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**Subject:            *Contracting Out-Regents Policy 5402 (Systemwide) - Health  
Report 2023-10B***

The final report for Contracting Out- Regents Policy 5402 (Systemwide) - Health Report 2023-10B, is attached. We would like to thank all members of the department for their cooperation and assistance during the review.

Because we were able to reach agreement regarding management action plans in response to the audit recommendations, a formal response to the report is not requested. The findings included in this report will be added to our follow-up system. We will contact you at the appropriate time to evaluate the status of the management action plans.

UC wide policy requires that all draft reports be destroyed after the final report is issued. We also request that draft reports not be photocopied or otherwise redistributed.

Christa Perkins  
Director  
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Attachment

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# UC San Diego

## AUDIT & MANAGEMENT ADVISORY SERVICES

Contracting Out - Regents Policy 5402 (Systemwide) - Health  
Report No. 2023-10B  
July 2023

### FINAL REPORT

**Performed By:**

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**Approved By:**

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ADDENDUM 1 – Systemwide Contracting Out Audit, Project No. P23A002

ADDENDUM 2 – Local (UCSD) Recommendations and Management Corrective Actions

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## I. EXECUTIVE SUMMARY

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Audit & Management Advisory Services (AMAS) has completed a review of Contracting Out / Regents Policy 5402 (Systemwide) as part of a Systemwide Contracting Out Audit, under the direction of the University of California (UC) Office of the President (UCOP). This report covers UCSD Health and supplements the Systemwide Contracting Out Audit, Project No. P23A002, issued by the Office of Ethics, Compliance, and Audit Services (ECAS) (pending UCOP report release).

The overall objective of our review was to evaluate UCSD processes and controls in place for compliance with the Contracting Out Implementation Guidelines for Regents Policy 5402 and AFSCME Article 5. The review was performed based on an audit program provided by UCOP ECAS and included the Campus and Health enterprises, which are being separately reported.

Based on our review procedures, we concluded that the UCSD Health processes for compliance with the Contracting Out Implementation Guidelines for Regents Policy 5402 and AFSCME Article 5 were generally compliant with applicable policies with the exception of the following areas:

- Covered services identification and annual reporting;
- Review and evaluation of decisions to contract out;
- Monitoring suppliers' compliance with wage and benefit parity requirements;
- Identification and conversion of Qualified Individuals (QIs);
- Grievances;
- Required Notices.

Our observations and related recommendations are described in greater detail in section V. of this report.

In most cases, the opportunities for improvement noted for our campus aligned with observations in the Systemwide Audit Report (Addendum 1), and were addressed through the Systemwide recommendations. The Systemwide Audit Report contains a total of 18 recommendations, including 13 to systemwide stakeholder groups and five to the campus locations. In some cases, Systemwide recommendations related to findings that were observed at other locations, but not at UCSD. In these cases, there are Systemwide recommendations to campuses to implement updated guidance that will be issued by UCOP on these topics. We also had three additional recommendations which were based on local observations. The Systemwide and Local management corrective actions (MCAs) for the audit recommendations are summarized in Addendum 2.

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## II. BACKGROUND

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Audit & Management Advisory Services (AMAS) has completed a review of Contracting Out / Regents Policy 5402 (Systemwide) as part of a Systemwide Contracting Out Audit, under the direction of the University of California (UC) Office of the President (UCOP). This systemwide review was performed based on an audit program provided by UCOP. Locations with Health operations were directed to evaluate compliance at both the Campus and Health enterprises. This report covers UCSD Health and supplements the Systemwide Contracting Out Audit, Project No. P23A002, issued by the Office of Ethics, Compliance, and Audit Services (ECAS) (pending UCOP report release).

On November 14, 2019, the Regents of the University approved Regents Policy 5402: Policy Generally Prohibiting Contracting for Services (Policy). This Policy prioritizes the use of UC employees over contract workers to provide covered services whenever possible. Contracting out for covered services should be used sparingly and treated as an option of last resort to address temporary needs, and not as a means to replace UC employees with lower-wage workers.

The Policy provides an opportunity for contracted employees who have performed services to the University on a long-term and continuous basis the opportunity to become University employees. No later than February 15, 2020, the University was required to identify covered services that have been provided on a continuous basis for 12 months or more through service which should be in-sourced<sup>1</sup> contracts to the fullest extent possible.

Contracting out for covered services only is permitted where contracting out is required by law, Federal requirements, contract or grant requirements, court decision or orders, or under the six limited circumstances noted in the Policy<sup>2</sup>. The Policy establishes standards for contracts for covered services exceeding \$100,000 to include provisions requiring contractors to provide its employees working at University locations wages and benefits that are equivalent to the University wages and benefits provided to the University employees performing the same work. There should not be displacement of University employees due to entering into a contract for covered services.

The University has determined that the American Federation of State, County & Municipal Employees (AFSCME) Collective Bargaining Agreement (CBA) Article 5<sup>3</sup> takes precedence over the Policy. Article 5 requires the University to convert contracted employees that meet the conversion criteria of 1,000 hours over a rolling (12) month period or 35% time over a rolling thirty-six (36) month period. The qualified employee will be placed in a career position no later than 120 days from the time the application to convert was received. UCOP issued the Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services (Implementation Guidelines) in May 2020 to provide guidance to location on the implementation of the Policy and Article 5. To assess the implementation

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<sup>1</sup> In-sourcing occurs when service contracts are terminated or not renewed, and the work is transferred to UC employees either by converting the supplier's employees or hiring additional employees to fill newly created positions.

<sup>2</sup> These circumstances include 1) actual emergency, 2) expertise not available locally, 3) incidental to purchase/lease of real or personal property, 4) urgent, temporary or occasional in nature, 5) contractor has equipment, materials, facilities or support services not feasibly available or 6) short-term staffing needs in clinical operations.

<sup>3</sup> The contract executed between UC and AFSCME and ratified for SX bargaining unit employees on January 31, 2020, and for EX bargaining unit employees on February 7, 2020.

of Policy 5402 and Article 5, UCOP required a systemwide audit to evaluate processes and controls in place to facilitate compliance with contracting out requirements and Regents Policy 5402.

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### III. AUDIT OBJECTIVE, SCOPE, AND PROCEDURES

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The overall objective of our review was to evaluate UCSD processes and controls in place for compliance with the Contracting Out Implementation Guidelines for Regents Policy 5402 and AFSCME Article 5. The review was performed based on an audit program provided by UCOP ECAS and included the Campus and Health enterprises, which are being separately reported.

In order to achieve our objective, we performed the following:

- Reviewed the following:
  - Regents Policy 5402: Policy Generally Prohibiting Contracting for Services;
  - Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services;
  - UC Policy BFB-BUS-43 Purchases of Goods and Services, Supply Chain Management;
  - AFSCME Article 5;
  - AFSCME Article 10 Grievance Procedures; and
  - UCOP Terms and Conditions of Purchase, dated December 14, 2021;
  - List of active contracts and purchase orders that include services;
  - List of all active covered services contracts reported to AFSCME as of February 2022;
  - UCOP-provided supplier workplace poster template;
  - UCOP-provided Qualified Individuals (QI) hiring poster;
- Interviewed the following:
  - Director, Supply Chain Management Services;
  - Senior Contract Specialist, Supply Chain;
  - Labor Relations Representative;
- Evaluated the following:
  - A sample of 15 of 14,360 total identified service contracts;
  - A sample of six of 55 identified active covered service contracts;
  - A sample of 10 of 105 individuals from the QI listing;
  - A sample of six of 60 terminations of covered services employees; and
- Testing the following in our sample selections:
  - Assessed if any covered services contracts were not properly identified in the total service contracts population;
  - Assessed if each active covered service contract reviewed included justification for the decision to contract out for services;
  - Verified compliance with wage and benefit parity requirements in each active covered service contract reviewed;
  - Verified the QIs reviewed met in-sourcing criteria;
  - Verified the QIs reviewed started employment with UCSD within 120 days of submitting a written request;
  - Assessed whether terminated employees were displaced due to a contract for covered services;

- Assessed whether the AFSCME Article 5 Notice was issued to AFSCME;
- Assessed the completeness and accuracy of reported contract information (contract start and end dates, wage and benefit parity rates and employee titles) compared to supporting documentation;
- Verified grievances were addressed consistent with the defined grievance procedures;

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## IV. CONCLUSION

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Based on our review procedures, we concluded that the UCSD Health processes for compliance with the Contracting Out Implementation Guidelines for Regents Policy 5402 and AFSCME Article 5 were generally compliant with applicable policies with the exception of the following areas:

- Covered services identification and annual reporting;
- Review and evaluation of decisions to contract out;
- Monitoring suppliers' compliance with wage and benefit parity requirements;
- Identification and conversion of Qualified Individuals (QIs);
- Grievances;
- Required Notices.

In most cases, the opportunities for improvement noted for our campus aligned with observations in the Systemwide Audit Report (Addendum 1), and were addressed through the Systemwide recommendations. The Systemwide Audit Report contains a total of 18 recommendations, including 13 to systemwide stakeholder groups and five to the campus locations. In some cases, Systemwide recommendations related to findings that were observed at other locations, but not at UCSD. In these cases, there are Systemwide recommendations to campuses to implement updated guidance that will be issued by UCOP on these topics. We also had three additional recommendations which were based on local observations. The Systemwide and Local management corrective actions (MCAs) for the audit recommendations are summarized in Addendum 2.

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## V. SUMMARY OF LOCAL OBSERVATIONS

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<b>A.</b>	<b>Covered Services Identification and Annual Reporting</b>
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### Covered Services Identification

We noted that Health Procurement does not have a formal process to manage purchase orders for contracts and how to readily identify contracts that include covered services and ensure the completeness of that list. Health Procurement currently runs data from PremierConnect and reviews individual purchase orders to identify covered services contracts for inclusion in the annual reporting, which is cumbersome and time-consuming. Given the manual nature of the review, there is increased risk of inadvertently excluding contracts which should be reported.

This exception was not specifically mentioned in the UCOP Audit Report, therefore local Recommendation A.1 in Addendum 2 addresses this finding.

### Annual Reporting

The Implementation Guidelines state that there will be an annual report (due on February 15 of each year) of all contracts for covered services, regardless of amount or duration, for the Regents and AFSCME. This report will include the following:

- List of existing contracts
- Information on titles and wage/benefit parity rates in effect for each contract

During our review of the 2021 AFSCME annual report and the supporting documentation for the six contracts selected for testing, we noted that some contracts included incorrect and missing information.

- One contract<sup>4</sup> did not have wage and benefit parity rates listed on the AFSCME report.
- Three contracts had different start and end dates compared to the dates listed on the annual report.
- One contract that was included in the annual report was not found in the purchase orders data listing provided by Health Procurement.

Health Procurement has indicated that while preparing the 2022 annual report, errors identified in the 2021 report had been revised and resolved through a thorough quality assurance review.

This finding is summarized in the UCOP Audit Report in Section II.1.g, however there is no related systemwide recommendation. Local Recommendation A.1 in Addendum 2 addresses this finding.

<b>B.</b>	<b>Review and Evaluation of Decisions to Contract Out</b>
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Article 5 of the AFSCME CBA has limited circumstances consisting of six requirements where contracting out for covered services is allowed. The rationale for contracting out must be documented including the specific carve-out listed in the AFSCME CBA, and details of all efforts made to in-source the service, on a “Rationale for Contracting Covered Services” form. In four of the six contracts reviewed, the “Rationale for Contracting Covered Services” documentation was not completed. For these four agreements, two have since been terminated, one will terminate in 2023 with plans to in-source this calendar year, and another is also planned to in-source this calendar year.

This finding is summarized in the UCOP Audit Report in Section II.1.a, however there is no related systemwide recommendation. Local Recommendation B.1 in Addendum 2 addresses this finding.

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<sup>4</sup> There has been a local process in place to share wage and benefit parity data in a detailed worksheet annually between the supplier and appropriate UCS DH personnel to implement wage adjustments; however, reference to this process or the shared worksheet have not been referenced in or incorporated into the underlying agreement and/or appendices. Management expects this process and associated required schedules to be formalized with a new agreement in the near future.

<b>C.</b>	<b>Monitoring Suppliers' Compliance with Wage and Benefit Parity Requirements</b>
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University Policy (BFB-BUS-43 Purchases of Goods and Services) states that UCOP terms and conditions apply to all contracts for services with suppliers. Health Procurement is responsible for initiating the execution of contracts and their amendments. There has not been a consistent practice to provide UC terms and conditions to suppliers when a new contract or an amendment is executed.

Health Procurement's current process is that not all contracts require an amendment when extending a purchase order. Once a contract ends there is an option to issue an updated purchase order which includes a statement about and link to the current terms and conditions.

During our review, we found one supplier contract included the current wage and benefit parity appendix, however it was not signed and was blank. As mentioned above, there has been a local process in place to share wage and benefit parity data in a detailed worksheet annually between the supplier and appropriate UCSDH personnel to implement wage adjustments; however, reference to this process or the shared worksheet have not been historically referenced in or incorporated into the underlying agreement and/or appendices. Management has indicated that this process and associated required schedules is expected to be formalized with a new systemwide agreement with the supplier currently being finalized.

This finding is summarized in the UCOP Audit Report in Section II.1.a, and a recommendation to locations is included in Addendum 2 as Recommendation 1.a.2.

<b>D.</b>	<b>Identification and Conversion of Qualified Individuals (QIs)</b>
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#### Identification of QIs

According to the Contracting Out Implementation Guidelines, supplier employees are required to meet 1,000 hours in a 12-month period or 35% time over a rolling thirty-six (36) month period performing the same services at the same UC location to be eligible for conversion to UC career employment. The current process to validate supplier employee hours is obtained from worksheets provided by the contractor. This process may result in data errors or incomplete information.

Health Labor Relations participated in a pilot of a centralized UC portal for suppliers to provide employee hours and for Health Labor Relations to track and verify hours for QIs. UC Policy 5402 and Article 5 do not require labor relations to track hours and are instead expected to conduct "best efforts" to ensure the accuracy of hours.

#### UC Career Employment Conversion Notices

Furthermore, we observed that the QI hiring poster, which is intended to inform contract employees of the requirements for converting to a UC career employee, was not displayed. Health Labor Relations stated that they were not previously aware of this poster, and there was no clear guidance on the expectations for distributing the poster.

Both findings above are summarized in the UCOP Audit Report in Section II.1.b, and a recommendation to locations is included in Addendum 2 as Recommendation 1.b.3.

<b>E.</b>	<b>Grievances</b>
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Per the Grievance procedures set forth in Article 9.I of the AFSCME – EX bargaining agreement and Article 10.I of the AFSCME – SX bargaining agreement, “The University Step 1 grievance official shall acknowledge receipt of the grievance in writing.” The immediate supervisor is required to review the grievance and meet with the grievant representative to discuss the grievance. A written response will be issued within 15 calendar days after receipt of the grievance to the employee or representative. If the University’s written response is not issued within these time limits or grievance is not resolved at Step 1, the grievance may be appealed to Step 2. If the grievance is denied at Step 2, it can be appealed to arbitration.

One of the five grievances sampled received an appeal for arbitration from AFSCME on 10/19/21, arbitration was remanded to UCSDH “with oversight from UCOP” on 11/05/21 and an arbitrator agreed to by both parties on 04/13/22 but the resulting hearings were not conclusive. Subsequent discussions between UCSDH and UCOP occurred on 12/08/22 where it was agreed that UCOP and outside counsel would retain representation. However, grievance tracking information maintained by UCOP as of March 2023 still categorized this grievance as remanded to the local campus. In this case there was a lack of consistency in UCOP’s tracking of who was responsible for this grievance. UCSDH records correctly showed that this grievance was being handled by UCOP.

This finding is summarized in the UCOP Audit Report in Section II.1.e, and a recommendation to locations is included in Addendum 2 as Recommendation 1.e.2.

<b>F.</b>	<b>Required Notices</b>
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#### Provision of Notice for Contracting Decisions

The Policy requires locations to comply with a provision communicating the AFSCME Article 5 Notice Template to AFSCME which includes the contract duration, scope of work, wage/benefit parity, dollar value, work location and justification for the contracting out decision information. The purpose of this notice is to ensure no AFSCME bargaining unit employees will be impacted by this contracting decision.

During our review, for the six suppliers sampled, we noted that AFSCME was not sent an Article 5 Notice by Health Procurement which is not in compliance with Policy 5402. Health Procurement did not have guidance from UCOP surrounding the role and expectation of providing the Notice to AFSCME.

This finding is summarized in the UCOP Audit Report in Section II.1.d, however there is no related systemwide recommendation. Local Recommendation C.1 in Addendum 2 addresses this finding.

Supplier Workplace Notice

The Policy requires suppliers to pay employees providing covered services to a University location equivalent wages and benefits that UC employees receive doing similar work. A supplier workplace poster, containing contact information for reporting issues related to wage and benefit parity conditions, must be displayed in visible areas for covered services employees to access. However, Health Procurement and Labor Relations were not aware of the supplier workplace poster template for reporting wage and benefit parity complaints. Health Procurement did not provide the poster to suppliers for sharing the necessary information with their employees and Health Labor Relations were not aware that they were required to post it in appropriate workspaces at Health facilities as applicable.

This finding is summarized in the UCOP Audit Report in Section II.1.f, and a recommendation to locations is included in Addendum 2 as Recommendation 1.f.2.

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

SYSTEMWIDE CONTRACTING OUT AUDIT  
Project No. P23A002  
April 2023

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

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# I. Executive Summary

## Introduction

In accordance with the fiscal year 2022-23 University of California (UC) audit plan, the systemwide Office of Ethics, Compliance and Audit Services (ECAS) oversaw a systemwide audit of compliance with contracting out requirements, including Regents Policy 5402: Policy Generally Prohibiting Contracting for Services and Article 5 of the Collective Bargaining Agreements (CBAs) with the American Federation of State, County and Municipal Employees (AFSCME). ECAS performed this audit in coordination with the internal audit departments at all UC locations using a standard systemwide audit program.

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

## Objective and Scope

**Objective:** The objective of this assessment is to evaluate processes and controls that facilitate compliance with contracting out requirements.

**Scope:** The scope of this audit included evaluation of the design and implementation of the processes and controls that facilitate compliance with contracting out requirements under Regents Policy 5402 and Article 5. While the audit focused on current processes, the evaluation of internal controls included review of documentation supporting implementation of contracting out requirements for the period of February 15, 2020<sup>1</sup> 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

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<sup>1</sup> Effective date of the Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services. Audit periods for tests of internal controls varied. For example, testing of Covered Services identification involved sample selections from active contracts as of December 31, 2021, while testing of QIs involved selection of supplier employees for all Covered Services contracts dating back to February 15, 2020.

- Tracking and reporting contract information to affected employee organizations and the Regents
- Mechanisms to facilitate reporting violations and respond to reported violations
- Processes for handling grievances
- Supplier audits

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

The audit scope did not include an assessment of controls and processes related to compliance with California Senate Bill 820, which imposed additional restrictions for contracting out for services performed in buildings that have received state capital funding.

## Background

On November 14, 2019, the Regents approved Regents Policy 5402: Regents Policy Generally Prohibiting Contracting for Services. This policy prioritizes the use of UC employees over contract workers to provide Covered Services<sup>2</sup> 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 AFSCME<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>2</sup> **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.

<sup>3</sup> **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.

<sup>4</sup> Current guidance is that UC location means all locations within the UC system (campuses, medical centers, Office of the President, the Lawrence Berkeley Lab, etc.) as well as properties that the University has leased from or to a third party.

If UC determines that it needs to contract for Covered Services, then the suppliers providing such services must pay their employees rates equivalent to the sum of the wages and benefits received by Bargaining Unit employees performing the same work.

Collectively, the requirements in Regents Policy 5402 and Article 5 include, but are not limited to the following:

- To the fullest extent possible, insource Covered Services work. As part of insourcing, use best efforts to identify supplier employees who meet the criteria for becoming a Qualified Individual (QI).<sup>5</sup> The University location must offer QIs career employment when insourcing Covered Services work.
- Contracting for Covered Services is permitted where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders, or limited circumstances (carve outs) established in the policy.
- University locations must provide advance notice to affected employee organizations prior to entering into, extending, or renewing a contract for Covered Services over \$100,000. University locations must also notify affected employee organizations when issuing an RFP with Covered Services estimated to be over \$100,000.
- Provide an opportunity to those affected employee organizations, upon receiving a notice, to request review of a proposed contract for Covered Services to determine whether the contract complies with policy requirements.
- Contracts for Covered Services must include provisions requiring the contractor to provide its employees the equivalent of wages and benefits provided to University employees performing the same work. This requirement, referred to as Wage and Benefit Parity (WBP), only applies to the contractor's employees providing services to the University under the Covered Service contract.
- Contracts for Covered Services must not displace University employees.
- Individuals providing services to the University under a Covered Service contract may request career employment when they meet the QI criteria.
- Produce an annual report of all contracts for Covered Services, regardless of amount or duration, and provide the report to affected employee organizations and the Regents.

On February 15, 2020, the Office of the Chief Procurement Officer issued Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services (Implementation Guidelines), which provide guidance to UC personnel on implementing Regents Policy 5402 and Article 5. Since then, UCOP has provided new guidance on contracting out requirements to UC locations in other forms.

## **Overall Conclusion**

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

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

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

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<sup>5</sup> QIs are individuals who have provided Covered Services to the University for 1,000 hours in a rolling 12-month period or 35% (~2,200 hours) in a rolling 36-month period.

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

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

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

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

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

## II. Opportunities for Improvement and Recommendations

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

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

#### a) Procurement and Contracting Processes

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

*Processes to identify Covered Services purchasing activity require improvement.*

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

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

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

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

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

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

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

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

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

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

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

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

### ***Recommendations***

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

- 1.a.1 Systemwide Procurement should issue guidance to provide clear direction to UC locations on the following contracting out compliance requirements related to procurement and contracting:
  - Requirements for monitoring lower-value purchasing activity (such as purchase orders, automatic purchase orders, purchasing cards, and travel and entertainment reimbursements) to identify procurement of Covered Services
  - Acceptable practices for documenting Covered Services-related terms and conditions in supplier contracts and purchase orders.
- 1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.

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

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

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

*Processes to track and identify QIs require improvement.*

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

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

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

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

*Processes to convert QIs to UC career employment require improvement.*

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

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

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

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

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

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

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

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

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

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

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

In October 2022, Systemwide HR partnered with Systemwide Procurement to initiate a request for proposal (RFP) to identify a supplier to provide a managed compliance tool with service support to facilitate tracking and reporting of QIs for suppliers of Covered Services at UC locations. The RFP also outlined that the identified supplier would be responsible for assisting with onboarding and management of Covered Services suppliers, communicating policy and reporting requirements to suppliers and supplier employees, managing the QI vetting and onboarding process, and managing communications regarding UC requests for supplier WBP audits. A supplier was selected in January 2023 and a plan has been developed to implement this tool systemwide by the end of calendar year 2023.

***Recommendations:***

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

- 1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.
- 1.b.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs:
  - QI monitoring and identification, including appropriate protocols for instances in which a location determines that a supplier employee reached QI eligibility in the past but has since stopped providing services to the University for an extended period of time
  - QI conversion to UC career employment, including the timeframe in which QIs must be notified of an option for employment and procedures for non-responsive QIs
  - Any allowable exceptions to required timeframes for QI conversion, such as certain categories of employees that require additional background checks
  - Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used
- 1.b.3 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.

**c) Compliance with Employee Displacement Requirements**

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

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

***Recommendations:***

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

- 1.c.1 Systemwide HR should issue guidance to provide clear direction to UC locations on required procedures to comply with employee displacement requirements when contracting out for covered services.

1.c.2 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.

**d) Provision of Notice for Contracting Out Decisions**

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

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

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

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

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

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

***Recommendations:***

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

**e) Article 5 Grievances**

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

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

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

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

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

*Recordkeeping for Article 5-related grievances requires improvement.*

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

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

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

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

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

- Requirements for recordkeeping
- Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration
- Criteria for notifying Systemwide Labor Relations regarding locally filed grievances
- Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process

## ***Recommendations***

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

- 1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances:
  - Requirements for recordkeeping
  - Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration
  - Criteria for notifying Systemwide Labor Relations regarding locally filed grievances
  - Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process
- 1.e.2 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.
- 1.e.3 Labor Relations should implement a systemwide case management system for handling Article 5-related grievances. This system should be a central system of record for all grievances systemwide and should have the following capabilities:
  - Tracking and reporting on the current status of all grievances systemwide
  - Update (write) access and visibility of grievance status (step progress) for all UC labor relations departments
  - Built-in logic to identify and track grievance steps and associated timeline requirements depending on the category of grievance filed
  - Ability to attach documents to grievance records supporting each location's completion of required steps
  - Ability to flag grievances as "systemwide" (when grievances impact multiple locations)

### **f) Reporting Violations of Contracting Out Requirements**

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

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

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

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

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

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

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

***Recommendations:***

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

- 1.f.1 Systemwide HR should issue guidance to provide clear direction to UC locations on requirements for provision of required employee notices to suppliers, including the appropriate template(s) to be used.
- 1.f.2 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.
- 1.f.3 Systemwide HR should revise the category used to classify reported contracting out-related violations in the systemwide whistleblower system to make it more specific. Consider including terms like “AFSCME Article 5” or “Regents Policy 5402” in the category description.

**g) Preparation of Annual Report to AFSCME**

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

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

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

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

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

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

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

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

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

***Recommendations:***

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

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

**2. The University has initiated a supplier audit program.**

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

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

***Recommendations:***

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

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

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

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

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

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

*The Implementation Guidelines contain outdated requirements.*

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

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

***Recommendations:***

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

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

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

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

## Appendix A: Systemwide Recommendations and Management Corrective Actions

Recommendation	UCOP Management Corrective Action and Target Date
<b>Procurement and Contracting Processes</b>	
<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"> <li>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</li> <li>Acceptable practices for documenting Covered Services-related terms and conditions in supplier contracts and purchase orders.</li> </ul>	<p>Systemwide Procurement is reviewing existing policy regarding Lower Value Purchases to determine what gaps exist and how to best identify Covered Services purchases. Updated guidance will be provided to UC locations based on this analysis.</p> <p>Systemwide Procurement is in the process of revising the existing Terms &amp; Conditions and will address acceptable practices for documenting Contracting for Covered Services Terms &amp; Conditions as part of that overhaul.</p> <p><b>Target Date:</b> July 31, 2023</p>
<p>1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>N/A – Recommendation to locations</p>
<p>1.a.3 Systemwide Procurement should ensure that outdated versions of UC’s terms and conditions are fully removed from public-facing UCOP websites such that they do not appear in Internet search results.</p>	<p>Systemwide Procurement will work with IT Services to either remove outdated versions of UC’s terms and conditions from public facing UCOP websites or clearly label them as not current.</p> <p><b>Target Date:</b> June 30, 2023</p>
<b>Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment</b>	
<p>1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.</p>	<p>The implementation of UC-Wide Qualified Individual (QI) Tracking &amp; Wage Benefit Parity Audit Project kick off is scheduled for April 10 and 11, 2023. Implementation preparations are underway, and the effort is projected to take 16 weeks. UCOP and the locations have key procurement and labor roles related to implementation, with locations defining roles related to implementation.</p> <p><b>Target Date:</b> December 31, 2023</p>
<p>1.b.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs:</p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p>The implementation of the QI Tracking and WBP Audit project will address these issues. In the interim, UCOP will issue guidance to improve QI operations between current practices and implementation. This includes requiring locations to provide updated QI data, guidance to locations regarding appropriate notices, and information regarding QI tracking requirements.</p> <p><b>Target Date:</b> May 15, 2023</p>

Recommendation	UCOP Management Corrective Action and Target Date
<ul style="list-style-type: none"> <li>• 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</li> <li>• Any allowable exceptions to required timeframes for QI conversion, such as certain categories of employees that require additional background checks</li> <li>• Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used</li> </ul>	<p>Systemwide HR has also secured funding for a workforce commitment office that will be dedicated to optimizing and supporting the university’s commitment to insourcing covered services work and compliance with outsourcing obligations. The workforce commitment office will also create needed capacity to support this work.</p> <p><b>Target Date:</b> December 31, 2023</p>
<p>1.b.3 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p>	<p>N/A – Recommendation to locations</p>
<b>Compliance with Employee Displacement Requirements</b>	
<p>1.c.1 Systemwide HR should issue guidance to provide clear direction to UC locations on required procedures to comply with employee displacement requirements when contracting out for covered services.</p>	<p>Given that the audit found no instances where employees were displaced as a result of contracting out activities, UCOP will consult with Chief Human Resources Officers and issue recommended practices to support and document this requirement.</p> <p><b>Target Date:</b> July 1, 2024</p>
<p>1.c.2 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>N/A – Recommendation to locations</p>
<b>Article 5 Grievances</b>	
<p>1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances:</p> <ul style="list-style-type: none"> <li>• Requirements for recordkeeping</li> <li>• Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration</li> <li>• Criteria for notifying Systemwide Labor Relations regarding locally filed grievances</li> <li>• Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process</li> </ul>	<p>UCOP Labor Relations will work with locations to implement roles and responsibilities related to record keeping, notification requirements, abandoned grievances, and retain and remand decisions. The workforce commitment office will also create needed capacity to support this work.</p> <p><b>Target Date:</b> December 31, 2023</p>

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

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

## Appendix B: Glossary of Terms

**American Federation of State, County and Municipal Employees (AFSCME):** A labor union that represents two University bargaining units, the Service (SX) unit and the Patient Care Technical (EX) unit. AFSCME represented employees perform the majority Covered Services (defined below).

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

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

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

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

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

**Covered Services:** Work customarily performed by bargaining unit employees at the University, whether in whole or in part, including but not necessarily limited to the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping; building maintenance (excluding skilled crafts); transportation and parking services; security services, billing and coding services, sterile processing, hospital or nursing assistant services, and medical imaging or other medical technician services.

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

**Qualified Individuals (QIs):** Individuals who have provided Covered Services to the University for 1,000 hours in a rolling 12-month period or 35% (~2,200 hours) in a rolling 36-month period.

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

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

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

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

**ADDENDUM 2**

**Management Corrective Actions from Systemwide Report**

<b>CAMPUS: UCSD</b>		
<b>Recommendation to UCOP</b>	<b>Recommendation to Locations</b>	<b>Management Corrective Action and Target Date</b>
<b>Procurement and Contracting Processes</b>		
<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"> <li>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</li> <li>Acceptable practices for documenting Covered Services-related terms and conditions in supplier contracts and purchase orders.</li> </ul>	<p>1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>UCSDH Procurement will implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p> <p>Target Date: February 1, 2024</p> <p><u>Note:</u> This date is 6 months after UCOP completion of guidelines per MCA 1.a.1 (estimated July 31, 2023).</p>
<b>Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment</b>		
<p>1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.</p>	<p>1.b.3 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals and implement the QI tracking tool procured by UCOP.</p>	<p>UCSDH Procurement and Labor Relations will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals.</p> <p>Target Date: November 15, 2023</p> <p><u>Note:</u> This date is 6 months after UCOP completion of guidelines per MCA 1.b.2 (estimated May 15, 2023).</p> <p>UCSD Health, in coordination with UC Health efforts, will evaluate QI Tracking tools and develop an action plan to either leverage the tool or develop an alternative</p>
<p>1.b.2 Systemwide HR should issue guidance to provide clear direction to UC locations on the following compliance requirements for QIs:</p> <ul style="list-style-type: none"> <li>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</li> <li>QI conversion to UC career employment, including the timeframe in which QIs must be</li> </ul>		

<b>CAMPUS: UCSD</b>		
<b>Recommendation to UCOP</b>	<b>Recommendation to Locations</b>	<b>Management Corrective Action and Target Date</b>
<p>notified of an option for employment and procedures for non-responsive QIs</p> <ul style="list-style-type: none"> <li>Any allowable exceptions to required timeframes for QI conversion, such as certain categories of employees that require additional background checks</li> <li>Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used</li> </ul>		<p>method to meet the requirements in the systemwide QI guidance.</p> <p>Target Date: July 1, 2024</p> <p><u>Note:</u> This date is 6 months after UCOP completion of action plan for QI Tracking tool per MCA 1.b.1 (estimated December 31, 2023).</p>
<b>Compliance with Employee Displacement Requirements</b>		
<p>1.c.1 Systemwide HR should issue guidance to provide clear direction to UC locations on required procedures to comply with employee displacement requirements when contracting out for covered services.</p>	<p>1.c.2 Locations should implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>UCSDH Labor Relations will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p> <p>Target Date: January 1, 2025</p> <p><u>Note:</u> This date is 6 months after UCOP completion of guidelines per MCA 1.c.1 (estimated July 1, 2024).</p>
<b>Article 5 Grievances</b>		
<p>1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances:</p> <ul style="list-style-type: none"> <li>Requirements for recordkeeping</li> <li>Roles and responsibilities of the locations and Systemwide Labor Relations for grievance administration</li> </ul>	<p>1.e.2 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p>	<p>UCSDH Labor Relations will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p> <p>Target Date: October 1, 2024</p>

<b>CAMPUS: UCSD</b>		
<b>Recommendation to UCOP</b>	<b>Recommendation to Locations</b>	<b>Management Corrective Action and Target Date</b>
<ul style="list-style-type: none"> <li>Criteria for notifying Systemwide Labor Relations regarding locally filed grievances</li> <li>Procedures and documentation requirements for instances in which AFSCME is non-responsive during the grievance or appeals process</li> </ul>		<p><u>Note:</u> This date is 6 months after UCOP completion of guidelines per MCA 1.e.1 (estimated December 31, 2023).</p>
<b>Reporting Violations of Contracting Out Requirements</b>		
<p>1.f.1 Systemwide HR should issue guidance to provide clear direction to UC locations on requirements for provision of required employee notices to suppliers, including the appropriate template(s) to be used.</p>	<p>1.f.2 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.</p>	<p>UCSDH Procurement and Labor Relations will implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.</p> <p>Target Date: November 15, 2023</p> <p><u>Note:</u> This date is 6 months after UCOP completion of guidelines per MCA 1.f.1 (estimated May 15, 2023).</p>

**Management Corrective Actions from Local Report**

<b>Recommendation</b>	<b>Management Corrective Action</b>	<b>Target Date</b>
A.1 Health Procurement should document procedures to ensure that contracts for covered services are consistently identified, and perform a quality assurance review on data submitted for purposes of the AFSCME annual report.	Health Procurement will document procedures to ensure that contracts for covered services are consistently identified, and perform a quality assurance review on data submitted for purposes of the AFSCME annual report.	December 1, 2023
B.1 Health Procurement should ensure that the justification to contract out for services is completed and fully documented prior to the execution of a contract with suppliers.	Health Procurement will ensure that the justification to contract out for services is completed and fully documented prior to the execution of a contract with suppliers.	December 1, 2023
C.1 Health Labor Relations should ensure that Article 5 contracting notices are sent to AFSCME as required.	Health Labor Relations will ensure that Article 5 contracting notices are sent to AFSCME as required.	December 1, 2023