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January 12, 2024

Marc Fisher
Vice Chancellor
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Vice Chancellor Fisher:

We have completed our audit of Business Contracts as per our annual service plan in accordance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Our observations with management action plans are expounded upon in the accompanying report. Please destroy all copies of draft reports and related documents. Thank you to the staff of the Business Contracts and Brand Protection office for their cooperative efforts throughout the audit process. 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

cc: Chief Procurement Officer Russell Chung
Executive Director Michèle Huff
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Chief Campus Counsel David Robinson
Senior Vice President and Chief Compliance and Audit Officer Alexander Bustamante
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AUDIT AND ADVISORY SERVICES

Business Contracts
Audit
Project No. 23-774

January 12, 2024

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**University of California, Berkeley
Audit and Advisory Services
Business Contracts**

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OVERVIEW

Executive Summary

The purpose of the audit was to evaluate the effectiveness and efficiency of internal controls related to the preparation, review, and approval of business contracts.

Our audit scope was limited to contracts processed by the campus Business Contracts and Brand Protection (BCBP) unit. Audit procedures included a review of related documentation and interviews with management from BCBP; key stakeholder offices including Risk Services, Office of Legal Affairs (OLA), and Privacy; and management from a selection of division/unit level organizations that engage in a higher volume of contracting activity.

Contract types currently within BCBP's purview include, but are not limited to, revenue-generating contracts pertaining to services, continuing and professional education, event and general sponsorships, copyright licenses, facilities use, affiliation/student placement, and public service and educational outreach. The office currently processes more than 700 agreements annually.

Third-party contract development and execution is a complicated and resource-intensive process requiring specialized knowledge and entailing shared accountabilities and coordination across BCBP, OLA, Risk Services, the requesting department, and potentially other subject-matter experts. Although cross-unit roles and responsibilities have been delineated at a high level, we found that individual accountabilities may not be optimally assigned or sufficiently well-delineated, which results in process inefficiencies and potential gaps or misalignment in managing risks. We note two areas in particular that warrant management attention:

- *Delegation of Authority:* BCBP derives its authority from a redelegation of the *Delegation of Authority 1058 – Execution of Agreements* originally issued by the President in 1991 to campus Chancellors. BCBP received its redelegation in 2013 as part of a complex redelegation across multiple units for a variety of transaction types for which there is the potential for overlap or conflict. To our knowledge, the delegations have not been evaluated in recent years to assess ongoing appropriateness or alignment with the current operating and compliance environment. We understand that BCBP management has already proposed to leadership that their delegation be reassessed and updated. As part of this effort, agreement types covered by the delegation and specific authority levels should be delineated. Related campus delegations of DA 1058 should also be evaluated.
- *Contract Initiation and Risk Assessment:* We note certain opportunities to enhance and/or reinforce existing procedures to better ensure that key contract risks are identified at the outset of the contracting process to minimize potential downstream delays and process inefficiencies. In addition, contract risk assessment is dispersed across multiple offices and the process currently lacks a uniform method and delineated accountabilities to support management in identifying, assessing, mitigating and/or accepting contract-related risks.

Management agrees with our observations and has provided management responses that, if implemented, should address the risks noted in our audit.

Source and Purpose of the Audit

Our audit was performed as part of our fiscal year 2023 audit plan. The purpose of the audit was to evaluate the effectiveness and efficiency of internal controls related to the preparation, review, and approval of business contracts.

Scope of the Audit

Our audit scope was limited to contracts processed by the campus Business Contracts and Brand Protection (BCBP) unit, and included an assessment of the design and effectiveness of the contracting process, including the preparation, review, and approval of business contracts. Areas of focus included:

- Alignment of activities with relevant campus and UCOP policies and delegations;
- Identification and mitigation of contract-related risks;
- Clarity and appropriateness of the assignment of responsibilities;
- Timely preparation and issuance of agreements; and
- Efficiency of processes.

Audit procedures included a review of related documentation and interviews with management from BCBP; key stakeholder offices including Risk Services, Office of Legal Affairs (OLA), and Privacy; and management from a selection of division/unit level organizations that engage in a higher volume of contracting activity.

Background Information

BCBP is a central campus office with authority to execute certain types of third-party agreements, generally those referred to as “service agreements”, on behalf of the campus. BCBP derives its authority from a 2013 redelegation of the *Delegation of Authority 1058 – Execution of Agreements* originally issued by the President in 1991 to campus Chancellors. Contract types currently within BCBP’s purview include, but are not limited to, revenue-generating contracts pertaining to services, continuing and professional education, event and general sponsorships, copyright licenses, facilities use, affiliation/student placement, and public service and educational outreach. The office currently processes more than 700 agreements annually.

The campus has a *Business Contracts Policy*, originally developed in 2000 and revised in 2020, that describes BCBP’s authority, responsibilities and procedures at a high level and refers to the UCOP *Principles of Accountability with Respect to Financial Transactions* and the *Delegation of Authority 1058*. There are no other policies that specifically govern BCBP processes. However, all contracts executed under BCBP’s delegation must comply with all applicable policies “governing the particular transaction”.

The contracting process requires the input and collaboration of various stakeholders, including the requesting department, BCBP, OLA, Risk Services, as well as other subject matter experts. BCBP manages its contracting workflow and documentation using an internally developed system, the Business Contract Management System (BCMS).

Summary Conclusion

Third-party contract development and execution is a complicated and resource-intensive process requiring specialized knowledge and entailing shared accountabilities and coordination across BCBP, OLA, Risk Services, the requesting department, and potentially other subject matter experts.

Although cross-unit roles and responsibilities have been delineated at a high level, we found that individual accountabilities may not be optimally assigned or sufficiently well-delineated. Accordingly, we recommend that management reassess certain fundamental aspects of the current process in order to enhance process efficiency and also better ensure that contract-related risks are appropriately identified and mitigated or accepted.

We note two areas in particular that warrant management attention:

- *Delegation of Authority:* BCBP received its redelegation of DA 1058 in 2013 as part of a complex redelegation across multiple units for a variety of transaction types for which there is the potential for overlap or conflict. To our knowledge, the delegations have not been evaluated in recent years to assess ongoing appropriateness or alignment with the current operating and compliance environment. We noted potential areas of concern in that the delegation delineates a limit on BCBP's authority that does not appear to have its basis in any higher delegation and that may no longer be appropriate or feasible as written and/or interpreted. In addition, the delegation is written in broad terms and does not delineate the types of agreements that are included the delegation, which leads to confusion over ownership of processing certain categories of agreements. We understand that BCBP management has already proposed to leadership that their delegation be reassessed and updated. As part of this effort, agreement types covered by the delegation and specific authority levels should be delineated. Related campus delegations of DA 1058 should also be evaluated.
- *Contract Initiation and Risk Assessment:* We note certain opportunities to enhance and/or reinforce existing procedures to better ensure that key contract risks are identified at the outset of the contracting process. Currently, a standard Statement of Work (SOW), which is a foundational document in the contracting process, is not uniformly completed by requesting departments, which can often lead to processing delays. Additionally, the process currently lacks a uniform method and delineated accountabilities to support management in identifying, assessing, mitigating and/or accepting contract-related risks.

Lastly, we note that BCBP does not uniformly maintain a copy of final executed agreements or other key contract-related materials, tasking the requesting department instead with this responsibility. We encourage management to reconsider this practice to help ensure a complete repository of campus contracts and supporting documentation.

Management agrees with our observations and has provided management responses that, if implemented, should address the risks noted in our audit.

SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

Delegated Authorities

Observation

BCBP derives its authority and purview from a redelegation of the *Delegation of Authority 1058 – Execution of Agreements* (DA 1058) originally issued by the President in 1991 to campus Chancellors. The Berkeley Chancellor subsequently issued redelegations (some with redelegation authority) to various positions on campus. BCBP received its redelegation in 2013 from the then Associate Vice Chancellor of Business and Administrative Services. Since this time, the volume and nature of business contracts activities has evolved significantly, however the delegation has not been reassessed to ensure its ongoing appropriateness or alignment with the current operating and compliance environment. We note two fundamental associated impacts that appear to potentially hinder the effectiveness and efficiency of current processes:

- The 2013 campus redelegation establishes its scope as pertaining to “service agreements”. Examples of the types of agreements covered by the delegation are listed in the 1991 President’s letter, but are not carried forward or otherwise explicitly defined within the 2013 redelegation. This represents a challenge for the campus in that certain service agreements may entail characteristics that closely align with agreement types historically and/or optimally processed by a different campus contracting office due to the risk they entail and/or specific external requirements for their handling. We understand that the campus formed a cross-functional working group in 2013 to clarify contracting responsibilities across different campus offices and that guidance and a decision tool was developed around that same time to help inform decisions about contract routing. However, we noted certain examples of contract types currently being routed to BCBP for processing that do not appear to be contemplated in the 1991 delegation. We note that it is not imperative that any one office be tasked with handling certain contract types as long as they are operating within their delegation, like contracts are treated the same, and relevant requirements are followed.
- The delegation delineates a limit on BCBP’s authority in that OLA or OGC must review all agreements prior to execution unless “previously reviewed and/or approved by...that office”. Management indicated that this reference has been interpreted and implemented differently over time. As currently implemented, BCBP’s authority is strictly limited and because of the frequent need for novel (versus template) agreements, OLA review is required to an extent and frequency that we understand from management and stakeholders impacts the timeliness and efficiency of the contract review and execution process. In addition, as referenced outside of the delegation, matters pertaining to insurable risk management are referred by OLA to campus Risk Services, requiring the engagement of a third office in the process and further extending the review timeline.

Furthermore, we note that the campus appears to have at least one other standing delegation, from 1997, for executing “service agreements” to the campus director of “material management” (Supply Chain Management). This delegation does not appear to be invoked in current campus

processes and authorities, and, if no longer relevant, should be rescinded. It is worth noting that this 1997 delegation does not contain the same limits around consultation with OLA or OGC that the 2013 delegation to BCBP establishes.

We understand that BCBP management has already proposed to leadership that the 2013 delegation be reassessed and updated. As part of this effort, at a minimum, it is critical that the agreement types covered by the delegation be specifically delineated, and that consultation with UCOP and the campus delegation coordinator occur to ensure consistency with the initial 1991 Regental delegation and any subsequent clarifications that might exist. In addition, the 1997 delegation and any others pertaining to service agreements should also be reassessed and amended or rescinded as appropriate. Lastly, as part of any changes to delegated authorities, we further recommend that the specific accountabilities of each office involved in the contract review and approval process be clearly delineated, documented, and accepted cross-functionally. To the extent any one office may assume a greater degree of responsibility, it is also imperative that management assess and ensure that requisite staffing levels, funding, skillsets, and procedures are in place.

Management Response and Action Plan

Management has asked the staff of the Office of Ethics, Risk and Compliance Services (OERCS) in the Chancellor's Immediate Office to conduct a comprehensive review of all current campus delegations and redelegations under DA1058. This review will identify and correct out-of-date delegations, including the one to BCBP. OERCS will consider updates to the delegations to more accurately specify the current agreement types encountered by the campus contracting units, as well as to delineate specific accountabilities of each office receiving delegations. Target completion date: July 1, 2024.

Contract Initiation and Risk Assessment

Observation

Processes pertaining to the initiation and review of business contracts have been outlined and are documented in internal BCBP departmental procedures, as well as campus-facing websites. However, we note certain opportunities to enhance and/or reinforce existing procedures to better ensure that key contract risks are identified at the outset of the contracting process and can be appropriately and efficiently addressed. In addition, not all aspects of the process are formally documented. We found that units generally understand their role in the process and that they are focused on risk identification and mitigation; however, we identified a number of areas where internal controls and execution of responsibilities could be clarified or strengthened, as follows:

- *Statement of Work:* Requesting departments are currently asked to develop and document a statement of work (SOW) before contacting BCBP to initiate a contract; however, they often do not fully document key information that is required. The SOW provides an early and foundational mechanism for BCBP and other reviewing offices to understand the nature of the third party relationship and the risks it may entail. A clear SOW is also essential to the efficiency of the contracting process to avoid late changes to contract terms and to focus negotiations appropriately. We were not able to definitively discern what obstacles exist for units in developing SOWs; however, we note this as an area for management to prioritize and further study and remediate in collaboration with requesting units.
- *Risk identification:* We note a related opportunity for a more robust contract intake and risk identification process in that requesting departments may not always possess the requisite knowledge to identify potential risks associated with the contract. To address this, other campus contracting offices have deployed mechanisms to formally solicit key risk information, such as whether data will be exchanged, whether the third party is a US or foreign entity, etc. A similar intake process is warranted for business contracts. Such a protocol would also help ensure that risks within the purview of central campus to assess (such as Regulation 4 compliance and UBIT requirements) are routinely considered. Currently, there is no explicit step to ensure that this review occurs and that outcomes are documented.
- *Risk assessment and acceptance:* Similarly, we note that a clear and consistent process and accountabilities for assessing and accepting risks pertaining to business contracts has not been developed. Although consultation and/or approval occurs with OLA and Risk Services, as well as with other campus subject matter experts, such as the Privacy Officer and Chief Information Security Office, formal escalation protocols and decision-making criteria and authorities for acceptance of any identified contract/engagement-specific risks are not in place. In addition, we note that requesting departments are sometimes provided notice regarding the assumption of risk; however, they report not necessarily having a basis to understand the potential implications and make an informed decision. It is also not currently established in process or policy whom within a department has decision-making authority for different types and levels of risk.

Management Response and Action Plan

BCBP will examine for redesign its intake process, including the forms used to understand the contemplated scope of work. Specific questions will be asked to identify those situations with potentially elevated compliance risk (such as involving hazardous materials, minors, sensitive technologies, personally-identifiable information, countries of concern as identified by the federal government, etc.) to ensure that the department is provided with appropriate information of other consultations and/or approvals that may be required by policy and/or regulation. This will include an assessment of current escalation and approval protocols. Target completion date: October 1, 2024.

Supply Chain Management and BCBP will also assess the current strengths and weaknesses of the BCMS system and consider potential enhancements or replacement that would facilitate client interaction (such as through a ticketing or case management system), approval workflow, contract management, and interfaces with financial accounting systems to facilitate customer setup, invoicing, receivables management, and financial performance monitoring.

Records Retention

Observation

Under current campus policy, the requesting department serves as the office of record for maintaining the original executed contract. BCBP requests that departments upload a copy to BCMS, but does not mandate this. As a result, there is no central repository for executed contracts. We encourage management to reconsider this practice and/or to monitor department compliance with execution/retention requirements. At a minimum, management should define a set of criteria or dollar threshold when a copy of the executed contract must be maintained centrally.

Similarly, we note that internal approvals for contracts, and other foundational supporting documents, such as statements of work, and key compliance documents, such as Visual Compliance screening of foreign third parties, are not consistently retained by BCBP. We recommend that management assess which documents are essential to retain for compliance or operational reasons, and determine whether central (versus department) retention might be feasible.

Management Response and Action Plan

Management believes that the requesting department should be the ultimate custodian of agreements approved by BCMS since they are responsible for the management of the lifecycle of the contract after it is signed by BCBP. That being said, there is recognition that historically there may be challenges for longer-term records retention as personnel turn over within units. Management will consider solutions to balance the two factors by considering risk factors that may necessitate keeping some portion of contracts and key supporting documents also being held in central campus repositories like BCMS such as for larger contracts or with elevated risk characteristics.