined processes to ensure employees are not displaced due to contracting out for Covered Services. Additionally, clearer guidance from UCOP is needed</i>	Regents Policy 5402 and Article 5 both explicitly prohibit displacement of University employees, defined as demotion, layoff, or involuntary reduction in time, due to the University entering into a contract for Covered Services. Internal Audit did not identify any instances of displacement due to contracting out for Covered Services in its sample testing. However, several locations did not have defined processes to confirm that such displacement does not occur. Internal Audit further noted that the Implementation Guidelines do not provide guidance on expectations of the locations to confirm that employees are not displaced due to contracting out for Covered Services.	We observed that management has certain processes in place to ensure that displacement due to contracting out for Covered Services does not occur. Management represented that UCOP has not established any minimum requirements or specific guidance to date.	Consistent with completion of systemwide audit report recommendation 1.c.1 by the Office of the President, Berkeley Employee & Labor Relations will implement any updated requirements for displacement due to contracting out for Covered Services. Target date: March 31, 2025.

APPENDIX B – Local Campus Audit Observations and Management Action Plans

Systemwide Report Section 1d - Provision of Notice for Contracting Decisions

Internal Audit found noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services. Additionally, some locations did not share drafts of those notices with UCOP prior to issuance.

Obs #	Systemwide Report Section	Systemwide Report Observation	Applicable Local Campus Observation	Management Action Plan
8	<i>1d - Several locations observed noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services</i>	<p>In its sample testing, Internal Audit identified multiple instances of noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services at several locations. Regents Policy 5402 and Article 5 both require notification to AFSCME prior to entering into, extending, or renewing a contract for covered services over \$100,000 or when a request for proposal for Covered Services is issued. Examples of instances of noted noncompliance included the following:</p> <ul style="list-style-type: none"> • Failure to notify AFSCME prior to entering into contracts for Covered Services valued at over \$100,000 • Lack of documentation of the required notice • Issuance of the required notice after the effective date of the contract 	<p>During our audit testing, we found instances where notice to AFSCME was issued subsequent to the effective date of the contract.</p>	<p>Employee & Labor Relations will coordinate with Supply Chain Management to strengthen the process and to work with departments to ensure they provide Employee & Labor Relations with the information needed for timely notice. Target date: 12/31/2023.</p>
9	<i>1d - Some locations did not comply with the Guidelines Requirement to Share Draft Notices with UCOP</i>	<p>The Implementation Guidelines require that drafts of notices to AFSCME regarding contracts for Covered Services valued at \$100,000 or more be shared with Systemwide Labor Relations and UC Legal prior to issuing them to AFSCME. Internal Audit noted in its sample testing that some locations did not share these draft notices with Systemwide Labor Relations and UC Legal prior to issuance to AFSCME as required for some contracts.</p>	<p>We observed that Employee & Labor Relations does not currently send draft notices to Systemwide Labor Relations and UC Legal for review prior to contract issuance.</p>	<p>Going forward, campus and Employee & Labor Relations will send draft notices as required by the Implementation Guidelines. Target date: 6/30/2023.</p>

APPENDIX B – Local Campus Audit Observations and Management Action Plans

Systemwide Report Section 1g - Preparation of Annual Report to AFSCME

Multiple errors and omissions were identified in the 2021 annual report to AFSCME, and it was not provided to the Regents as required.

Obs #	Systemwide Report Section	Systemwide Report Observation	Applicable Local Campus Observation	Management Action Plan
10	<i>1g - Multiple errors and omissions were observed in the 2021 annual report to AFSCME, indicating a need for stronger quality assurance controls over report preparation</i>	<p>In its sample testing to assess the accuracy of the 2021 annual report on Covered Services contracts, Internal Audit noted instances of inaccurate or incomplete information in the report at most locations, including:</p> <ul style="list-style-type: none"> • Contracts missing from the report • Inaccurate contract start and/or end dates • Inaccurate service types • Carve outs in the report not matching the justification form • Inaccurate, outdated, or missing WBP rates • Inaccurate contract values <p>These errors and omissions indicate the need for stronger quality assurance controls over the preparation of report content at these locations. Additionally, Internal Audit identified weaknesses in controls or errors in tracking and reporting contract information at several locations.</p> <p>According to Systemwide HR, the University issued clearer guidance and stronger protocols for the preparation of the 2022 report. Due to the timing of fieldwork, Internal Audit did not review the accuracy of the 2022 report.</p>	<p>During our audit testing, we observed one Covered Services contract that was not included in either the 2021 or 2022 AFSCME report. Management represented that, based on reporting guidance from UCOP, specifically cutoff dates for inclusion in the report and requirements for multi-year contract reporting, this particular contract may not have met the criteria to be listed on either report. However, we were unable to definitively validate this assertion because, as of the end of audit fieldwork, UCB management and UCOP were still in conversation regarding its cause.</p> <p>We also observed two instances where the contract end dates included possible renewal periods.</p>	<p>Supply Chain Management will consult with UCOP to determine whether either the AFSCME 2021 or 2022 report may need to be amended for the issues noted. In addition, management will consult with UCOP as to the root cause for the omitted contract, and will enhance report review processes as needed. Target date: 12/31/2023.</p>

UNIVERSITY OF CALIFORNIA
ETHICS, COMPLIANCE AND AUDIT SERVICES
INTERNAL AUDIT SERVICES

SYSTEMWIDE CONTRACTING OUT AUDIT
Project No. P23A002
April 2023

*University of California
Ethics, Compliance and Audit Services
Systemwide Contracting Out Audit*

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I. Executive Summary

Introduction

In accordance with the fiscal year 2022-23 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 in coordination with the internal audit departments at all UC locations using a standard systemwide audit program.

ECAS developed this summary report based on information gathered by each location's internal audit department. It provides a consolidation of the systemwide findings and a set of corresponding recommendations to address these findings. Each location's internal audit department will issue a separate report presenting findings noted at that location, corresponding management corrective actions to address those findings, as well as management corrective actions to address each of this report's recommendations to the locations.

Objective and Scope

Objective: The objective of this assessment is to evaluate processes and controls that 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 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

Audit fieldwork was conducted at all UC campuses and health systems, Lawrence Berkeley National Laboratory, UCOP, and Agricultural and Natural Resources (ANR). Each of these entities is referred to as a separate location in this report. Specifically, campuses and health systems are generally referred to as separate locations.

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.

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.

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:

- 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

Internal Audit observed that processes and controls that facilitate compliance with Regents Policy 5402 and Article 5 require improvement at all UC locations.

As a result of inadequate processes and controls, instances of non-compliance with contracting out requirements were observed at UC locations in the following areas:

- Identification of covered services in procurement activity
- Documentation supporting decisions to contract out for covered services
- Updating contracts for covered services with required terms and conditions and the annual WBP amendment
- QI identification

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.

- QI conversion to UC career employment
- Posting of notices on requirements for converting to UC career employment
- Provision of employee notices to suppliers
- Accuracy and completeness of annual report to AFSCME

Further, Internal Audit noted that additional guidance from UCOP is required to establish measurable standards and clarify UC locations' compliance obligations for certain areas related to contracting out requirements.

Internal Audit observed that the University has initiated a supplier audit program to monitor its suppliers' compliance with WBP requirements and recommends that this program be continued and expanded.

Finally, Internal Audit recommends that UCOP's guidance on contracting out requirements be maintained in a central location that is easily accessible to all interested stakeholders.

These opportunities for improvement and associated recommendations are described in detail in this report. A summary of the systemwide recommendations and associated management corrective actions is included in **Appendix A**.

II. Opportunities for Improvement and Recommendations

1. Location processes supporting compliance with contracting out requirements require improvement and, in several areas, the Office of the President has not provided clear guidance.

Internal Audit noted deficient processes and instances of noncompliance with contracting out requirements at all UC locations. Additionally, location stakeholders were unclear on the specific requirements for contracting out policy compliance in several areas, indicating a need for additional guidance from the Office of the President.

a) Procurement and Contracting Processes

Internal Audit identified instances of noncompliance related to procurement and contracting processes for Covered Services.

Processes to identify Covered Services purchasing activity require improvement.

Internal Audit identified opportunities to improve most locations' existing processes for identifying Covered Services purchasing activity. Further, Internal Audit identified contracts that were not appropriately identified as Covered Services contracts in sample testing at some locations. Failure to have effective and reliable processes in place to identify Covered Services contracts at all locations increases the risk that the University is not in compliance with policy requirements for Covered Services contracts.

Examples of process deficiencies that Internal Audit identified included the following:

- Some locations either lacked a formal process to identify Covered Services contracts as part of the procurement process or had deficiencies in their process
- Several locations either did not have processes or had inadequate processes to identify potential Covered Services in those purchasing channels typically reserved for lower-value activity, such as low-value purchase orders, purchasing cards, and travel and entertainment reimbursements.

Instances of missing or incomplete documentation supporting decisions to contract out for Covered Services were identified.

Internal Audit noted instances of missing or incomplete documentation supporting decisions to contract out for Covered Services in sample testing at several locations. Maintaining clear and complete documentation of the justification for decisions to contract out for Covered Services helps ensure and demonstrate that the university is in compliance with Regents Policy and Article 5, which only permit contracting out for Covered Services in certain specific circumstances. Typically, locations require that a designated form be completed to document appropriate justification of the decision to contract out for Covered Services, but it was not available for some sampled contracts.

Opportunities for improvement in documenting contracting out terms and conditions were identified.

Internal Audit noted inconsistent practices and opportunities for improvement in documenting terms and conditions for Covered Services contracts and purchase orders at several locations. Failure to sufficiently or consistently document Covered Services terms and conditions could limit the enforceability of these provisions. Examples of noted deficient practices in sample testing at UC locations include:

- Contracts for covered services that did not include the current covered services terms and conditions (as a link or as an attachment)
- Purchase orders that included a link to outdated versions of UC's standard terms and conditions

While Systemwide Procurement has previously emailed guidance to UC locations on appropriate practices for documenting terms and conditions, to ensure that all locations are appropriately documenting contracting out terms and conditions in supplier contracts, Systemwide Procurement should post this guidance in an easily accessible, centralized location. Further, it was noted that outdated versions of UC's standard terms and conditions are still accessible on the Internet. According to Systemwide Procurement, they have taken down these outdated versions from UCOP websites, but due to a technical issue they still appear in Internet searches. Systemwide Procurement should work with IT Services to make technical adjustments that ensure that these outdated versions of UC's terms and conditions do not appear in Internet search results.

Instances of noncompliance with an Implementation Guideline specific to the Wage and Benefit Parity amendment were identified.

The Implementation Guidelines require that contracts for Covered Services be updated each year with a WBP amendment that includes the current WBP rates. Internal Audit observed instances of noncompliance with this requirement at several locations. Failure to accurately update Covered Services contracts with the required WBP amendment in a timely manner increases the risk that suppliers providing covered service are not appropriately notified of current WBP requirements and could limit their enforceability.

Examples of noncompliance with WBP amendment requirements noted in sample testing at multiple UC locations included failure to execute the annual WBP amendment or to do so in a timely manner, and failure to update WBP rates accurately in the amendment.

Recommendations

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 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:
 - 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.a.3 Systemwide Procurement should ensure that outdated versions of UC's terms and conditions are fully removed from public-facing UCOP websites such that they do not appear in Internet search results.

b) Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment

Internal Audit identified instances of noncompliance related to tracking of supplier employee hours, identification of QIs, and providing QIs with UC career employment options. Additionally, clearer guidance from UCOP is needed.

Processes to track and identify QIs require improvement.

Article 5 of the CBAs with AFSCME outline a process by which a supplier employee may submit a request for UC employment if they have met the QI eligibility requirements. However, it also states that the University will exercise its best efforts to determine individuals who meet these criteria. Internal Audit observed that most locations either had significant process deficiencies or did not have a process for identifying QIs through tracking of supplier employee hours. Examples of process deficiencies included:

- Lack of a process to monitor QIs for certain suppliers or most suppliers
- Lack of a process to monitor QI eligibility based on the rolling three-year period requirement (noted in the "Background" section)
- Failure to identify QIs that met the eligibility criteria
- Insufficient documentation supporting attainment of QI eligibility
- Errors in data and/or calculations for determining QI eligibility

Additionally, some locations reported challenges in obtaining information necessary to track contractor hours from suppliers or internal sources.

Based on the process deficiencies that Internal Audit observed, it is possible that a number of QIs meeting the eligibility criteria have not been identified by the University, unless suppliers themselves or the union have identified these individuals as QIs or supplier employees have self-reported attaining the eligibility criteria. The latter two mechanism are contemplated by the CBAs as viable ways that QIs would be identified.

Processes to convert QIs to UC career employment require improvement.

Similarly, Internal Audit noted significant deficiencies in location processes for providing QIs with UC career employment options. Most locations either lacked a process to convert identified QIs to career employment or their processes were deficient. Examples of process deficiencies included:

- Failure to designate an individual responsible for tracking the progress of QIs requesting career employment
- Instances of failure to meet the 120-day requirement for hiring QIs
- Inadequate recordkeeping to support compliance with the University's obligations for converting QIs

Internal Audit further observed that some of the instances in which QIs were not hired within 120 days involved certain employee categories that require extensive

background checks (e.g., security positions). For these positions, some locations reported difficulty completing the hiring process within the required timeframe.

Locations are not posting notices visible to contract workers as required by the Implementation Guidelines.

The Implementation Guidelines state that “departments contracting for covered services must post a notice to contract workers with the requirements for converting to a UC career employee, and the notice must be in a place where the contract workers are likely to see it.” Internal Audit observed that several locations have not implemented adequate processes for posting these notices as required by the guidelines. Several locations reported that they were either unaware of this requirement or that clearer guidance from UCOP on specific expectations for posting these notices, including required templates, is needed.

Clearer guidance to the locations on “best efforts” to determine individuals who meet QI eligibility criteria is needed.

Article 5 states that “The University will exercise its best efforts to determine employees who meet the criteria to become qualified individuals.” However, it does not provide any further detail on what these “best efforts” should entail. It is therefore incumbent on the University to establish specific expectations and criteria for meeting the “best efforts” standard. However, UCOP has not yet provided such guidance to UC locations. Additionally, locations desire clearer guidance for instances in which a supplier employee previously attained QI eligibility but has since stopped providing services to the University for an extended period of time.

Internal Audit therefore recommends that UCOP issue clear guidance to the locations on specific expectations and requirements for:

- Tracking and identifying QIs
- Converting QIs to UC employment, including required timelines and any exceptions for those timelines
- Posting of notices to contract workers on requirements for converting to UC employment

Systemwide HR has identified a supplier to provide a systemwide QI tracking tool with service support.

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.

Recommendations:

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 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.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs:
 - 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
- 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.

c) Compliance with Employee Displacement Requirements

Several locations lack defined processes to ensure employees are not displaced due to contracting out for Covered Services. Additionally, clearer guidance from UCOP is needed.

Regents Policy 5402 and Article 5 both explicitly prohibit displacement of University employees, defined as demotion, layoff, or involuntary reduction in time, due to the University entering into a contract for Covered Services. Internal Audit did not identify any instances of displacement due to contracting out for Covered Services in its sample testing. However, several locations did not have defined processes to confirm that such displacement does not occur. Internal Audit further noted that the Implementation Guidelines do not provide guidance on expectations of the locations to confirm that employees are not displaced due to contracting out for Covered Services.

Recommendations:

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 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.

d) Provision of Notice for Contracting Out Decisions

Internal Audit found noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services. Additionally, some locations did not share drafts of those notices with UCOP prior to issuance.

Several locations observed noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services.

In its sample testing, Internal Audit identified multiple instances of noncompliance with the requirement to notify AFSCME of decisions to contract out for Covered Services at several locations. Regents Policy 5402 and Article 5 both require notification to AFSCME prior to entering into, extending, or renewing a contract for covered services over \$100,000 or when a request for proposal for Covered Services is issued. Examples of instances of noted noncompliance included the following:

- Failure to notify AFSCME prior to entering into contracts for Covered Services valued at over \$100,000
- Lack of documentation of the required notice
- Issuance of the required notice after the effective date of the contract

Some locations did not comply with the Guidelines Requirement to Share Draft Notices with UCOP.

The Implementation Guidelines require that drafts of notices to AFSCME regarding contracts for Covered Services valued at \$100,000 or more be shared with Systemwide Labor Relations and UC Legal prior to issuing them to AFSCME. Internal Audit noted in its sample testing that some locations did not share these draft notices with Systemwide Labor Relations and UC Legal prior to issuance to AFSCME as required for some contracts.

Recommendations:

No systemwide recommendations. Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

e) Article 5 Grievances

Internal Audit identified instances of missed deadlines and opportunities for improvement in recordkeeping for Article 5-related grievances. Additionally, clearer guidance from UCOP is needed.

Instances of missed deadlines for Article 5-related grievances were observed at several locations.

In its sample testing, Internal Audit noted instances of missed process step deadlines for Article 5-related grievances at several locations, including UCOP. Failure to meet grievance step deadlines could lead to negative outcomes for the

University in the grievance process. Examples of missed deadlines included failure to:

- Provide a written response to a grievance within the required timeframe
- Acknowledge receipt of an appeal to arbitration within the required timeframe
- Respond to a notification of arbitrator selection within the required timeframe for scheduling of an arbitration hearing in response to an appeal notice

Recordkeeping for Article 5-related grievances requires improvement.

Internal Audit's sample testing of Article 5-related grievances found that recordkeeping of grievance administration requires improvement at several locations, including UCOP. In multiple instances, management was unable to provide complete documentation supporting the administration of grievances or recordkeeping was otherwise inadequate or inefficient. Specific examples of deficiencies in recordkeeping include failure to:

- Locate and provide supporting documents for grievances (due to transition in personnel)
- Substantiate the University's fulfillment of required grievance steps within the established timeframes
- Properly identify grievances as "systemwide" when they affect multiple locations
- Create and maintain a local log to manage and track grievances
- Log or track certain grievances that were part of a mass grievance managed by UCOP
- Capture all grievance process events in local logs

Implementation of a systemwide case management system for Article 5-related grievances would help ensure appropriate recordkeeping at all locations, provide greater transparency on grievance status to all stakeholders, and facilitate compliance with grievance-related requirements, including guidance from UCOP.

Clearer guidance to the locations on expectations and requirements for administration of Article 5-related grievances is needed.

In its sample testing of Article 5-related grievances, Internal Audit observed that in certain aspects, UCOP has not provided clear guidance to UC locations on specific expectations and requirements for grievance administration. Additionally, location stakeholders reported to Internal Audit that they were unclear on certain expectations and requirements regarding Article 5-related grievances. Specific areas requiring additional guidance from UCOP include:

- 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

Recommendations

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 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:
 - 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.e.3 Labor Relations should implement a systemwide case management system for handling Article 5-related grievances. This system should be a central system of record for all grievances systemwide and should have the following capabilities:
 - Tracking and reporting on the current status of all grievances systemwide
 - Update (write) access and visibility of grievance status (step progress) for all UC labor relations departments
 - Built-in logic to identify and track grievance steps and associated timeline requirements depending on the category of grievance filed
 - Ability to attach documents to grievance records supporting each location's completion of required steps
 - Ability to flag grievances as "systemwide" (when grievances impact multiple locations)

f) Reporting Violations of Contracting Out Requirements

Internal Audit observed that locations have not established processes to help Covered Services suppliers inform their employees of violation reporting options, and thus the University could improve mechanisms to capture and track reported violations. Additionally, clearer guidance from UCOP is needed.

Due to lack of clear guidance from UCOP, locations have not established processes to help Covered Services suppliers notify their employees of contracting out violation reporting methods.

The Implementation Guidelines state that the University will provide Covered Services suppliers with a template for an employee notice that includes information on WBP and how to report violations of contracting out requirements. According to the guidelines, suppliers are required to post these notices in prominent and accessible places where they may be easily seen by their Covered Services employees. However, several locations have not established processes to provide these notices to Covered Services suppliers, who consequently were not provided

with them. Many of these locations reported that either they were not aware of any templates to be used for these notices or the guidance from UCOP was not clear.

There are opportunities to improve mechanisms to capture and track reported violations of contracting out requirements.

Some locations noted opportunities for improvement in processes to collect and manage locally reported violations of contracting out requirements. For example, at one location there was no established process for managing locally reported violations of contracting out requirements. At another location, Internal Audit observed that there was no local intake system in place to collect reported violations of contracting out requirements.

Additionally, Internal Audit observed that the category “Covered Services,” which is intended to be used to classify reported contracting out-related violations in the systemwide whistleblower system, may not clearly convey that it is to be used to report violations of Regents Policy 5402 or Article 5. Internal Audit identified a significant number of complaints that were reported under this “Covered Services” category that did not relate to contracting out requirements. Systemwide HR should consider including terms like “AFSCME Article 5” or “Regents Policy 5402” in the category description to make the purpose of the category clearer.

Recommendations:

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 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.f.3 Systemwide HR should revise the category used to classify reported contracting out-related violations in the systemwide whistleblower system to make it more specific. Consider including terms like “AFSCME Article 5” or “Regents Policy 5402” in the category description.

g) Preparation of Annual Report to AFSCME

Multiple errors and omissions were identified in the 2021 annual report to AFSCME, and it was not provided to the Regents as required.

Multiple errors and omissions were observed in the 2021 annual report to AFSCME, indicating a need for stronger quality assurance controls over report preparation.

In its sample testing to assess the accuracy of the 2021 annual report on Covered Services contracts, Internal Audit noted instances of inaccurate or incomplete information in the report at most locations, including:

- Contracts missing from the report
- Inaccurate contract start and/or end dates
- Inaccurate service types

- Carve outs in the report not matching the justification form
- Inaccurate, outdated, or missing WBP rates
- Inaccurate contract values

These errors and omissions indicate the need for stronger quality assurance controls over the preparation of report content at these locations. Additionally, Internal Audit identified weaknesses in controls or errors in tracking and reporting contract information at several locations.

According to Systemwide HR, the University issued clearer guidance and stronger protocols for the preparation of the 2022 report. Due to the timing of fieldwork, Internal Audit did not review the accuracy of the 2022 report.

The 2021 annual report on Covered Services contracts was not provided to the Regents as required by Regental policy.

Regents Policy 5402 states that “The University shall produce an annual report of all contracts for covered services, regardless of amount or duration, and shall provide the report to affected employee organizations and the Regents.” Internal Audit observed that UCOP produced this report for calendar year 2021 and provided it to AFSCME but did not provide it to the Regents as required. The 2022 report was provided to the Regents.

Recommendations:

Instances of local noncompliance and internal control deficiencies will be addressed through management corrective actions at the identified locations.

- 1.g.1 Systemwide HR should continue to provide the annual report on Covered Services contracts to the Regents each year as required by policy.

2. The University has initiated a supplier audit program.

Internal Audit observed that Systemwide Procurement has initiated a supplier audit program to assess suppliers’ compliance with WBP requirements. As part of this program’s initial implementation, suppliers selected for this audit were those with an active contract as of September 30, 2022 for covered services valued at more than \$100,000 in the 2021 Annual Report. Additionally, if a location did not have at least two contracts that met these criteria, additional contracts were selected from that location to reach a minimum of two contracts selected for audit. Under this program, the supplier is required to engage an independent auditor to perform the audit at the supplier’s expense, in accordance with UC’s Standard Terms and Conditions of Purchase. As part of the supplier audit program, Systemwide Procurement has developed procedures to create and implement remediation plans in response to audit findings. The University plans to report on the initial results of the supplier audit program in April 2023.

The supplier audit program appears to be an effective tool to hold suppliers accountable for implementing WBP requirements. Systemwide Procurement should continue this program and consider expanding it to include additional supplier agreements.

Recommendations:

- 2.1 Systemwide Procurement should continue the supplier audit program and expand it to include additional criteria for supplier audit selection, such as a lower dollar threshold or risk-based criteria.

3. General Observations on UCOP's Guidance on Contracting Out Requirements

Internal Audit observed that UCOP has not established a central repository of guidance on contracting out requirements that is easily accessible, and the Implementation Guidelines have not been updated to reflect current requirements.

UCOP's guidance on contracting out is not maintained in a central location that is easy to access.

As has been noted elsewhere in this report, UCOP has failed to provide guidance to locations on key issues. Related to that issue, even if guidance exists, Internal Audit observed that UCOP has not established a central, comprehensive repository of guidance on contracting out requirements that is easily accessible and transparent to all interested stakeholders. During audit fieldwork, it was observed that location stakeholders were not always clear on contracting out requirements and associated guidance from UCOP. For example, location stakeholders reported that guidance on whether specific subcategories of services not articulated in Article 5 should be considered Covered Services could be enhanced and clarified.

Where possible, UCOP should endeavor to provide clear guidance, and then organize all contracting out guidance in a central location with broad access would help ensure that location stakeholders are aware of all existing contracting out requirements and guidance, thereby facilitating improved compliance and reducing confusion.

The Implementation Guidelines contain outdated requirements.

Internal Audit observed the following requirements in the Implementation Guidelines that appear to be outdated:

- The guidelines detail the specific language that should be included in the WBP Appendix, but since the guidelines have been issued, some of that language has been incorporated into the Standard Terms and Conditions of Purchase, thereby apparently negating the need to include these terms in the appendix.
- The guidelines require that draft notices on decisions to contract out for Covered Services be shared with Systemwide Labor Relations and UC Legal prior to issuing these notices to AFSCME. UCOP stakeholders have indicated that this requirement may no longer be necessary and they may consider removing it from the Implementation Guidelines.

Recommendations:

- 3.1 Systemwide Procurement, in coordination with Systemwide HR and Systemwide Labor Relations, should consolidate all of the University's guidance on contracting out requirements into a central repository that is easily accessible to all of the individuals at the locations that have compliance responsibilities. This guidance should include clear direction on specific categories of services that are to be treated as Covered Services and those that are not to be treated as Covered Services. This guidance should be

updated periodically and serve to address specific questions that come from the locations on subcategories of services that are not addressed in Article 5.

3.2 Systemwide Procurement, in coordination with Systemwide HR and Systemwide Labor Relations, should review the Implementation Guidelines and update them to include new requirements and remove outdated requirements. At a minimum, the following requirements should be reviewed for potential updates:

- The required language in the WBP appendix
- The requirement to share draft notices on decisions to contract out Covered Services with Systemwide Labor Relations and UC Legal prior to issuing them to AFSCME

Appendix A: Systemwide Recommendations and Management Corrective Actions

Recommendation	UCOP Management Corrective Action 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>Systemwide Procurement is reviewing existing policy regarding Lower Value Purchases to determine what gaps exist and how to best identify Covered Services purchases. Updated guidance will be provided to UC locations based on this analysis.</p> <p>Systemwide Procurement is in the process of revising the existing Terms & Conditions and will address acceptable practices for documenting Contracting for Covered Services Terms & Conditions as part of that overhaul.</p> <p>Target Date: July 31, 2023</p>
<p>1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>N/A – Recommendation to locations</p>
<p>1.a.3 Systemwide Procurement should ensure that outdated versions of UC’s terms and conditions are fully removed from public-facing UCOP websites such that they do not appear in Internet search results.</p>	<p>Systemwide Procurement will work with IT Services to either remove outdated versions of UC’s terms and conditions from public facing UCOP websites or clearly label them as not current.</p> <p>Target Date: June 30, 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>The implementation of UC-Wide Qualified Individual (QI) Tracking & Wage Benefit Parity Audit Project kick off is scheduled for April 10 and 11, 2023. Implementation preparations are underway, and the effort is projected to take 16 weeks. UCOP and the locations have key procurement and labor roles related to implementation, with locations defining roles related to implementation.</p> <p>Target Date: December 31, 2023</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 	<p>The implementation of the QI Tracking and WBP Audit project will address these issues. In the interim, UCOP will issue guidance to improve QI operations between current practices and implementation. This includes requiring locations to provide updated QI data, guidance to locations regarding appropriate notices, and information regarding QI tracking requirements.</p> <p>Target Date: May 15, 2023</p>

Recommendation	UCOP Management Corrective Action and Target Date
<ul style="list-style-type: none"> • 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 	<p>Systemwide HR has also secured funding for a workforce commitment office that will be dedicated to optimizing and supporting the university’s commitment to insourcing covered services work and compliance with outsourcing obligations. The workforce commitment office will also create needed capacity to support this work.</p> <p>Target Date: December 31, 2023</p>
<p>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.</p>	<p>N/A – Recommendation to locations</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>Given that the audit found no instances where employees were displaced as a result of contracting out activities, UCOP will consult with Chief Human Resources Officers and issue recommended practices to support and document this requirement.</p> <p>Target Date: July 1, 2024</p>
<p>1.c.2 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>N/A – Recommendation to locations</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>UCOP Labor Relations will work with locations to implement roles and responsibilities related to record keeping, notification requirements, abandoned grievances, and retain and remand decisions. The workforce commitment office will also create needed capacity to support this work.</p> <p>Target Date: December 31, 2023</p>

Recommendation	UCOP Management Corrective Action and Target Date
1.e.2 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.	N/A – Recommendation to locations
<p>1.e.3 Labor Relations should implement a systemwide case management system for handling Article 5-related grievances. This system should be a central system of record for all grievances systemwide and should have the following capabilities:</p> <ul style="list-style-type: none"> • Tracking and reporting on the current status of all grievances systemwide • Update (write) access and visibility of grievance status (step progress) for all UC labor relations departments • Built-in logic to identify and track grievance steps and associated timeline requirements depending on the category of grievance filed • Ability to attach documents to grievance records supporting each location’s completion of required steps • Ability to flag grievances as “systemwide” (when grievances impact multiple locations) 	<p>UCOP Labor Relations is implementing a systemwide grievance tracker system in SmartSheet to track and report on the status of all grievances received by UCOP Labor Relations, including Article 5 grievances.</p> <p>UCOP will review case management systems with the functionality to support this recommendation.</p> <p>Target Date: December 2023.</p>
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.	<p>Systemwide HR will re-issue the employee notices in conjunction with updated guidance. WBP guidance is being issued with instructions to the locations on when and how often to require suppliers to update their employees with this information. That notice will be included with the Qualified Individual guidance.</p> <p>This guidance will be iterative and updated based on campus feedback and effectiveness.</p> <p>Target Date: May 15, 2023</p>
1.f.2 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.	N/A – Recommendation to locations
1.f.3 Systemwide HR should revise the category used to classify reported contracting out-related violations in the systemwide whistleblower system to make it more specific. Consider including terms like “AFSCME Article 5” or “Regents Policy 5402” in the category description.	<p>Systemwide HR will review this information as part of the update of QI guidance and when issuing the employee notice. We will work with the office that manages the whistleblower system to make updates to coincide with the release of that guidance.</p> <p>Target Date: May 15, 2023</p>

Recommendation	UCOP Management Corrective Action and Target Date
Preparation of Annual Report to AFSCME	
<p>1.g.1 Systemwide HR should continue to provide the annual report on Covered Services contracts to the Regents each year as required by policy.</p>	<p>Systemwide HR will ensure that the annual report on Covered Services contracts to the Regents each year as required by policy.</p> <p>Target Date: Completed. Annual Report was provided to the Regents in February 2023.</p>
Supplier Audit Program	
<p>2.1 Systemwide Procurement should continue the supplier audit program and expand it to include additional criteria for supplier audit selection, such as a lower dollar threshold or risk-based criteria.</p>	<p>Systemwide Procurement is developing processes and tools to address the ongoing need to verify supplier compliance with Wage & Benefit Parity requirements.</p> <p>Target Date: December 31, 2023</p>
UCOP Guidance	
<p>3.1 Systemwide Procurement, in coordination with Systemwide HR and Systemwide Labor Relations, should consolidate all of the University’s guidance on contracting out requirements into a central repository that is easily accessible to all of the individuals at the locations that have compliance responsibilities. This guidance should include clear direction on specific categories of services that are to be treated as Covered Services and those that are not to be treated as Covered Services. This guidance should be updated periodically and serve to address specific questions that come from the locations on subcategories of services that are not addressed in Article 5.</p>	<p>UCOP partners agree and commit to accomplish this recommendation. Now that the systemwide function of Article 5 compliance is formalizing, and we will receive staffing resources, we will document and publicize guidance. The work of this recommendation will begin very soon but will not be completed quickly and will necessarily be iterative. To that end, it is difficult to provide a target date for completion.</p> <p>Target Date: July 1, 2024 (for progress report)</p>
<p>3.2 Systemwide Procurement, in coordination with Systemwide HR and Systemwide Labor Relations, should review the Implementation Guidelines and update them to include new requirements and remove outdated requirements. At a minimum, the following requirements should be reviewed for potential updates:</p> <ul style="list-style-type: none"> • The required language in the WBP appendix • The requirement to share draft notices on decisions to contract out Covered Services with Systemwide Labor Relations and UC Legal prior to issuing them to AFSCME 	<p>UCOP partners will collaborate to update the Implementation Guidelines to address current requirements for contracting out for Covered Services. This update will address the topics specified in the recommendation.</p> <p>Target Date: December 15, 2023.</p>

Appendix B: Glossary of Terms

American Federation of State, County and Municipal Employees (AFSCME): 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 Covered Services (defined below).

Bargaining Unit: A defined group of employees who are represented by a single labor union (their exclusive representative) for purposes of collective bargaining and representation in the grievance process. For the Implementation Guidelines, this refers to the AFSCME SX and EX bargaining units.

Carve Outs: Circumstances listed in Section B of the Regents Policy and Article 5 Section C of the AFSCME Collective Bargaining Agreement where contracting for Covered Services is allowed.

Contract: A legally binding agreement between a supplier and UC to provide goods or services. It is only enforceable if signed by authorized representatives of both the supplier and UC.

Contractor: The organization contracting with UC to provide services. Contractor is the same as supplier with respect to the Regents Policy and Collective Bargaining Agreement Article 5.

Collective Bargaining Agreement (CBA): The contract executed between UC and AFSCME and ratified for SX bargaining unit employees on January 31, 2020, and for EX bargaining unit employees on February 7, 2020. For purposes of these Guidelines, Article 5 of the CBA takes precedence over the Regents Policy.

Covered Services: 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; grounds keeping; 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.

Insourcing: Insourcing occurs when service contracts are terminated or not renewed, and the work is transferred to UC employees either by converting the supplier's employees or hiring additional employees to fill newly created positions.

Qualified Individuals (QIs): 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.

Supplier Employees: These individuals are sometimes referred to as contractors or contract workers. They are employed by the organization contracting with UC, and they provide services to UC.

UC Location: Campuses, medical centers, the Lawrence Berkeley Lab, and properties that the University has leased from or to a third party.

Wage and Benefit Parity: Contracts for covered services must include UC employee wage and benefit parity for the contract workers providing services to UC. Parity is defined as the cost equivalent of the following:

- Annual and hourly salary at Step 1 of the salary range for the entry level of the comparable UC classification (or if not entry, the most junior classification)
- UC benefits for health, dental, vision, life insurance, disability insurance, and retirement that a UC employee performing the same duties would receive (applied as a percentage of salary)