



AUDIT AND ADVISORY SERVICES
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May 7, 2019

To: Jim Corkill, Controller and Director
Jacob Godfrey, Associate Director and Chief Procurement Officer
Business and Financial Services

Distribution

Re: **Business Contracts - International
Audit Report No. 08-19-0006**

We have completed an audit of International Business Contracts as part of the 2018-19 annual audit services plan. The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*. Enclosed is the report detailing the results of our work.

We sincerely appreciate the cooperation and assistance provided by personnel in Procurement Services, Real Estate Services, and the University of California Education Abroad Program. If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ashley Andersen".

Ashley Andersen
Director
Audit and Advisory Services

Enclosure

cc: Chancellor Henry Yang
Assistant Chancellor for Finance and Resource Management Chuck Haines
Associate Vice Provost and Executive Director of the University of California Education Abroad Vivian-Lee Nyitray
UCSB Audit Committee
Senior Vice President and Chief Compliance and Audit Officer Alexander Bustamante

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UCSB Audit and Advisory Services

Internal Audit Report

Business Contracts - International

May 7, 2019

Performed by:

Antonio Mañas-Melendez, Associate Director
Irene Camargo, Senior Auditor

Approved by:

Ashley Andersen, Audit Director

Report No. 08-19-0006

EXECUTIVE SUMMARY

OBJECTIVE

The overall objective of this audit was to assess whether adequate procedures and controls are in place and operating as intended to mitigate certain risks uniquely associated with purchases from foreign vendors. Campus business processes and policies for foreign purchases are equivalent to those of domestic purchases, with the addition of some requirements imposed by external regulatory agencies. Our objectives were to evaluate adherence to University of California (UC) procurement policies, University of California Santa Barbara (UCSB) campus procedures, and to ensure compliance with external regulatory agencies.

CONCLUSION

Based on the results of the work performed within the scope of the audit, we found Procurement Services has established overall effective internal controls related to foreign contracts including, bidding and proposal requirements, contractual agreements, and regulatory requirements. Our work identified some opportunities to improve controls and procedures in areas such as restricted party screening¹ and compliance with delegated authority of contractual agreements entered into by the University of California Education Abroad Program (UCEAP).

¹ Restricted Party Screening: The United States government and its export regulations restrict or prohibit U.S. individuals and companies from exporting or providing services to any party contained in the U.S. government denial, debarment, and blocked persons list.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

1. RESTRICTED PARTY SCREENING

OBSERVATION

Office of Foreign Asset Control (OFAC) restricted party screening is not always performed during the preliminary vendor qualification process. Instead, it may occur after the completion of the purchase, when payment obligation to the vendor has likely already been created, resulting in potential financial and compliance exposure for the campus.

During our review to determine whether international business contracts were screened to ensure an individual or entity was not on the sanctions list, we were informed:

- Sponsored Projects Office (SPO), within the Office of Research, performs a restricted party screening on grant proposals with international sponsors. The SPO team is responsible to ensure potential grant and contract sponsors are not on United States government restricted lists to avoid violations. Additionally, if there is a proposed grant purchase or service with a foreign entity, the SPO team performs a restricted party screening to ensure compliance with government regulations.
- Procurement Services does an annual cumulative restricted party screening of all vendors in the online e-procurement system (Gateway). However, this process is only performed once per year and as such is an after-the-fact OFAC review.

We compared the campus international vendor list with the OFAC sanctions list of the United States Department of Treasury and determined that foreign vendors from the Gateway system and the Campus Financial System did not match names of individuals or entities under sanctions.

RECOMMENDATION

We recommend that Procurement Services evaluate performing the restricted party screening on all persons or entities as part of the preliminary vendor qualification screening, before a purchase occurs.

MANAGEMENT RESPONSE

Procurement Services will evaluate performing the restricted party screening on all persons or entities as part of the preliminary vendor qualification screening. Procurement Services will evaluate the benefits and costs of the real-time integration feature using Visual Compliance software.

Expected completion date: September 30, 2019.

2. CONTRACT FORMAT AND OVERSIGHT

OBSERVATION

Our review of ten international contracts found nine of them included UC or UCSB approved standard format forms, University of California Terms and Conditions of Purchase (UC Terms and Conditions), appropriate party approvals, and certificate of insurance when applicable. Additionally, we verified that contract extensions did not exceed ten years and services were not provided before execution of the contract. However, we found:

- UCEAP entered into an international real property contract without the appropriate delegation of authority. The agreement was oversighted by the Office of General Counsel at UCSB. However, during the period UCEAP continued under the purview of the University of California Office of the President (UCOP), UCEAP was not aware of the need of seeking review and approval from the UCSB Real Estate Services Office and UCSB Procurement Services. The Provost and Executive Vice President of Academic Affairs delegated the authority to negotiate and execute contracts to the Associate Vice Provost and Executive Director of UCEAP in 2010, but this delegation did not include authority to negotiate and execute real property contracts.
- UCEAP was not aware of the need of including in the real property contract mentioned above, the forms *the Regents of the University of California Standard Lease Form the Regents as Tenant* (UC Standard Lease Form) or the *UC Terms and Conditions*.

During 24 years UCEAP had been reporting directly to UCOP. UCEAP recently transitioned over to reporting to UCSB. Since UCEAP was aware of the mentioned needs, it has been working with UCSB Real State Office in coordination with the Office of General Counsel to obtain the adequate delegation of authority and the use of university forms for contracts.

The Real Estate Services Office in the Office of Budget & Planning is responsible for reviewing and approving all real property contracts. After this review, real property contracts are forwarded to Procurement Services for final review and execution on behalf of the Regents of the University of California for contracts initiated by UCSB.

RECOMMENDATION

To help ensure that UCEAP complies with all University policies, and conducts all procurement activities in accordance with policy, we recommend that the organization:

- Consult with the Real State Services Office, Procurement Services, and the Chancellor's Office to clarify whether UCEAP needs a formal delegation to execute real property contracts.
- Familiarize themselves with campus policy and consult with the Real Estate Services Office and Procurement Services when negotiating contracts on behalf of the Regents of the University of California.

MANAGEMENT RESPONSE

UCEAP provided a letter in response to our draft report, along with copies of additional historical documents. In this response letter, the organization recognized the facts presented in the report were accurate but without enough context. It is apparent that UCEAP acted in good faith to comply with university policies and seek consultation and clarification, particularly from the UC Office of the General Counsel and with regard to appropriate processes and delegations of authority for international business contracts and leases.

UCEAP has been working with the Real Estate Services Office to ensure the organization is properly negotiating real state contracts on behalf of the Regents of the University of California and will seek delegated authority for these types of transactions from the Office of the Chancellor.

Expected completion date: July 31, 2019.

GENERAL INFORMATION

BACKGROUND

Business and Financial Services²

UCSB Business and Financial Services is an integral campus and community partner. Units within Business and Financial Services include Accounts Payable, Billing, Accounts Receivable, Collections, Equipment Management, Extramural Funds, General Accounting, Payroll, Travel and Entertainment, and Procurement Services.

Procurement Services is a unit responsible for contracting for requested goods and services for the University at the best price and quality available. Procurement Services uses Gateway to order from a variety of contracted suppliers and non-catalog suppliers.

All federally funded purchases above \$10,000 must be supported by either several quotes to support price analysis or a sole source justification. Any order, regardless of funding source, over \$100,000 must be competitively bid³. Bids must be made public to make available a fair opportunity to provide goods and services to the UC, with the contract awarded to the Lowest Responsible Bidder (LRB). However, in some circumstances, competition cannot be sought because equipment or services are deemed proprietary or unique to a particular vendor. In this case, the purchasing department must complete and submit a sole source justification to the Material Manager for approval.

Purchases that are identified as restricted commodities are itemized and listed on the UCSB Campus Restricted Commodity and Routing List by commodity. Approvers are flagged in the Gateway approval workflow to review and approve/deny restricted goods and services. Any acquisition shipped from another country is considered restricted and needs to be routed to Procurement Services for final approval.

Goods or services for onsite service or delivery by the vendor requires a certificate of insurance before issuing a purchase order for on-site training, maintenance, calibration or repair, and charter services for bus, boat, and aircraft.

Contracts issued on behalf of the UC Regents are only valid if signed by a delegated official. Only individuals issued a formal delegation of authority to sign contracts can sign written contracts for goods and services up to a defined threshold. If signed without appropriate delegation authority, the contract may be considered unenforceable and the signatory may be held personally liable for the contract.

University of California Education Abroad Program⁴

The University of California Education Abroad Program was established by the UC Regents in 1962 under UCSB oversight. In 1994 oversight was subsumed by the UC Office of the President.

Per the July 1, 2011 Memorandum of Understanding (MOU) between UCSB and UCOP, an administrative partnership was established for the provision of UCSB administrative support

² Business and Financial Services/Procurement Services website.

³ California Public Contract Code Section 10507.

⁴ University of California Education Abroad Program website.

to UCEAP. In July 2018, the procedural oversight returned to UCSB.

UCEAP offers UC approved programs that allow students to explore new cultures, enhance UC studies, and gain international experiences. Study abroad programs can provide learning environments for a summer, quarter, semester, or an entire year. In 2018, UCEAP included 5,412 students in 380 programs and 43 countries.

Restricted Party Screening

The United States government and export regulations restrict or prohibit U.S. individuals from exporting or providing services with sanctioned individuals or entities. A restricted party screening software helps to screen export, trade, and provide OFAC compliance for denied and restricted individuals and entities. UCSB uses Visual Compliance software with recordkeeping and audit capabilities to perform restricted party screening of foreign vendors. Visual Compliance offers batch screening or can plug into business systems to ensure real-time restricted party screening, regardless of the system or number of daily transactions.

SCOPE

The scope of the review was limited to international contract bidding and proposal requirements, vendor qualification, and purchase order and contract formation during fiscal year 2017-18. Our audit and evaluation included audit tests we developed from our risk assessment in determining whether internal controls for international business contracts are adequate to ensure compliance with University of California policies and procedures, contractual agreements, and regulatory requirements.

Specifically, we:

- Researched and reviewed relevant UC and UCSB audits and reports related to international business contracts.
- Researched and reviewed UC and UCSB policies, best practices, and other guidance relevant to the scope of the audit.
- Conducted interviews with personnel in Procurement Services, UCEAP, the campus Real Estate Services Office, Office of Research Export Control, and Environmental Health and Safety to gain an understanding of department's processes, policies, and procedures for administering international contracts.
- Performed a risk analysis that considered purchases or service agreements with international vendors, international travel purchases, certificate of insurance, oversee vendor qualification, and contract execution.
- Evaluated Procurement Services business practices to determine whether they incorporate adequate internal controls and reviewed for opportunities to enhance operational efficiency.
- Tested a sample of international business contracts to determine whether:
 - A public, competitive bid was conducted for expenditures over \$100,000 in value.

- A public notification or broad solicitation was made public for bidding.
- Lowest responsible bidder was selected.
- Competitive quotations were sought.
- Tested a sample of international individuals or vendors to determine whether:
 - A vendor qualification documentation was processed.
 - Disclosure of conflict of interest was obtained⁵.
 - A restricted screening process was performed to ensure persons or businesses were not on the OFAC list.
- Tested a sample of international contracts to determine whether:
 - Contracts were properly created and documented using an approved UC standard contract format.
 - UC Terms and Conditions were included.
 - Contracts were signed by people with delegated authority.
 - Contract renewals did not extend beyond ten years.
 - Restricted items were properly approved by appropriate parties.
 - Contracts were reviewed by legal, Risk Management and/or Procurement Services.
 - Contracts were signed before the service was provided.
 - Certificate of Insurance requirements was met if applicable or services waived.

CRITERIA

Our audit was based upon standards as set forth in the UC and UCSB policies, best practices, and other guidance relevant to the scope of the audit. This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

This review emphasized, but was not limited to, compliance with:

- UC Business and Finance Policy, Procurement Supply Chain Management (UC Policy BFB-BUS-43).
- UC Business and Finance Bulletin 63, Insurance Requirements and Certificates of Insurance (UC Policy BFB-BUS-63).
- UC Policy, International Activities (UC Policy IAP).
- UC Policy, Travel Regulations (UC Policy G-28).

AUDIT TEAM

Ashley Andersen, Audit Director
Antonio Mañas-Melendez, Associate Director
Irene Camargo, Senior Auditor

⁵ The California Political Reform Act and California Government Code Section 81000-81016.