

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF ETHICS, COMPLIANCE AND AUDIT SERVICES



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August 3, 2023

**EXECUTIVE VICE PRESIDENT NAVA
VICE PRESIDENT LLOYD
EXECUTIVE DIRECTOR KALMIJN**

RE: Final Report Project No. P23A002a: Contracting Out University of California Office of the President (UCOP)

Attached is a copy of the final report for: Audit Services Project No. P23A002a Contracting Out University of California Office of the President (UCOP). With the issuance of this final report, please destroy any previous draft versions. We very much appreciate the assistance provided to us by you and members of your staff during our review. If you should have any questions please feel free to contact me at 510-987-9646 (email: matthew.hicks@ucop.edu).

A handwritten signature in black ink, appearing to read "Matt Hicks".

Matt Hicks
Systemwide Deputy Audit Officer

Attachment

cc: Senior Vice President Bustamante
Associate Vice President Matella
Systemwide Associate Audit Director Bishin
Director Vrizuella
Local Procurement Manager Greene
Senior Human Resources Business Partner Arnold

UNIVERSITY OF CALIFORNIA
ETHICS, COMPLIANCE AND AUDIT SERVICES
OFFICE OF THE PRESIDENT
INTERNAL AUDIT SERVICES

CONTRACTING OUT
University of California Office of the President (UCOP) Local Report
Audit No. P23A002a
July 2023

Work Performed by:
Deloitte, Contract Auditor

Work Reviewed by:
Systemwide Associate Audit Director Bishin
Systemwide Deputy Audit Officer Hicks

Executive Summary

Introduction

In accordance with the 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 of procurement and human resources functions for the Office of the President (UCOP Local) using the standard audit program developed for the systemwide audit.

ECAS developed this report based on information gathered from UCOP Local. It provides findings and a set of corresponding recommendations to address these findings.

Objective, Scope, and Approach

Objective: The objective of this assessment was to evaluate processes and controls in place to 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
 - 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

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.

- Supplier audits

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.

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.

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.

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.

- 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

We identified four observations that have the potential to impact the management of risks related to contracting out. A summary of these observations are listed below:

1. Contracts not in compliance with wage and benefit parity requirements
2. Inadequate monitoring of QI hours
3. Inadequate controls over data integrity for information included in the AFSCME report
4. Grievance monitoring

For a detailed discussion of these issues, including the management action plans, please refer to the subsequent pages of this report.

Recommendations in this report are focused on addressing non-compliance areas at the local level and recommendations coming from the report *Systemwide Contracting Out Audit*⁶ that require local implementation of systemwide guidance. Recommendations, management corrective action (MCA) plans, responsible owner, and target implementation dates are presented in the Appendix A of this report.

⁶ *Systemwide Contracting Out Audit*, Project No. P23A002, released in April 2023.

Opportunities for Improvement and Action Plans

1. Contracts not in compliance with Wage and Benefit Parity (WBP) requirements

Internal Audit selected five Covered Services contracts for review and noted contracts that were not in compliance with WBP requirements.

Internal Audit noted one instance where a supplier contract did not explicitly state the UC Terms and Conditions in the contract nor the extension amendment. The contract was originally sourced in 2014. At this time, the terms and conditions were not explicitly stated in the contract and were incorporated throughout different sections of the contract. This agreement was extended in 2019 and was not updated in 2020 to include the amendment for Article 39.

Internal Audit additionally noted that one contract did not have a signed WBP Amendment.

Furthermore, Internal Audit noted that two of five contracts reviewed did not have the required Retroactive Wages clause in the annual Wage and Benefit Parity Amendments. Internal Audit verified that this issue has since been rectified by UCOP Local. Additionally, these contracts have been terminated.

Recommended Action Plan (Ref Appendix A, 1.a.3):

UCOP Local Procurement should confirm that contracts include appropriate language to be in compliance with Wage and Benefit Parity Requirements.

Additionally, UCOP Local Procurement should update the current contract with the UC Terms and Conditions that were previously not included and obtain the signed WBP Amendment for the contract that did not have a signed WBP Amendment.

These items should be documented as part of a formal procedure.

2. Inadequate monitoring of QI hours

Through testing and walkthroughs, Internal Audit noted that there are inadequate procedures in place to request and track supplier employee hours and maintain documentation to support the designation of QIs. Internal Audit noted the following:

- One of five supplier employees reviewed exceeded the 1,000-hour threshold stated in Article 5 and was not identified as a QI. No additional measures were taken to contact this supplier employee. This employee has not provided services for UCOP Local since 2020.
- UCOP Local does not have a process in place to identify supplier employees that exceed QI thresholds of 35% of total hours worked at UC for a rolling 36-month timeframe. As such, UCOP Local could inadvertently fail to offer employment to supplier employees who are deemed to be a QI. However, Internal Audit did not note any supplier employees that would have met this threshold during testing.

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. QI thresholds are defined in AFSCME Article 5 as 1,000 hours over a rolling 12-month period or 35% of total working hours over a rolling 36-month period. Once this tool has been rolled out systemwide, UCOP Local management should ensure that it is implemented locally.

Recommended Action Plan (Ref Appendix A, 1.b.4):

UCOP Local Procurement should request guidance from Systemwide Labor Relations to seek additional clarification regarding supplier employees that exceeded QI thresholds in prior periods and take any necessary action to appropriately address the supplier employee that exceeded the 1,000 hour threshold.

As the systemwide tool for tracking QIs will not roll out until the end of calendar year 2023, UCOP Local Procurement should document and implement an interim process for reviewing supplier employee hours to determine if any meet the threshold of 35% of total working hours over a rolling 36-month period.

3. Inadequate controls over data integrity for information included in the AFSCME report

Internal Audit selected a sample of five Covered Services contracts and compared the information in each signed contract to what was reported in the CY 2021 AFSCME Report. Upon inspection, it was noted that there was one contract with start and end dates that did not match what was reported in the AFSCME Report for this contract.

Recommended Action Plan (Ref Appendix A, 1.g.1):

After aggregating Covered Services contract information, there should be two levels of review prior to submitting this information to Systemwide Labor Relations. The UCOP Local Procurement Manager should review the information to be submitted and provide a documented signoff. After being reviewed by Local Procurement, the Director of Business Resource Center should additionally review and signoff after making any identified updates prior to final submission of the AFSCME report. These items should be documented as part of a formal procedure.

4. Grievance monitoring

OP did not have a grievance monitoring process in place for handling Article 5 grievances. Although OP did not receive any grievances related to Article 5 through December 2022, a monitoring process should be developed and documented.

While this audit report is generally focused on OP processes, there are some systemwide functions that are coordinated out of UC Systemwide Labor Relations. Article 5 grievances which affect multiple systemwide locations may be grouped into a ‘mass’ grievance that is handled out of Systemwide Labor Relations. These are tagged as Systemwide (OR). Internal Audit selected a sample of five grievances labeled as Systemwide (OR). Upon review of these grievances, we noted that documentation supporting the administration of these grievances was not retained.

- For one sample, no documentation was provided.

- For two samples, only the grievance claim was provided. There was no evidence provided to validate that the grievances were addressed.
- For two samples, after receiving the claim of grievance, a written response was not provided within 10 calendar days as required. Documentation to validate that the grievance was addressed was not provided. While the 10-day requirement in the Implementation Guidelines was not adhered to, management noted this was an acceptable practice given the circumstances of the grievances. Per Labor Relations, no deadlines were missed that would adversely impact the University.

Therefore, Internal Audit was unable to verify the adequacy of the Systemwide Labor Relations grievance process during testing.

Recommended Action Plan

Action plan has been addressed in the Systemwide report P23A002 issued April 17, 2023, recommendations 1.e.2 and 1.e.3 (see Appendix A) as follows:

1.e.2. Human Resources will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances. Target Date: March 31, 2024.

1.e.3. 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. UCOP will review case management systems with the functionality to support this recommendation. Target Date: December 31, 2023.

Appendix A: Recommendations and Management Corrective Actions

Recommendation to Systemwide	Recommendation to UCOP	UCOP Management Corrective Action, Owner, 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 UCOP should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>Procurement Services will implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p> <p>Owner: Rick Greene, Local Procurement Manager, Business Resource Center</p> <p>Target Date: October 31, 2023</p>
	<p>1.a.3 UCOP Local Procurement should confirm that contracts include appropriate language to be in compliance with Wage and Benefit Parity Requirements.</p> <p>Additionally, UCOP Local Procurement should update the current contract with the UC Terms and Conditions that were previously not included and obtain the signed WBP Amendment from the one supplier for the contract that did not have a signed WBP Amendment.</p> <p>These items should be documented as part of a formal procedure.</p>	<p>Procurement Services will continue to confirm that contracts include appropriate language to be in compliance with Wage and Benefit Parity Requirements.</p> <p>Additionally, Procurement Services will update the current contract with the UC Terms and Conditions that were previously not included and obtain the signed WBP Amendment form from the one supplier for the contract that did not have a signed WBP Amendment.</p> <p>Finally, Procurement Services will update formal procedures as needed.</p> <p>Owner: Rick Greene, Local Procurement Manager, Business Resource Center</p> <p>Target Date: September 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>1.b.3 UCOP should implement the updated guidance provided by Systemwide HR on</p>	<p>Human Resources in collaboration with Procurement Services will implement the updated guidance provided by Systemwide HR on contracting out compliance</p>

Recommendation to Systemwide	Recommendation to UCOP	UCOP Management Corrective Action, Owner, and Target Date
<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 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>contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p>	<p>requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p> <p>Owner: Karen Arnold, Sr. HR Business Partner.</p> <p>Target Date: June 30, 2024</p>
	<p>1.b.4 UCOP Local Procurement should request guidance from Systemwide Labor Relations to seek additional clarification regarding supplier employees that exceeded QI thresholds in prior periods and take any necessary action to appropriately address the supplier employee that exceeded the 1,000 hour threshold.</p> <p>As the systemwide tool for tracking QIs will not roll out until the end of calendar year 2023, UCOP Local Procurement should document and implement an interim process for reviewing supplier</p>	<p>Procurement Services will request guidance from Systemwide Labor Relations to seek additional clarification regarding supplier employees that exceeded QI thresholds in prior periods and take any necessary action to appropriately address the supplier employee that exceeded the 1,000 hour threshold.</p> <p>As the systemwide tool for tracking QIs will not roll out until the end of the calendar year 2023, Procurement Services will document and implement an interim process for reviewing supplier employee hours to determine if any meet the threshold of 35% of total working hours over a rolling 36-month period.</p> <p>Owner: Rick Greene, Local Procurement Manager, Business Resource Center</p> <p>Target Date: September 30, 2023</p>

Recommendation to Systemwide	Recommendation to UCOP	UCOP Management Corrective Action, Owner, and Target Date
	employee hours to determine if any meet the threshold of 35% of total working hours over a rolling 36-month period.	
Compliance with Employee Displacement Requirements		
1.c.1 Systemwide HR should issue guidance to provide clear direction to UC locations on required procedures to comply with employee displacement requirements when contracting out for covered services.	1.c.2 UCOP should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.	Human Resources will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement. Owner: Karen Arnold, Sr. HR Business Partner. Target Date: December 31, 2024
Article 5 Grievances		
1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances: <ul style="list-style-type: none"> • Requirements for recordkeeping • Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration • Criteria for notifying Systemwide Labor Relations regarding locally filed grievances • Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process 	1.e.2 UCOP should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.	Human Resources will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances. Owner: Karen Arnold, Sr. HR Business Partner. Target Date: June 30, 2024
Reporting Violations of Contracting Out Requirements		
1.f.1 Systemwide HR should issue guidance to provide clear direction to UC locations on requirements for provision of required employee notices to suppliers, including the appropriate template(s) to be used.	1.f.2 UCOP should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.	Human Resources in collaboration with Procurement Services will implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers. Owner: Rick Greene, Local Procurement Manager, Business Resource Center Target Date: August 15, 2023

Recommendation to Systemwide	Recommendation to UCOP	UCOP Management Corrective Action, Owner, and Target Date
Preparation of Annual Report to AFSCME		
	<p>1.g.1 After aggregating Covered Service contract information, there should be two levels of review prior to submitting this information to Systemwide Labor Relations. The UCOP Local Procurement Manager should review the information to be submitted and provide a documented signoff. After being reviewed by Local Procurement, the Director of Business Resource Center should additionally review and signoff after making any identified updates prior to final submission of the AFSCME report.</p> <p>These items should be documented as part of a formal procedure.</p>	<p>After aggregating Covered Service contract information, there will be two levels of review prior to submitting this information to Systemwide Labor Relations. The UCOP Local Procurement Manager will review the information to be submitted and provide a documented signoff. After being reviewed by Local Procurement, the Director of Business Resource Center will additionally review and signoff after making any identified updates prior to final submission of the AFSCME report. These items will be documented as part of a formal procedure.</p> <p>Owner: Rick Greene, Local Procurement Manager, Business Resource Center</p> <p>Target Date: September 30, 2023</p>

Source: Systemwide recommendation with associated location recommendations from report Systemwide Contracting Out Audit.