

**UNIVERSITY OF CALIFORNIA, SAN FRANCISCO
AUDIT AND ADVISORY SERVICES**

**Consulting Services Contracting
Project #20-041**

June 2020



University of California
San Francisco

Audit & Advisory Services

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June 30, 2020

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SUBJECT: Consulting Services Contracting

As a planned internal audit for Fiscal Year 2020, Audit and Advisory Services (“A&AS”) conducted a review of Consulting Services Contracting. The purpose of this review was to assess the adequacy of the internal controls in place for contracting and monitoring of consulting services agreements.

Our services were performed in accordance with the applicable International Standards for the Professional Practice of Internal Auditing as prescribed by the Institute of Internal Auditors (the “IIA Standards”).

Our review was completed and the preliminary draft report was provided to department management in June 2020. Management provided their final comments and responses to our observations in June 2020. The observations and corrective actions have been discussed and agreed upon with department management and it is management’s responsibility to implement the corrective actions stated in the report. A&AS will periodically follow up to confirm that the agreed upon management corrective actions are completed within the dates specified in the final report.

This report is intended solely for the information and internal use of UCSF management and the Ethics, Compliance and Audit Board, and is not intended to be and should not be used by any other person or entity.

Sincerely,

Irene McGlynn
Chief Audit Officer
UCSF Audit and Advisory Services



EXECUTIVE SUMMARY

I. **BACKGROUND**

As a planned audit for Fiscal Year 2020, Audit & Advisory Services (A&AS) conducted a review of the adequacy of the internal controls for contracting and monitoring of consulting services agreements within the UCSF Campus Supply Chain Management (Campus SCM) and the UCSF Health Procurement Services (Health Procurement Services). The California Public Contract Code (PCC) section 10335.5 and 10510.5, and UC Business and Finance Bulletin BUS-43, "Purchases of Goods and Services Supply Chain Management" (based on the PCC) are the governing regulations and policy for consulting services. BUS-43 defines a consultant as a supplier that provides primarily professional or technical advice. Generally the University does not control either the manner of performance or the result of the services. Consultants are subject to restrictions in the Public Contract Code regarding follow-on contracts.

The Campus SCM and the Health Procurement Services act as an advisor, enforcer of policy compliance, and a facilitator to the departments on steps to take prior to onboarding a supplier for goods or services. These steps include guidance on how to establish a detailed and precise statement of work, obtaining insurance certificate for period of performance, assessing whether an individual should be considered as an independent contractor or employee based on IRS rules, and where applicable create a business associate agreement with supplier.

Per data provided by the respective procurement departments, for FY19, the Campus contracted approximately \$8.6 million in consulting services and the UCSF Health had approximately \$49 million in professional/consulting services. Health Procurement Services considers consulting as a component of professional services and therefore had inconsistencies in classifying consulting services separately. In May 2020, Health Procurement Services added fields to categorize consulting services, as a subset of Professional Services in its most recent version of the Salesforce Contract Management software platform, ContractKing.

The Campus SCM uses BearBuy, an e-procurement system that automates many aspects of the procurement process including: requisition creation and approval, sending purchase order to suppliers, invoice approval and payment. The Health Procurement Services utilizes Allscript Pathway Materials Management system as their system for creation of requisitions and purchase orders. During FY19, Health Procurement Services had three databases: Salesforce, WorkForce Logiq and Meditract for the tracking and processing of contract agreements. Effective FY20, the Health Procurement Services began tracking and managing all agreements in ContractKing.

Inadequate processes and controls for contracting and management of consulting services may result in deliverables not being achieved, costs overruns and potential non-compliance with Public Contract Code.

II. AUDIT PURPOSE AND SCOPE

The purpose of this review was to assess the controls in place for contracting and monitoring of consulting services agreements. The scope of the review covered active consulting services contracts for the period of July 1, 2018 to June 30, 2019.

To conduct the review, the following procedures were performed:

- (1) Conducted walkthroughs and interviews with relevant personnel to understand the processes and controls for the contracting of consulting services;
- (2) Determined whether there is correct classification of consulting vs. professional service;
- (3) Reviewed bidding documentation for consulting work greater than \$100k;
- (4) Evaluated whether the statement of work clearly defines the scope of work, milestones and/or deliverables;
- (5) Reviewed the agreements to make sure it is in place prior to work commencing;
- (6) Determined whether milestones per the Statement of Work were met prior to payment;
- (7) Evaluated the justification for change orders to extend consulting services for reasonableness;
- (8) Reviewed certificate of insurance to ensure there is proper coverage for period of performance;
- (9) Determined whether an assessment was performed to determine whether a consultant should be considered as an independent contractor or an employee according to IRS rules;
- (10) Determined whether follow-on¹ work by consultants was correctly identified and complied with the California Public Contracting Code; and
- (11) Reviewed consulting agreements data in CalUSource² for completeness.

Work performed was limited to the specific activities and procedures described above. As such, this report is not intended to, nor can it be relied upon to provide an assessment of compliance beyond those areas specifically reviewed. Fieldwork was completed in May 2020.

III. SUMMARY

Based on work performed, the Campus SCM and the Health Procurement Services were generally in compliance with BUS-43. Opportunities for enhanced internal controls and processes were identified related to appropriate classification of consulting services, ensuring adequacy of suppliers' insurance coverage, independent contractor status assessment, and prevention of by-passing of procurement policies and processes.

¹ Per California Public Contracting Code, Section 10515-10518, a consultant may not perform implementation of the advice they have offered during the engagement unless it was included in the initial statement of work.

² CalUSource is a database that is shared system wide to allow all the UC campuses to leverage procurement strategy over contracts and agreements for professional and consulting services.

The specific observations from this review are listed below as well as in Section IV. Observations and Management Corrective Actions.

A. Campus and Health

1. The policy language in defining consulting vs. professional services is very broad and leading to inconsistent interpretation and practices between Campus SCM and Health Procurement in handling consulting/professional service agreements.
2. Instances were identified where the departments by-passed procurement processes and policy requirements.
3. The Campus SCM and the Health Procurement Services do not have good processes for the collection, maintenance, and renewal of suppliers' insurance certificates.

B. Campus

1. The Campus SCM does not have effective procedures in place to ensure that an independent contractor assessment is re-performed beyond the initial contracting of services.
2. The Campus SCM does not have a practice to determine whether the department's assessment of follow-on work is correct to ensure compliance with the California Public Contract Code.
3. The Campus SCM has not identified all the criteria for requiring professional/consulting services agreements to be in CalUSource.

IV. OBSERVATIONS AND MANAGEMENT CORRECTIVE ACTIONS

A. Campus and Health

No.	Observation	Risk/Effect	Recommendation	MCA
1	<p><i>The policy language in defining consulting vs. professional services is very broad and leading to inconsistent interpretation and practices between Campus SCM and Health Procurement in handling consulting/professional service agreements.</i></p> <p>BUS-43 has a broad definition of consulting services and professional services; it defines a consultant as “a supplier that provides primarily <u>professional or technical advice</u>. Generally the University does not control either the manner of performance or the result of the services. Consultants are subject to restrictions in the Public Contract Code regarding follow-on contracts.”</p> <p>Professional services are defined “<u>as highly specialized functions, typically of a technical nature, performed by a supplier</u> that, with respect to the services to be rendered, most commonly a) has a professional license; b) is licensed by a regulatory body; and/or c) is able to obtain professional errors and omissions insurance.”</p> <p>Per BUS-43, professional services is exempt from competitive bidding requirements when services exceed \$100,000. The 2017 California State Auditor’s report, cited that these broad definitions resulted in “broad service categories from competitive bidding requirements”.</p>	<p>The lack of clarity in defining consulting services creates confusion and inconsistencies in practices and may result in the misclassification of consulting services and thereby competitive pricing may not be sought as required by BUS-43 policy.</p>	<p>a) Campus SCM and the Health Procurement Services should seek further guidance and clarification from UCOP Procurement and UC Health Procurement on how consulting services should be distinguished from professional services to enable better classification.</p> <p>b) Based on the classification guidance from UCOP and UC Health Procurement, Campus SCM and the Health Procurement should provide training to all procurement staff and the departments.</p>	<p>Actions: a) Health Procurement Services will take the lead and work with both UCOP and UC Health Procurement to obtain clarification on how consulting services should be distinguished from professional services to enable better classification.</p> <p>Target Date: December 31, 2020</p> <p>Responsible Party: VP Supply Chain/Support Services</p> <p>b) Campus SCM and Health Procurement will train its procurement staff and the departments on the new classification guidance. Target Date: March 31, 2021</p>

No.	Observation	Risk/Effect	Recommendation	MCA
	<p>The fine distinction between the two definitions is that consulting is providing technical advice while professional service is the performance of a specialized function which is technical in nature. This broad definition makes it difficult to distinguish consulting services from professional services.</p> <p>The Health Procurement Services defines all consulting services to be a subset of professional services and therefore do not require competitive bidding when services exceed \$100,000.</p> <p>Review of the scope of services for our sampled agreements identified 3 of 8 Health Professional Services where the nature of the work and outcomes were advisory in nature, required analysis, roadmaps and recommendations which more closely aligns with consulting services.</p> <p>Campus SCM on the other hand, classifies consulting separately from professional services based on the statement of work where the services is primarily "advisory" in nature as the main distinguishing criteria between the two types of services. As a result, Campus SCM requires some consulting services to be competitively bid when services exceed \$100,000. Campus SCM acknowledges that there is often confusion in defining and distinguishing between the two different types of services which has resulted in some campus consulting services being classified as professional services.</p>			<p>Responsible Party: VP Supply Chain/Support Services, and Associate Vice Chancellor, Supply Chain Management</p>

No.	Observation	Risk/Effect	Recommendation	MCA
2	<p><i>Instances were identified where the departments by-passed procurement processes and policy requirements.</i></p> <p>During the review, we noted that consulting services for two suppliers by-passed the standard procurement process and in violation of University policy.</p> <p>(A) Campus: A department procured services from a supplier without initiating a Purchase Order (PO). A statement of work was uploaded to BearBuy by the department on November 15, 2017 for services effective from July 1, 2017 to June 30, 2018. The total project had a “not to exceed” amount of \$5 million, and so the buyer in SCM advised the department to obtain bids. The department did not obtain bids for the project nor completed a sole source justification; their rationale was that the supplier was already being used by the Medical Center and that another supplier they would like to use was not available to do the work. The Buyer did not escalate or engage senior leadership to resolve the issue. To enable payments to be made to the supplier, the buyer created an after-the-fact PO. This method was used to pay approximately \$5.3 million in invoices for the entire period of the supplier’s services. The total spend for the supplier surpassed the “not to exceed” amount by approximately \$300k. Since a PO was not set up in BearBuy, the additional review and approval process that is required for invoice payment in excess of the PO amount was not triggered in BearBuy.</p>	<p>Management by-pass or override of procurement policies and procedures increases risks of circumvention of internal controls leading to improper procurement of services and potential non compliance with public contract code. Additionally, without a contract in place for the specific changed or expanded scope of services, it may be significantly more difficult to ensure obligations to UCSF are met.</p> <p>Without an escalation process to engage with senior leadership, the Campus SCM’s management does not have the opportunity to intervene when departments are not complying with procurement policy.</p>	<p>a) Campus SCM to remind and reinforce the need for campus departments to follow policy requirements. Additionally, Campus SCM should develop a process for Buyers to escalate issues to senior leadership when the department is not complying with procurement policy.</p> <p>b) Health Procurement Services should work with the relevant department to establish with the supplier a formal contract agreement and corresponding PO for a “not to exceed amount”, and ensure that an assessment is conducted to determine whether the supplier should be considered an employee or an independent contractor.</p>	<p>Actions:</p> <p>a) Campus SCM will reinforce the need for campus departments to follow policy requirements. Additionally, Campus SCM will train Buyers to escalate issues to senior leadership when the department is not complying with procurement policy.</p> <p>Target Date: September 30 , 2020</p> <p>Responsible Party: Associate Vice Chancellor, Supply Chain Management</p> <p>b) Health Procurement will work with the department to determine the current status of the engagement and determine whether a new agreement is needed; and if so, will ensure all</p>

No.	Observation	Risk/Effect	Recommendation	MCA
	<p>(B) Health: UCSF Health paid a total of \$852k in FY19 to a vendor without an appropriate agreement in place between the supplier and UCSF Health. Additionally, no PO was established and UCSF Health Accounts Payable (Health AP) bypassed their standard practice and paid the invoices without a PO.</p> <p>In 2016, the UCSF Benioff Children’s Physicians Group had an agreement and utilized the services from this supplier. During 2018, this supplier transitioned to UCSF Health to provide executive support for affiliate growth with a scope of work to include design, due diligence, implementation and stabilization for any new physician affiliation, and focusing on revenue cycle and compliance. However, Procurement Services was not notified and no new agreement was established between UCSF Health and the supplier for the new scope of work and consequently no purchase order (PO) was established. Health AP did not follow their standard process and paid the invoices without a PO, based on department authorized official’s approval. Additionally, no assessment was performed to determine whether the supplier should be considered an employee or an independent contractor to be in compliance with IRS Common Law Rules.</p>		<p>c) UCSF Health Procurement Services as part of its outreach efforts with departments should re-educate and reinforce procurement policies and procedures.</p> <p>d) UCSF Health’s AP should ensure that a PO is in place at the new vendor set-up stage. Additionally, Health AP management should reinforce to staff the department’s standard procedure that invoices without a PO needs to be escalated to the line of business and the Health Procurement Services.</p>	<p>procurement compliance requirements are met.</p> <p>Target Date: August 30, 2020</p> <p>Responsible Party: VP Supply Chain/Support Services</p> <p>c) UCSF Health Procurement Services will re-educate and reinforce procurement policy as part of its outreach efforts with departments.</p> <p>Target Date: October, 30, 2020</p> <p>Responsible Party: VP Supply Chain/Support Services</p> <p>d) UCSF Health AP will ensure a PO is in place at the new vendor set-up stage, and will reinforce to staff</p>

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				<p>the department's standard procedure that invoices without a PO needs to be escalated to the line of business and the Health Procurement Services.</p> <p>Target Date: September 30, 2020</p> <p>Responsible Party: UCSF Health Chief Accounting Officer</p>
3	<p><i>Campus SCM and Health Procurement Services do not have effective processes in place for the collection, maintenance, and renewal of suppliers' insurance certificates.</i></p> <p>During the review of insurance certificate, it was noted that:</p> <p>(A) Campus:</p> <ul style="list-style-type: none"> • One out of seven suppliers reviewed had an expired insurance certificate; the supplier's insurance lapsed by one month. The expired insurance certificate was due to the Buyer not being aware that the department had extended work beyond the initial statement of work time frame. • One out of seven suppliers had a missing certificate of insurance. The missing 		<p>Campus SCM and Health Procurement should develop procedures for ensuring that certificates of insurance are in place covering the entire period of the approved requisition(s), and to retain the certificate of insurance in one place consistently.</p>	<p>Action:</p> <p>a) Campus SCM and Health Procurement will create a new process moving forward to ensure there's no general lapse in certificate of insurance of active contracts.</p> <p>b) Campus SCM and Health Procurement will train Buyers to include a certificate of insurance for every supplier when</p>

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	<p>certificate of insurance was due to the work transitioning from one Buyer to another.</p> <p>(B) Health Procurement Services:</p> <ul style="list-style-type: none"> • Three out of eight suppliers reviewed did not have a certificate of insurance that covered the statement of work time frame; the certificates that were available were for a later period. This was due to the lack of clarity on the roles and responsibilities between the Risk Management and Insurance Services (RMIS) and the Health Procurement Services over the collection, maintenance, and renewal of insurance certificates. • Certificates of insurance for two suppliers were misplaced and could not be located as a result of the database transition. <p>Per BUS-63 Insurance Requirements and Certificate of Insurance, a certificate of insurance should be in place before commencing work. The certificate of insurance provides evidence that an individual or entity has adequate insurance coverage in force to protect the interests of the University.</p>			<p>there is an approved requisition, and to store the certificate of insurance in one place consistently.</p> <p>Target Date: March 1, 2021</p> <p>Responsible Party: VP Supply Chain/Support Services, and Associate Vice Chancellor, Supply Chain Management</p>

B. Campus

No.	Observation	Risk/Effect	Recommendation	MCA
1	<p><i>Campus SCM does not have effective procedures in place to ensure that an independent contractor assessment is re-performed beyond the initial contracting of services.</i></p> <p>During the review of procedures performed for the assessment of whether an individual should be classified as an employee or independent contractor, it was noted that two out of seven consultants' determination of independent contractor status spanned four to five years from the initial assessment. No subsequent assessment was performed when their services were extended.</p> <p>With each new requisition with an individual, conditions relating to the behavioral, financial, and type of relationship could change and thus may impact the assessment of whether a consultant should continue to be classified as an independent contractor or employee.</p> <p>Per IRS Common Law rules and UC Independent Contractor Guidelines for Federal Tax Purposes, business owners must correctly determine whether the individuals providing services are employees or independent contractors. An assessment of the degree of control and independence must be considered and the three criteria in the assessment are: behavioral, financial, and type of relationship.</p>	<p>Without a new assessment for each new requisition there is a risk of misclassifying an individual's status and non-compliance with IRS Common Law rules.</p>	<p>The Campus SCM should re-educate and communicate to the Buyers the importance of completing independent contractor assessment before approving any new requisition to ensure compliance with IRS Common Law rules.</p>	<p>Action: The Campus SCM will re-educate and communicate to the Buyers the importance of completing independent contractor assessment before approving any new requisition to ensure compliance with IRS Common Law Rules.</p> <p>Target Date: September 30, 2020</p> <p>Responsible Party: Associate Vice Chancellor, Supply Chain Management</p>

No.	Observation	Risk/Effect	Recommendation	MCA
2	<p><i>Campus SCM does not have a practice to determine whether the department’s assessment of follow-on work is correct to ensure compliance with the California Public Contract Code.</i></p> <p>Per BearBuy data for FY19, various departments assessed that 251 agreements were for services that resulted from current or prior consulting work with the supplier. Review of a sample of eight of these agreements determined that these were not follow-on work.</p> <p>The California Public Contract Code section 10515-10518 stipulates states, “No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract”.</p> <p>Departments may have misunderstood the definition of follow-on work and thus made an erroneous assessment. However, SCM does not have an established process for Buyers to investigate for compliance with the California Public Contract Code and make the final assessment in BearBuy.</p>	<p>By not having a process for Buyers to investigate and make a final assessment of follow-on work, erroneous data may be retained in the system and the opportunity to identify actual follow-on work and ensure compliance to the regulations may be overlooked.</p>	<p>Campus SCM management should consider developing procedures for having the Buyer make a final assessment in BearBuy whether the work is follow-on, and take the necessary steps to ensure compliance with the California Public Contract Code.</p>	<p>Action: Campus SCM will develop procedures for having the Buyer make a final assessment in BearBuy whether the work is follow-on, and take the necessary steps to ensure compliance with the California Public Contract Code.</p> <p>Target Date: September 30, 2020</p> <p>Responsible Party: Associate Vice Chancellor, Supply Chain Management</p>
3	<p><i>Campus SCM has not identified all the criteria for requiring professional/consulting services agreements to be in CalUSource.</i></p> <p>Per data analysis in CalUSource, there were only 47 consulting agreements for FY19 for the Campus SCM. The data in BearBuy produced 674 consulting agreements for the same period. It was noted that not</p>	<p>Without developing the criteria for agreements to be in CalUSource, the Campus SCM risks having incomplete data.</p>	<p>The Campus SCM should get clarity from UCOP on the criteria for requiring professional/consulting services agreements to be in CalUSource, and ensure that those</p>	<p>Action: Campus SCM will work with UCOP to get clarity on the criteria for requiring professional/consulting services agreements to be in CalUSource and</p>

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	<p>all agreements in BearBuy are required to be in CalUSource. However, the Campus SCM has not established the criteria that would require professional/consulting services agreements to be in CalUSource.</p> <p>BearBuy is the source system for UCSF agreements and CalUSource is the fully-integrated collaborative eSourcing solution used by California public higher education systems for sourcing, contracting and spend analysis. It is a database shared system-wide to allow all the UC campuses to leverage procurement strategy over contracts and agreements. <i>(Note: UC Health, the five medical centers, including UCSF Health, does not currently upload or send their agreements to CalUSource. However, UCSF Health and the other UC medical centers use CalUSource as a contract repository to check whether an existing UCOP systemwide agreement may exist during the course of contracting).</i></p>		<p>agreements are uploaded in CalUSource.</p>	<p>train the Buyers to upload those agreements accordingly.</p> <p>Target Date: September 30, 2020</p> <p>Responsible Party: Associate Vice Chancellor, Supply Chain Management</p>