

**UNIVERSITY OF CALIFORNIA, DAVIS  
AUDIT AND MANAGEMENT ADVISORY SERVICES**

**UC Davis  
Contracting Out  
Audit & Management Advisory Services Project #23-06**

**June 2023**

**Fieldwork Performed by:**

Gagan Kaur, Sr. Auditor  
Pamela Ranslow, Sr. Auditor  
Hiba Baloch, Law Fellow

**Reviewed by:**

Tony Firpo, Associate Director

**Approved by:**

Ryan Dickson, Interim Director

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**MANAGEMENT SUMMARY**

**Background**

At the direction of Ethics Compliance and Audit Services (ECAS) at the Office of the President (OP), and as part of the fiscal year (FY) 2023 audit plan, Audit and Management Advisory Services (AMAS) reviewed the contracting out process. This process is subject to requirements contained in Article 5 of the two collective bargaining agreements (CBAs) with AFSCME<sup>1</sup> and Regents Policy 5402: Policy Generally Prohibiting Contracting for Services.

Article 5 generally prohibits contracting for services and functions that can be performed by University employees. Article 5 also contains limited exceptions to this general prohibition and requirements that are triggered when a university contracts out for Covered Services<sup>2</sup>.

On November 14, 2019, the Regents approved Regents Policy 5402. This policy prioritizes the use of UC employees over contract workers whenever possible and ensures contracting for Covered Services is utilized sparingly to address specified needs - not as means to replace UC employees with lower-wage contract workers. The Regents have made clear that Article 5 takes precedence over Regents Policy 5402.

On February 15, 2020, the Office of the Chief Procurement Officer issued Implementation Guidelines that provide guidance to UC personnel with the implementation of Regents Policy 5402 and Article 5. In a situation where UC contracts out for Covered Services, these specific guidelines must be followed.

In addition, ECAS developed a Systemwide Contracting Out Audit report based on information gathered by each location's<sup>3</sup> internal audit department. The report provides a consolidation of the systemwide findings and a set of corresponding recommendations to address these findings. A summary of the systemwide recommendations for the locations is included in **Appendix A**.

**Purpose and Scope**

The purpose of this audit was to evaluate processes and controls in place to facilitate compliance with contracting out guidelines and requirements.

To accomplish these objectives, we conducted interviews with Supply Chain Management (SCM) and Employee and Labor Relations (ELR) to gain understanding of the contracting process and reviewed:

- Procedures to identify covered services.

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<sup>1</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>2</sup> Per Article 5 and Regents Policy 5402, Covered Services refers to work customarily performed by bargaining unit employees, 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> All UC Campuses and health systems, LBNL, UCOP, and ANR.

- 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 monitor contractors' compliance with wage and benefit parity (WBP) requirements.
- Procedures to track contractor hours and identify contract workers that meet the in-sourcing criteria.
- Procedures to comply with employee displacement requirements.
- Processes by which Qualified Individuals (QIs) are provided options of UC career employment.
- Processes to submit notices for contracting decisions.
- Tracking and reporting contract information to affected employee organizations and the Regents.
- Mechanisms to facilitate reporting violations and responding to reported violations.
- Processes for handling grievances.

The scope of the review covered activities in the Calendar Year (CY) 2022, including those reported in the CY 2021 AFSCME Report reported in February 2022.

### **Conclusion**

While SCM and ELR have internal controls and procedures in place to contract out covered services in accordance with Article 5 and Implementation Guidelines, there are opportunities for improvement in the following areas:

- I. Covered Services Identification
- II. Monitoring Suppliers' Compliance with Wage and Benefit Parity Requirements
- III. Identification of QIs/UC Career Employment Conversion
- IV. Provision of Notice for Contracting Decisions
- V. Tracking and Reporting Contract Information

Detailed observations, recommendations and management corrective actions are contained within the body of the report.

In addition, ECAS noted that additional guidance from OP is required to established measurable standards and clarify UC locations' compliance obligations for certain areas related to contracting out requirements, including:

- Monitoring lower value purchasing activity
- Contracting out terms and conditions
- QI monitoring and identification
- QI conversion to UC career employment
- Posting of notices on requirements for converting to UC career employment
- Procedures to comply with employee displacement requirements
- Handling of Article 5-related grievances
- Provision of employee notices to suppliers

A summary of the systemwide recommendations and associated management corrective actions is included in **Appendix A**.

**Observations, Recommendations, and Management Corrective Actions**

**I. Covered Services Identification**

Ref.	Observations	Recommendation	Management Corrective Actions
A	<p><b><i>Existing controls to identify covered services are not sufficient to capture all covered service contracts.</i></b></p> <p>This observation addresses contracts subject to SCM oversight, as well as Automatic Purchase Orders (APOs) and Travel &amp; Entertainment Cards (T&amp;E cards), which are not subject to SCM oversight.</p> <p>Once a covered service need is identified, departments initiate a request to contract out that is routed to SCM and ELR for evaluation and approval. This is the primary method by which covered services contracts are identified and processed at UC Davis. Additionally, in 2021, for all contracts routed to SCM, the unit began using covered service commodity codes to identify and track contracts for covered services<sup>4</sup>. SCM runs reporting on commodity codes to identify covered services contracts not identified or processed using the standard process. Any purchases of covered services not routed to SCM are not subject to this control.</p> <p><b><i>1. Contracts Subject to SCM Oversight</i></b>                      AMAS reviewed a judgmentally selected sample of 15 active service contracts<sup>5</sup> to determine whether the contracts are for covered services. Any confirmed contracts for covered services would have needed to be reported in the CY 2021 AFSCME Article 5 CBA Report<sup>6</sup> (“CY 2021 AFSCME Report”).</p>	<p>SCM should improve controls to manage risk surrounding identification of potential contracts for covered services, including enhanced compliance with contracting protocols such as adding correct commodity codes to contracts. Controls should be documented.</p> <p>SCM should improve controls to manage risk surrounding the use of T&amp;E cards and APOs to purchase covered services.</p>	<p>1) By 10/15/2023, SCM will revise existing controls to identify purchases of covered services subject to SCM Oversight. The process will be documented and include regular reviews for improvement.</p> <p>2) By 4/1/2024, SCM will revise existing controls to process purchases of covered services using all procurement methods, including T&amp;E cards and APOs.</p>

<sup>4</sup> For a contract request to route to SCM, departments must first identify the request correctly as a general service contract. General services are one of several “restricted commodities” that trigger routing to SCM. Once routed to SCM, the service contract is reviewed to determine whether it is for a covered service. If so, SCM will attach a covered service commodity code. Departments do not attach covered service commodity codes to contracts.

<sup>5</sup> All “active service contracts” discussed in this report are defined as contracts for services that were in effect as of 12/31/2021 and had not yet been closed as of 12/31/2021, unless noted otherwise.

<sup>6</sup> Per Article 5.D.7, the University at the Systemwide level shall produce an annual report of all contracts for covered services, regardless of amount or duration, and shall provide the report to AFSCME.

	<p>At UCOP’s direction, AMAS vetted these contracts with Campus ELR and received confirmation that four<sup>7</sup> out of the 15 contracts selected were for covered services and should have been included in the CY 2021 AFSCME Report.</p> <p>SCM maintains that two of the four contracts did not include covered service commodity codes as they were processed and coded prior to implementation of the new commodity codes. The remaining two contracts did include covered services commodity codes however they failed to be identified by SCM during its commodity code review. All four contracts were to be identified and reported in the CY 2021 AFSCME Report.</p> <p><u>2. Automatic Purchase Orders (APOs)</u>                  An APO is created if a) there are no restricted commodities included on a requisition and b) the total dollar limit does not meet nor exceed \$10,000. Restricted commodities include “services”, and “services” include covered services. Fiscal officer approval is required. APOs are not routed to SCM for processing.</p> <p>In at least one instance, a department incorrectly coded a purchase of covered services using a nonrestricted code and the purchase was for less than \$10,000; therefore, the purchase was made using an APO and never routed to SCM for processing. Ultimately, the contract services here were rendered prior to 2020 so there was no need to report the contract in the CY 2021 AFSCME Report.</p> <p><u>3. Travel and Entertainment Cards (T&amp;E cards)</u>                  Departments can use T&amp;E cards for expenses in accordance with local as well as Office of the President policies. There was at least one instance of a department purchasing covered services (catering) using a travel and entertainment card, meaning the purchase bypassed existing preventive controls as described above. These types of purchases should have been identified and reported in the CY 2021 AFSCME Report.</p>	<p>Controls should be documented.</p>	
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<sup>7</sup> Six contracts were identified as potential covered services, however two of them were omitted from further review. One contract was tied to an agreement that was reported in the CY 2021 AFSCME Report. Another contract was initiated by the department in 2021, however SCM did not approve the contract until 2022, therefore it was not actually active until 2022 and would not have been subject to reporting in 2021.

**II. Monitoring Suppliers' Compliance with Wage and Benefit Parity Requirements**

Ref.	Observations	Recommendation	Management Corrective Actions
B	<p><b><i>Throughout 2020 and 2021, OP guidance and direction pertaining to compliance with WBP rate requirements was inconsistent and evolving; as a result, corresponding local procedures to comply with WBP rate requirements were equally inconsistent and evolving.</i></b></p> <p>For the scope of time under review (2020-2021), UCOP (Procurement/Legal) provided campuses with fluctuating guidance and expectations regarding compliance with WBP rate requirements<sup>8</sup>. This contributed to some of the findings indicated below. UCOP has since provided standard guidance and SCM indicated local procedures have been amended accordingly to enhance accuracy and timeliness of compliance with WBP rate requirements.</p> <p>AMAS reviewed a judgmentally selected sample of five contracts for covered services to determine whether WBP rates were included or excluded from the contracts in accordance with requirements. AMAS reviewed original agreements or purchase orders and any amendments applicable from 2020 through 2021. Altogether, seven individual contracts were reviewed.</p> <p>We observed that approximately 70% of contracts reviewed included or excluded WBP rates in compliance with requirements.</p> <p>The following were observed with respect to the remaining ~30% of contracts:</p> <ul style="list-style-type: none"> <li>• In at least one case, the WBP rate was inappropriately included in the contract. Because the contracted services were performed <u>off-site</u>, the supplier was exempt from the requirement of paying its employees WBP rates. SCM identified and corrected this issue prior to the AMAS review; however, the supplier was still subject to WBP provisions for approximately two years before the issue was remedied.</li> <li>• Historical, rather than current, WBP rates were included in contracts.</li> <li>• Contracts were not amended to include applicable WBP rates by the WBP rate effective date.</li> </ul>	<p>SCM should implement procedures to increase compliance with WBP rate requirements.</p>	<ol style="list-style-type: none"> <li>1) By 7/15/2023, SCM will update all current active covered service contracts with the current WBP rates, except for those with off-site services.</li> <li>2) By 7/15/2023, SCM will review current active covered service contracts for off-site services and execute amendments to omit WBP rates if included in contracts.</li> <li>3) By 10/15/2023, SCM will revise existing procedures for adding WBP rates to new and existing contracts.</li> </ol>

<sup>8</sup> Per Article 5 B.1, contractor must provide its service employees with wages and benefits of equivalent value to those provided to bargaining employees performing same/similar duties at the work location or nearest University location if the work is being performed by non-bargaining unit employees. In determining equivalent value, the University shall determine the pay rate and composite benefits rate.

**III. Identification of Qualified Individuals (QIs) / UC Career Employment Conversion**

Ref.	Observations	Recommendation	Management Corrective Actions
<b>C</b>	<p><b><i>There is no mechanism for tracking contractors' hours.</i></b></p> <p>To identify qualified individuals (QIs)<sup>9</sup>, ELR requests contractors to provide hours on a quarterly basis. However, ELR did not develop a process to track contractors' hours. As a result, ELR was not able to provide summary of hours obtained prior to Q4, FY 2022.</p> <p>In addition, there were eight active contracts for covered services for which hours prior to Q4, FY 2022 were not requested.</p>	<p>ELR should develop a mechanism to track contractors' hours to identify qualified individuals.</p> <p>For the eight active contracts identified, ELR should request contractors' hours and take appropriate action on any identified QIs.</p>	<p>1) By 8/15/2023, ELR will develop a master list of accumulated hours to capture contractors' hours and identify qualified individuals.</p> <p>2) By 8/15/2023, ELR will request contractors' hours for the eight contracts identified and take appropriate action on any identified QIs.</p>
<b>D</b>	<p><b><i>Procedures have not yet been defined to address UC Career employment conversion for Qualified Individuals.</i></b></p> <p>As part of the career conversion<sup>10</sup> process, the University is required to offer QIs a position within ten miles of the same UC location where the QI performs contracted covered services. The UC career position must also be one that the QI is qualified to perform, although it need not have the same title and/or the same department as the contracted position the QI worked in.</p> <p>While campus has its hiring procedures in place, these do not explicitly include considerations for QI's and requirements for career conversion such as location and position. The lack of procedure however has not been relevant since there were no qualified individuals identified or requests received from contract workers as of February 2023.</p>	<p>ELR should develop written procedures to address the career conversion process.</p>	<p>1) By 1/15/2024, ELR will develop written procedures to address the career conversion process.</p>

<sup>9</sup> Per Article 5 F.2, a contract worker who performs the same services at the same UC location for 1,000 hours in a rolling 12-month period, or 35% time over a rolling 36-month period, may be deemed a qualified individual for UC Career employment conversion.

<sup>10</sup> Per Article 5 F.1, the University will exercise its best efforts to determine employees who meet the criteria to become qualified individuals (outlined in Article 5 F.2) and at any time the qualified individual submits a written request for conversion to Human Resources.

**IV. Provision of Notice for Contracting Decisions**

Ref.	Observations	Recommendation	Management Corrective Actions
<b>E</b>	<p><b><i>Noncompliance with Guidelines Requirement to Share Draft Notices with OP</i></b></p> <p>UC Davis must provide notice to AFSCME prior to entering into, extending or renewing a contract that includes Covered Services valued at over \$100,000.<sup>11</sup> As part of the notification process, a “<i>draft of the notice should be shared with UCOP Labor Relations [LR] and the Office of the General Counsel [OGC] prior to issuing it to AFSCME.</i>” However, this step is not performed by ELR.</p>	<p>ELR should implement a process to submit draft notices to UCOP LR and the OGC.</p>	<p>1) By 7/15/2023, ELR will implement a process to submit draft notices to UCOP LR and the OGC.</p>

**V. Tracking and Reporting Contract Information**

Ref.	Observations	Recommendation	Management Corrective Actions
<b>F</b>	<p><b><i>Information reported to AFSCME is not always in alignment with information found in contracts or supporting documentation.</i></b></p> <p>AMAS reviewed 15 different report fields across a judgmentally selected sample of five contracts for covered services to determine whether the information reported to AFSCME was accurate.</p> <p>We found that approximately 15% of information reported in the CY 2021 AFSCME Report did not align with the corresponding contract or was not entered in accordance with instructions provided to locations.</p> <p>The noted exceptions were typically due to using a prior version of an amended contract.</p> <p>Note: previously, locations were asked to enter information for the CY 2021 AFSCME Report at designated points in time. The process has changed, and locations can now enter contract information on a rolling basis. Due to</p>	<p>SCM should improve existing procedures to increase accuracy of information reported to AFSCME.</p> <p>SCM should consult with OP to determine whether errors require disclosure to AFSCME.</p>	<p>1) By 11/15/2023 SCM will develop written procedures to ensure accuracy of information submitted to OP. Procedures must include quality assurance reviews to increase the accuracy of information reported.</p> <p>2) By 11/15/2023, SCM will consult with OP to determine errors that require disclosure to AFSCME and act as needed.</p>

<sup>11</sup> Per Article 5.D and Implementation Guidelines

	<p>the timing of fieldwork, AMAS did not review the accuracy of the CY 2022 AFSCME report.</p>		
<p><b>G</b></p>	<p><b>Documentation supporting information reported to AFSCME was not available.</b></p> <p>AMAS reviewed a judgmentally selected sample of five contracts for covered services to determine whether the information reported to AFSCME was accurate. Five contracts were assessed across 15 different report fields.</p> <p>A total of 75 sections were reviewed, and with respect to nearly 5% of fields reviewed, AMAS was unable to validate whether information reported in the CY 2021 AFSCME Report agreed with contracts.</p> <p>For one of these cases, AMAS received documentation from Campus SCM, however the information provided did not contain sufficient detail to a) confirm whether the language in the CY 2021 AFSCME report was an accurate representation of services rendered and b) validate whether notice to AFSCME was required based on the cost allocation of the services rendered under the contract.</p>	<p>SCM should document the retention procedures to ensure supporting documentation pertaining to contracts, such as services rendered, are sufficiently detailed and are securely retained and readily accessible.</p>	<p>1) By 9/15/2023, SCM will document retention procedures for supporting documentation pertaining to contracts, including descriptions of services rendered and cost allocation, such that information obtained and submitted to AFSCME by OP is securely retained and readily accessible.</p>

Appendix A

Systemwide Recommendations and Management Corrective Actions

Recommendation to UCOP	Recommendation to Locations	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>1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.</p>	<p>1) SCM will implement processes to address OP guidance on contracting out compliance requirements for procurement and contracting by 4/1/2024.</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>1) ELR will implement the systemwide QI tracking tool procured by OP by 9/1/2024.</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 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>2) ELR will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to Qualified Individuals by 9/1/2024.</p>

Recommendation to UCOP	Recommendation to Locations	Management Corrective Action and Target Date
<b>Compliance with Employee Displacement Requirements</b>		
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.	1) ELR will implement processes to address OP guidance on requirements related to employee displacement by 3/1/2025.
<b>Article 5 Grievances</b>		
1.e.1 Systemwide Labor Relations should issue guidance to provide clear direction to UC locations on the following compliance requirements related to administration of Article 5-related grievances: <ul style="list-style-type: none"> <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>	1.e.2 Locations should implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.	1) ELR will implement processes to address OP guidance for Article 5-related grievances by 9/1/2024.
<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.	1.f.2 Locations should implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.	1) SCM & ELR will determine the process owner pertaining to the provision of employee notices to supplies and implement processes to address OP guidance by 1/15/2024.