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June 23, 2023

To: Chuck Haines, Vice Chancellor - Chief Financial Officer
Finance & Resource Management

Distribution

Re: **Contracting Out (Systemwide)**
Audit Report No. 08-23-0001

As part of the 2022-23 audit services plan, Audit and Advisory Services, in coordination with the Office of Ethics, Compliance, and Audit Services, initiated work on a systemwide contracting out audit.

The purpose of this assessment was to evaluate processes and controls in place to facilitate compliance with contracting out requirements. The scope of the audit included a design and implementation evaluation of the processes and controls in place to facilitate compliance with contracting out requirements. The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*. Enclosed is the report detailing the results of our work.

We sincerely appreciate the cooperation and assistance provided by Procurement Services, and Employee & Labor Relations personnel during the review. If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ashley Andersen".

Ashley Andersen
Director
Audit and Advisory Services

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Contracting Out (Systemwide)

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UCSB Audit Committee
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UC **SANTA BARBARA**
Audit & Advisory Services

Audit Report

Contracting Out (Systemwide)

June 23, 2023

Performed by:

Antonio Mañas Meléndez, Associate Audit Director
Gifty Mensah, Principal Auditor

Approved by:

Ashley Andersen, Audit Director

Report No. 08-23-0001

EXECUTIVE SUMMARY

OBJECTIVE

The primary purpose of this assessment was to evaluate processes and controls in place to facilitate compliance with contracting out for covered services¹ under Article 5 of the AFSCME² Collective Bargaining Agreement (Article 5). The objectives of our audit were to determine whether there were effective:

- 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 monitor suppliers' compliance with wage and benefit parity requirements.
- Procedures to track contractor hours and identify contract workers that meet the insourcing criteria.
- Procedures to comply with employee displacement requirements.
- Processes by which Qualified Individuals (QIs)³ are provided options of UC career employment.
- Processes for providing advance notice for contracting decisions.
- Processes for tracking and reporting contract information to affected employee organizations and the University of California (UC) Regents (Regents).
- Mechanisms to facilitate reporting violations and responding to reported violations.
- Processes for handling grievances.

CONCLUSION

Based on the results of the work performed within the scope of the audit, we found that:

- Procurement Services has adequate processes and controls by which it identifies contracts that include covered services and ensures completeness.
- Activities like catering services processed as direct payments or reimbursements by Accounts Payable could be a risk of some services being omitted from the list of covered services. This has highlighted the need for the campus to continue strengthening and monitoring the control in this area.
- Employee & Labor Relations (ELR) has implemented a process to review and evaluate decisions to contract out to ensure the University is contracting for services only when

¹ For the purposes of this audit, we will define covered services as described in Article 5 of the AFSCME collective bargaining agreements. 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; 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.

² 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.

³ 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.

permitted by policy and contractual requirements. However, we found the need to formalize the department responsible for tracking contracts for insourcing opportunities when new insourcing requirements are established.

- The campus currently has an annual amendment process to update suppliers with the required Wage and Benefit Parity requirements. Additionally, there is a process to ensure the contracts for covered services include the required provisions for contracting out policy requirements. We noted that some vendors with multiyear contracts would not be accountable to comply with new requirements. Given that the current UC Terms and Conditions of Purchase is not required to be amended in the contracts with prior version of this document, the campus anticipates a systemwide guidance on acceptable practices for documenting Contracting Out-related terms and conditions in supplier contracts and purchase orders.
- The campus does not have a mechanism to track contract hours from suppliers. We noted that Article 5 guidelines requires the University to exercise “best efforts” to determine employees who meet the criteria to become QI. The campus is anticipating a systemwide guidance to define “best efforts” to setup expectations and to layout a process to identify QIs. Additionally, we found limited documentation and information retention, and this has revealed the need to enhance the documentation of the QI identification process.
- The campus has policies and procedures in place to enforce the prohibition of displacing employees, including due to contracting for covered services. There is no single department responsible for enforcing the prohibition of displacing employees due to contracting for covered services. It's a collective effort required of ELR and all campus departments.
- ELR adopts a case by case approach to communicate UC career options to QIs, when identified, largely depending on the type of service the QI had provided and whether there is a present role they could fit in. The campus is anticipating systemwide guidance on how to communicate UC career options to contract workers and suppliers given that this process requires best effort to communicate an option of employment to QIs identified by the University. Additionally, we found the lack of procedures to document acceptances or declinations of offers and tracking of request from QIs.
- The campus has processes in place for providing advance notice for contracting out decision to AFSMCE when the campus goes out to bid (Request for Proposal) covered services contracts. However, we noted the campus does not have a clear interpretation of the contract value and the notice requirements in the case of multi-year contracts. As a result, the campus did not send the required notice for some covered services contracts. This has emphasized the need for the campus to seek guidance/interpretation of the contract value and the notice requirements in the case of multi-year contracts.
- Procurement Services has a process for tracking and reporting contract information to affected employee organizations and the Regents. However, we found some minor discrepancies in the information reported in February 2022 for the 2021 annual report of contracts for covered services. It could be prudent for Procurement Services to ensure they select the correct information in the drop-down menu and review consistency with support documents before submitting the report.

- The campus has a reporting line that helps suppliers providing covered services notify their employees about how contracting out concerns can be reported. However, we found that the menu of classes of potential violations in the whistleblower hotline (Ethics Point) could cause some complaints to be classified as covered services when they are not due to limited options in the menu to classify issues⁴.
- The campus has processes for handling Article 5 grievances. We noted that there is currently no requirement for campus to report local grievances to Systemwide Labor Relations. However, as a practice, the campus keeps Systemwide Labor Relations in the loop for grievances received. It could be convenient to have a systemwide guidance on how locations should formally communicate grievances that may have systemwide impact.

Details of these conclusions are presented in the various sections of the report. Recommendations in this report are focused on addressing non-compliance areas at the local level and corrective actions coming from the report *Systemwide Contracting Out Audit*⁵, requiring the implementation of systemwide guidance. Recommendations are presented in the Appendix A of this report.

BACKGROUND⁶

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

In addition, the Regents have made clear that Article 5 of the two Collective Bargaining Agreements (CBAs) with AFSCME takes precedence over the Regents Policy.

Per Regents Policy, the actual job titles of supplier employees performing covered services do not need to match AFSCME titles; 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 anywhere in the UC system.

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 total compensation received by Bargaining Unit employees performing the same work.

Regents Policy and Article 5 apply to covered services performed at a UC location⁷. However, neither the Regents Policy nor Article 5 applies to construction or work typically performed by

⁴ The campus has the expectation that UCOP could enhance menu of classes of potential violations in the whistleblower hotline.

⁵ *Systemwide Contracting Out Audit*, Project No. P23A002, released in April 2023.

⁶ Systemwide 2023 Contracting Out audit program.

⁷ 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.

members of a skilled crafts or trades bargaining unit such as a plumber, electrician, or facilities mechanic.

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

- To the fullest extent possible, insource covered service work. As part of insourcing, identify supplier employees who meet the criteria for becoming a QI. The University location must offer QIs career employment when insourcing covered service 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.
- 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 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.
- 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 notice affected employee organizations when issuing a Request for Proposal (RFP) with covered services estimated to be over \$100,000.
- Provide an opportunity to those affected employee organizations, upon receiving the notice, to request review of a proposed contract for covered services to determine whether the contract complies with policy requirements.
- 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 and Article 5. The Implementation Guidelines are currently under revision, but not yet issued.

UCSB Implementation⁸

The Article 5 implementation at UCSB has suffered massive turn over in the past two years. When Article 5 officially started moving during the pandemic, Employee & Labor Relations (ELR) met with some major departments that were affected to review this requirement. UCSB follows the systemwide guidance to avoid high risks situations. The campus has very small appetite for risk because of limited budget for arbitrations. UCSB handles cautiously and

⁸ Discussions held with Employee & Labor Relations and Procurement Services.

consults with the Office of the President extensively for interpretation and guidance. UCSB organizes trainings for any departments that comes with a request regarding contracting covered services, and holds Article 5 monthly/bi monthly meetings/webinars to answer questions from departments. This is to get new staff onboard as they join the campus. The majority of departments that are affected by Article 5 are centered around those with custodial, groundskeeping, building maintenance, and food service workers. Pest control contracts could have technical work and additional areas that could be considered covered services.

The current responsible executive for the campus is the Vice Chancellor - Chief Financial Officer. The responsible executive plays several roles in this capacity such as engaging with Procurement and Labor Relations teams to ensure Article 5 compliance is understood and implemented at all organizational levels. He also works with Systemwide Labor Relations and Systemwide Procurement to ensure compliance with all parts of Article 5. The communication of changes to Article 5 comes from the Office of the President directly to the responsible executive who relays these to campus when received. There is also a systemwide monthly meeting on Article 5 for ELR at the various campuses.

UCSB maximizes the use of campus employees to perform covered services to the fullest extent possible. To ensure UCSB's compliance, departments that wish to contract out for covered services must first explore whether campus employees can be used to perform all or any portion of the covered services. If not, the department must submit a Covered Service Exception Request to ELR and obtain prior written approval before contracting for those services. If an exception is granted, a contract must be written and signed by Procurement Services.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

A. COVERED SERVICES IDENTIFICATION

OBSERVATION

Our review found that Procurement Services has adequate processes and controls by which it identifies contracts that include covered services and ensures completeness. However,⁹ direct payments and reimbursements for catering services, which are processed through Accounts Payable, could be at risk of some services being omitted from the list of covered services. This has highlighted the need for the campus to continue strengthening and monitoring the control in this area.

During the review, we noted the following controls and processes to identify contracts that include covered services and ensure the completeness of the list:

- Departments have to initiate consultation in the work order ticket system, ServiceNow, for any service request before it is processed in the campus e-procurement system. ServiceNow has incorporated all the necessary questions to help ELR track and determine if the service is a covered service.
- Departments submit requests for covered service payments through Gateway, Concur, or Direct Bill. All covered services requests must have an exception form approved by ELR on file. Gateway transactions will not process requisition for covered services until an exception is provided by ELR.
- Procurement Services identifies vendors that provide covered services in Gateway with a supplier class identification which routes all requisitions for those vendors to Procurement, regardless of dollar value.
- FlexCard¹⁰ has blocked all MCC¹¹ codes related to covered services and Procurement Services keeps track of those codes in the department's database that documents every single contract.

However, although the campus requires all services to be pre-approved and processed through Gateway, we determined that direct bill and reimbursements for activities like catering services are possible. It is crucial to formalize a process for departments that directly contract catering services to obtain an ELR assessment before contracting a catering service.

We were informed of the following actions taken to control this process:

- Procurement Services has provided Accounts Payable department with guidance and a Google Sheet to report covered services that come through their office (reimbursements, and direct bill) without ELR approval.

⁹ See systemwide recommendation 1.a.1 and UCSB recommendation 1.a.4 in Appendix A to address this issue.

¹⁰ A Visa procurement card issued by U.S. Bank to UCSB employees who have the authority to buy goods and services on behalf of their departments.

¹¹ Merchant Category Codes are assigned to merchant accounts during the set-up process and are used to differentiate between types of business & industries.

- Accounts Payable was instructed to track all reimbursements related to catering that did not have ELR's approval and was given a copy of a warning letter to send departments that do not have ELR approval for any covered service invoices they process.
- When someone submits an invoice for reimbursement that includes catering services, Accounts Payable reviews supporting documents for ELR's approval. Where approval is not included, the department receives a warning notification. However, Accounts Payable does not reject the reimbursement.

Additionally, we identified a sample of 15 purchase order transactions related to services. We verified if the services were covered services and were included in the list of covered service contracts reported in the February 2022 annual report¹². We found that all the sampled purchase orders were not related to covered services and did not need to be reported in the February 2022 annual report.

B. REVIEW AND EVALUATION OF DECISIONS TO CONTRACT OUT

OBSERVATION

We noted that ELR is responsible for reviewing and evaluating decisions to contract out when permitted by policy and contracting out requirements. Departments cannot contract out for covered services without ELR's approval for exception. We found no exception in our sample testing and all new contracts are currently evaluated for insourcing through the exception process.

Our inquiry revealed that the campus uses the exception criteria indicated in the Article 5 and has not seen the need to develop a local policy in this area. We confirmed that the language for the carve outs indicated in the Regents Policy, and in the Article 5 of the AFSCME collective bargaining agreements is consistent with the exception language indicated on the campus Contracting Out for Covered Services Exception Request form¹³.

At UCSB, there is no threshold for granting carve out/exceptions. It's purely a case by case analysis, and ELR reviews the justifications documented by departments contracting out to satisfy the carve out/exceptions and establish that the service qualifies to be a covered service. If ELR is unclear about the justification, they confirm with UCOP.

During the audit, we requested and reviewed documentation for five contracting out decisions to verify that there is documented justification supporting the decision to contract out for services that is consistent with policy requirements. We found that:

- The covered services job category for the decisions were appropriately identified on the exception forms.
- There were documented justifications supporting the decision to contract out. The departments documented detailed justification to support one or more of the exception criteria to contract out as required. These justifications met the exception criteria identified.

¹² In February of every year, all UC campuses are required to submit a report of the campus list of active covered service contracts as of December 31st to UCOP and for onward submission to AFSCME.

¹³ A review form implemented to document departments requests and justification to contract out.

- ELR provided a recommendation to support/approve the decision to contract out based on the justification documented for the exception criteria. Where ELR recommended the service to be insourced, there was evidence that the campus made efforts to insource the work.

As part of the review, we inquired about the campus's progress in identifying contracts to be insourced and the progress made to insource those contracts. We were informed that ELR met with Procurement Services and departments to review this requirement when Article 5 was implemented. They determined that before the campus signs a contract with a vendor that includes covered services, the departments must work with ELR on the justification to contract out, and they implemented the justification/exception forms.

C. MONITORING SUPPLIERS' COMPLIANCE WITH WAGE AND BENEFIT PARITY REQUIREMENTS

OBSERVATION

Our review found that the campus has a process to ensure contracts for covered services are updated each year to include the updates to the Wage and Benefit Parity rates and include the required provisions for contracting out policy requirements. However, the required annual amendments for multi-year contracts were not always signed to reflect the updates to Wage and Benefits Parity for the contracts updated before 2022. Additionally,¹⁴ we noted that some UCSB vendors would not be accountable to provide employee hours to the University or to acknowledge that their employees could be hired by the University if they become QI. This has highlighted a need for systemwide guidance on acceptable practices for documenting Contracting Out-related terms and conditions in supplier contracts and purchase orders.

During the review, we inquired about the process the campus has taken to ensure that contracts for covered services include the required provision language of Article 39 for contracting out. We noted the following processes/controls:

- Procurement Services attaches the UC Terms and Conditions of Purchase which include a Wage and Benefit Parity clause as an appendix to the executed contracts.
- The executed contract includes a section for the relevant job titles and Wage and Benefits Parity rates.
- Additionally, covered services identification is also part of the procurement purchase order and contract checklist that must be completed with every purchase order (and contract).
- Procurement Services issues an amendment every year in multi-year contracts to update the rates when UCOP sends out the new job code and Wage and Benefit Parity rates in April.
- Procurement will cancel any contract for vendors that do not accept the agreement/

¹⁴ See systemwide recommendation 1.a.1 (second bullet) in Appendix A to address this issue.

amendment.

Additionally, we reviewed whether a sample of five multi-year contracts complied with updating the Wage and Benefit Parity rates in the required annual amendments for the years 2020, 2021, and 2022. We found that for all samples in 2022, the annual amendments were appropriately signed to update the new rates at the effective dates; however:

- In one sample, for years 2020 and 2021, the annual amendments were signed prior to the new rates. The amendments included the prevailing rate at the time. When the new rates were issued and became effective, new amendments were not signed to update the rate.
- In three samples in 2021, no annual amendment was signed to update the 2021 new rates.
- For three samples in 2020 and one sample in 2021, the annual amendments were appropriately signed to update the new rates for the respective years.

The campus was fully compliant to annual Wage and Benefit Parity rates amendment in 2022 for all contracts. Procurement explained that the requirement to issue an amendment to update the Wage and Benefit Parity rates was clearly communicated in 2022, and all contracts active in 2022 were thus updated.

As part of our testing, we verified that the covered services provision language provided to vendors is consistent with the language in the applicable version of Article 39 in the UC Terms and Conditions of Purchase. We found that:

- In all five samples reviewed, the covered services contracts were signed in 2020, and the Article 39 language in the Terms and Conditions of Purchase attached to the executed contracts was consistent with the 2020 version of the UC Terms and Conditions of Purchase.

However, we noted that, a new UC Terms and Conditions released on December 14, 2021 required vendors to provide employee hours to the University to facilitate the QI identification process and acknowledge that the University has the responsibility to offer a position to vendors' employees that meet QI requirements. It could be important for UCOP Procurement Services to communicate to locations when contracts should be amended with significant changes to UC Terms and Conditions.

D. IDENTIFICATION OF QUALIFIED INDIVIDUALS (QIS)

OBSERVATION

We noted that institutional knowledge of Article 5 decisions has not always been properly documented, and personnel working on the implementation of Article 5 has suffered massive turnover in the past two years at UCSB. This has highlighted the need to enhance the documentation of the decision-making process to determine how QIs meet the required insourcing criteria. The Article 5 guidelines require that the University will exercise its best efforts to determine employees who meet the criteria to become QIs. The campus anticipates

systemwide guidance¹⁵ to define expectations in the following areas¹⁶.

- How to identify QIs and what is adequate to satisfy “best effort”.
- How and who has the responsibility to track and verify contract hours from supplier employees to identify QIs. We were informed that this process and ownership are in debate and the campus is waiting for systemwide guidance to formalize roles and responsibilities, how to collect the hours and verify the accuracy of the hours.

During the review, we inquired about the campus process to identify QIs and procedures in place to request and track contract hours from suppliers’ employees. We noted that during the timeline included in the scope of this review¹⁷.

- ELR did not have a formal process to identify QIs. Primarily, ERL would be only aware of QIs if a third party, such as Unions, departments, Procurement Services, or the QIs bring the case to their attention.
- The campus did not have a mechanism to track contract hours from suppliers. The campus did not have an active role in this process, and it was in discussion who should be the responsible party to comply with this requirement.
- Article 39 of the UC Standard Terms and Conditions of Purchase updated on December 14, 2021 requires suppliers to provide hours to the campus. However, the campus did not collect or request vendors’ employees’ hours.

As part of the review, we requested and reviewed documentation of suppliers’ employees who have been deemed QIs to verify that they have met the insourcing criteria. UCSB has one confirmed QI, and we found that it was not clearly documented how the QI was identified or met the required insourcing criteria. We were informed that the department contracting out made the determination through internal knowledge and observation and subsequently informed ELR of the QI’s qualification. However, the internal knowledge and observation were not documented as to what criteria were being observed and the evidence of how the QI met the criteria. Additionally, ELR did not document how they evaluated or reviewed the QI’s qualification in accordance with Article 5 compliance¹⁴.

E. DISPLACEMENT OF EMPLOYEES

OBSERVATION

Our review found policies and procedures in place to enforce the prohibition of displacing employees due to contracting for covered services. We found in our sample testing that all employees released were not due to a contract for covered services.

During the audit, we inquired about the campus process to ensure university employees were not demoted, laid off or had involuntary reductions due to entering into a contract for covered

¹⁵ See systemwide recommendation 1.b.1 and 1.b.2 in Appendix A to address this issue.

¹⁶ See UCSB recommendation 1.b.4 in Appendix A to address this issue.

¹⁷ Human Resources informed us that ELR has recently adopted the systemwide QI tracking tool to identify QIs and track contract hours from suppliers. We will confirm this statement during the implementation of the management corrective actions included in this report.

services and the actions taken by management to enforce or address prohibited displacements. We noted the following:

- University policy General Prohibition Against Displacement of Employees, Article 5, and most collective agreements prohibit displacing employees due to contracting for covered services.
- The prohibition of displacing employees due to contracting for covered services is a responsibility of all campus departments, including ELR as the unit to provide campus guidance on this topic.
- ELR puts a hold on such actions and discusses every separation. Departments must have a legitimate reason to separate a career employee from the university. ELR would not approve a separation in order to replace with a contract employee.

During our testing, we reviewed documentation of five involuntary terminations to assess whether or not employees were displaced due to a contract for covered services. Based on documentation reviewed for the terminations, all employees released were not due to a contract for covered services.

F. UC CAREER EMPLOYMENT CONVERSION

OBSERVATION

Our review found the need for systemwide guidance to define best efforts to communicate an option of employment to QIs identified by the University. We also found that it is necessary for Human Resources to implement a procedure to document the career conversion process, acceptances or declinations, and track QI requests, given the rise in the numbers in the future¹⁴.

We performed a walkthrough of the campus processes by which QIs are provided options of UC career employment and how the campus records and responds to requests for UC career employment conversion. We noted the following:

- UCOP has developed posters/ flyers that were interpreted as the mechanism to communicate UC career employment to QIs. ELR was not informed of the existence of the UCOP flyers until the audit. After ELR became aware, they sent instructions to departments with contracting out contracts to post the flyers¹⁸.
- ELR has adopted a case by case approach to communicate the options of employment to QIs identified by the University. It usually depends on the type of work the QIs had provided and whether there are present positions they could fit in.
- ELR uses email as the primary medium to record and store acceptances and declination of offers. Documenting records and acceptances in using a more reliable tool could minimize the risk of missing emails when employees leave the department¹⁴.

¹⁸ See systemwide recommendation 1.b.2 (Fourth bullet) in Appendix A to address this issue.

We reviewed the documentation of the identified QIs to verify that an option of employment was communicated to the QIs. We found that the UCSB Talent Acquisition team reached out to the QI in the scope of this review and an option of employment was communicated on July 20, 2022. The QI declined the offer of employment conversion on July 22, 2022 and did not initiate the conversion process/start employment in UC.

G. PROVISION OF NOTICE FOR CONTRACTING DECISIONS

OBSERVATION

Our review noted that the campus has processes in place for providing advance notice to affected employee organizations, prior to entering into, extending, or renewing a contract for covered services over \$100,000 and when issuing a Request for Proposal (RFP) with covered services estimated to be over \$100,000. However, we found different interpretations between the campus and UCOP guidelines on the contract value that triggers notice to AFSCME for multiyear contracts. As a result, the required notices for some multiyear contracts were not sent to AFSCME¹⁹.

During the review, we inquired about the campus processes in providing notice for contracting out to an affected employee organization. We found that:

- Procurement Services alerts ELR when there is a need for an RFP, renewal of contract or extension and provides the necessary information to ELR. Procurement Services would provide an initial draft of the template notice to ELR. ELR will work with procurement to obtain additional information as needed for the notice and will also run the notice by UCOP Labor Relations (which also includes Office of General Counsel) prior to issuing the notice. Once the draft of the notice is finalized, ELR issues the notice to AFSCME. Procurement Services follows a process and a checklist for the RFP.
- Where no RFP is issued (such as renewal or extension of a contract), then Article 5 requires a 30-day notice period before implementing the renewal or extension of the contract. This gives AFSCME time to consider whether to request a meeting from ELR to inquire further about the contract.
- For all contracts for covered services, Procurement Services uses the standard UC contract template.

As part of the review, we verified that for a sample of five contracts, the appropriate notices were provided to the affected employee organization and included the required elements per the Implementation guidelines. We also assessed whether the notice templates provided by UCOP were used to help ensure the required elements were included. We found that:

- In three of the five samples with total value more than \$100,000, ELR did not send a notice to AFSCME prior to signing the contract. However, these contracts were appropriately reported to AFSCME in February 2022 for the 2021 annual report of contracts for covered services. The notices were not sent due to the campus interpretation of the notice requirement that the campus only sends a notice when the annual spend/contract value is more than \$100,000 or when the contract goes to bid

¹⁹ See UCSB recommendation 1.d.1 in Appendix A to address this issue.

(RFP). However, systemwide guidance²⁰ requires campuses to report all contracts with total value more than \$100,000 once, no matter if it is a multiyear contract and how much spend per/year¹⁹.

- In one sample, an RFP was done in 2019 and was reported to AFSCME in 2019 ahead of the notice requirements in 2020. No template was required in 2019.
- In one sample where RFP notice was required, AFSCME was appropriately notified two months prior to signing the contract.

H. TRACKING AND REPORTING CONTRACT INFORMATION

OBSERVATION

Our review found that the campus has processes and controls for tracking covered service contracts and reporting covered service contract information to affected employee organizations, and UC Systemwide Procurement Services. Overall, reported information was complete and accurate. However, we found some minor discrepancies in the information reported in February 2022 for the 2021 annual report of contracts for covered services. This has highlighted the need for Procurement Services to enhance the data integrity of the reported information²¹.

During the review, we gained an understanding of the campus current processes and controls for tracking covered service contracts and reporting covered service contract information to the affected employee organization, UC Systemwide Procurement Services and to the Regents. We noted that Procurement Services:

- Tracks several elements of covered service contracts. Some elements tracked include contracting out vendor, contract number, affiliated purchase order, contract begin date with wage parity, date of WBP last update, contract expiration, and annual spend.
- Submits the AFSCME Collective Bargaining Agreements report (CBA) annually for every contract.
- Provides signed contract information required by UC Systemwide Procurement Services.

Additionally, we performed some procedures to confirm accuracy and completeness of the AFSCME CBA 2021 report²² submitted by the campus in February 2022. We found that, overall, the reported information was complete.

Specifically,

- We verified that the AFSCME CBA 2021 report included the required content and found that the information applicable to each contract was provided.

²⁰ The idea of notifying AFSCME is to give AFSCME a chance to propose alternatives before UC enters into a contract for covered services over \$100,000.

²¹ See UCSB recommendation 1.g.2 in Appendix A to address this issue.

²² All UC locations submit a report of every covered services contract in a smart sheet provided by UCOP in February of each year.

- We verified that all contracts for covered services that existed as of December 2021 were included in the February 2022 report. We found that all 12 covered services that existed as of December 2021 were reported to AFSCME.
- We compared the information in the report to a sample of five covered services contracts to assess the accuracy of the reported information. We found the following discrepancies:
 - All the information reported for one of the five samples was consistent and accurate with support documents.
 - In four samples, although the Wage and Benefit Parity rate captured in the report was consistent with support document, it was not the current rate at the time (2021). The campus did not issue an amendment to update the rates when the 2021 rates were issued.
 - In one sample, the covered services type was wrongly captured in the report²¹.
 - The contract end date was wrongly captured in the report in one sample²¹.

These errors are low risk but they represent a data integrity issue. It could be necessary for Procurement Services to enhance the data integrity of the reported information by ensuring that going forward, they select the correct information in the drop-down menu and review consistency with support documents before submitting the report²¹.

I. REPORTED VIOLATIONS

OBSERVATION

Our review found that the campus has a channel that helps suppliers providing covered services notify their employees about how contracting out complaints can be reported. The campus reporting line for suppliers' employees with issues regarding Article 5 is the Whistleblower hotline. There is a general provision for whistleblower hotline that is available to everyone and this is also communicated in the executed contracts. We noted an opportunity for UCOP to enhance menu of classes of potential violations in the whistleblower hotline²³.

During the review, we gained an understanding of how the hotline and other systems that receive contracting-out related complaints is managed, including how the systems collects reporting complaints, the policies/procedures that establish responsibility for reviewing and updating status of complaints and how completeness is ensured over reported complaints. We noted the following:

- The Whistleblower system/hotline is managed by the Campus Locally Designated Official (LDO), currently under the Division of Administrative Services.
- Complainants can call into the hotline to speak to the company or input the information themselves in the hotline. The Campus Compliance Investigator has a mechanism to go into the system to reclassify the primary issues. However, we found that the menu of

²³ See systemwide recommendation 1.f.3 in *Systemwide Contracting Out Audit*, Project No. P23A002, released in April 2023 to address this issue.

classes of potential violations in the whistleblower hotline (Ethics Point) could cause some complaints to be classified as covered services when they are not due to limited options in the primary issue.

- Complainants can also send email or complete a form and email it to the LDO or the Campus Compliance Investigator. When such emails are received, they determine whether the complaints require a whistleblower report and input the details in EthicsPoint to generate a number for tracking.
- The Whistleblower policy establishes the mechanism and codifies the requirements to review and assign responsibilities. For every allegation received, the Campus Compliance Investigator performs an initial review to determine whether the allegation, even if true, describes conduct that constitutes improper governmental activity and, if so, develops an investigative plan.
- For all complaints received, they rely on EthicsPoint to generate a case number and case numbers generated are sequential and systemwide. All cases including those received via email or discussion with complaints are keyed into EthicsPoint if it's determined to have a reason for investigation.

Based on discussions with the Campus Compliance Investigator, it was determined that the two complaints received from Ethics, Compliance and Audit Services (ECAS) were not related to covered services. One complaint was related to a disagreement in the retribution of a campus employee, and the other was a disagreement with the vendor selected for a service. The campus did not substantiate any of the allegations and were improperly characterized as contracting for covered services. Additionally, there were no other complaint tracking systems outside of EthicsPoint that could be considered for sample selection. Therefore, the test for this section was not applicable given that there were no complaints to review.

J. GRIEVANCES

OBSERVATION

Our review found that the campus has processes for handling Article 5 grievances. We were informed that there is currently no requirement for campuses to report local grievances to systemwide Labor Relations. However, as a best practice, campuses should communicate grievances and settlements that may have systemwide impacts. It could be useful to have systemwide guidance/instructions on the requirement to report grievances with systemwide impacts. Additionally, we found opportunities for ELR to enhance the process of documenting/logging/tracking the events occurring in the grievance process²⁴.

During the review, we inquired about how the departments handle and report grievances, and about the follow-up process. We noted the following:

- Departments do not handle grievances. ELR is responsible for grievances related to Article 5. When a grievance is under Article 5c, it goes directly to UCOP for expedited action.

²⁴ See UCSB recommendation 1.e.1 in Appendix A to address this issue.

- ELR handles Article 5 grievances following the standard process for grievances. This process is specifically outlined in Article 10.
- ELR follows the arbitration language and process in Article 3 (Arbitration Procedures) for non-article 5c grievances.
- We found that the campus keeps some officials of UCOP informed for all Article 5 grievances received even though there is no requirement to report local grievances to Systemwide Labor Relations. The campus is waiting for guidance on the stage at which local grievances should be formally reported to Systemwide Labor Relation²⁴.

We reviewed support documentation for one grievance received by ECAS to ensure a written response was appropriately issued, verify whether there was evidence that the grievance was appropriately addressed, and that an arbitration process was conducted as required by the Contracting Out Implementation Guidelines. We found the following:

- Given that this case was Article 5, the campus provided the written response within 11 calendar days, which is compliant with the required timeframe for Article 5 grievances (15 calendar days).
- Based on the documents reviewed, we conclude that the appropriateness of the process and the steps followed were in accordance with the process outlined in Article 10. Accordingly, there was evidence that the grievance was actually evaluated and there was documentation supporting the evaluation.
- The union did not appeal the Step 2 response²⁵ for an appeal to arbitration, and the campus did not need to initiate an arbitration process. Proposed settlement terms were reached between UCSB and AFSCME. This grievance is not officially closed as campus is currently working to insource the work per the settlement terms.
- The events in handling or resolving grievances were documented in email correspondence. However, the department's grievance log did not include all these events.

SCOPE

The scope of this audit included a design and implementation evaluation of the processes and controls in place to facilitate compliance with contracting out requirements. The time period covered in this audit was February 2020 to December 2022.

Specifically, but not limited to the following, we:

- Reviewed relevant documentation, including policies, procedures and guidelines.
- Performed interviews with key stakeholders to gain an understanding of processes, procedures and controls and supporting documentation related to the in-scope areas.

²⁵ A process in the grievance process per the standard procedures when the Step 1 response is appealed.

- Conducted internal control testing according to defined testing attributes and assessed associated design and implementation of in-scope internal controls and processes.
- Identified any areas requiring additional guidance and/or training.

The scope did not include:

- Compliance with SB 820 requirements²⁶
- Supplier audits. The supplier audit was being managed by Systemwide Office. Local audit teams were not involved at the time of the audit.

CRITERIA

Our audit was based upon standards as set forth in the UC and UCSB policies, best practices, and other guidance relevant to the scope of the audit. This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

This review emphasized but was not limited to, compliance with:

- *Regents Policy 5402: Policy Generally Prohibiting Contracting for Services.*
- *Implementation Guidelines for Regents Policy Generally Prohibiting Contracting for Services, released on February 15, 2020*
- *Article 5 of the AFSCME Collective Bargaining Agreement*
- *Terms and Conditions of Purchase (UC-Terms-Conditions), updated on February 27, 2020 and December 14, 2021.*
- *Article 10: Grievance Procedures*
- *Article 3: Arbitration Procedures*

AUDIT TEAM

Ashley Andersen, Audit Director
Antonio Mañas Meléndez, Associate Audit Director
Gifty Mensah, Principal Auditor

²⁶ In September 2021, the Governor signed into law SB820, which legally prohibits the UC from using contracted labor for services traditionally performed by Service Unit employees in buildings that have received certain types of funding from the State of California. Thus, this legislation acts as a ban on using contracted employees for Service Unit work inside any “SB 820 Building”.

APPENDIX A

Systemwide Recommendations, UCSB Recommendations, and Management Corrective Actions

Table 1 Systemwide Recommendations, UCSB Recommendations, and Management Corrective Actions				
Recommendation to UCOP	Recommendation to UCSB	Management Corrective Action	Owner	Target Date
Procurement and Contracting Processes				
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: <ul style="list-style-type: none"> Requirements for monitoring lower-value purchasing activity (such as purchase orders, automatic purchase orders, purchasing cards, and travel and entertainment reimbursements) to identify procurement of Covered Services. Acceptable practices for documenting Covered Services-related terms and conditions in supplier contracts and purchase orders. 	1.a.2 Locations should implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.	Procurement Services will implement the updated guidance provided by Systemwide Procurement on contracting out compliance requirements for procurement and contracting.	Jacob Godfrey	October 31, 2023*
	1.a.4 To ensure that the direct bill and reimbursement payment process complies with Article 5, we recommend Accounts Payable to update their operational procedures processing direct bills and reimbursements related to covered services payments. Account Payable should not process direct bill and/or reimbursement requests for covered services that do not have ELR's pre-approval. This new control should be conveniently communicated to the campus community.	Accounts Payable will update their operational procedures regarding direct bill and reimbursement requests for covered services. Account Payable will not process direct bills and reimbursement payments for covered services, such as catering services that do not have ELR's pre-approval. This procedure will be formally communicated to campus departments.	Steven Kriz	October 31, 2023*

Tracking Supplier Employee Hours, Identifying QIs, and Providing QIs Options for UC Career Employment				
<p>1.b.1 Systemwide HR should complete the implementation of the systemwide QI tracking tool with the selected supplier identified in the RFP.</p>	<p>1.b.3 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>Human Resources in collaboration with Procurement Services will 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>Ann Marie Musto</p>	<p>March 31, 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"> • QI monitoring and identification, including appropriate protocols for instances in which a location determines that a supplier employee reached QI eligibility in the past but has since stopped providing services to the University for an extended period of time. • QI conversion to UC career employment, including the timeframe in which QIs must be notified of an option for employment and procedures for non-responsive Qis. • Any allowable exceptions to required timeframes for QI conversion, such as certain categories of employees that require additional background checks. • Posting notices to contract workers with the requirements for converting to a UC career employee, including the appropriate template(s) to be used. 			<p>Jacob Godfrey</p>	
	<p>1.b.4 ELR should implement alternatives to guarantee compliance with record retention policies for the evidences to support the identification of qualified individuals, tracking of</p>	<p>Human Resources will implement alternatives to guarantee compliance with record retention policies for the evidences to</p>	<p>Ann Marie Musto</p>	<p>July 31, 2023</p>

	<p>QI requests, and the career conversion process.**</p>	<p>support the identification of qualified individuals, tracking of QI requests, and the career conversion process.</p>		
<p>Compliance with Employee Displacement Requirements</p>				
<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>Human Resources will implement the updated guidance provided by Systemwide HR on contracting out compliance requirements related to employee displacement.</p>	<p>Ann Marie Musto</p>	<p>October 1, 2024*</p>
<p>Article 5 Grievances</p>				
<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"> • 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. 	<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>Human Resources will implement the updated guidance provided by Systemwide Labor Relations on contracting out requirements for Article 5-related grievances.</p>	<p>Ann Marie Musto</p>	<p>March 31, 2024*</p>
<p>Reporting Violations of Contracting Out Requirements</p>				
<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>Human Resources in collaboration with Procurement Services, if applicable, will implement the updated guidance provided by Systemwide HR on provision of employee notices to suppliers.</p>	<p>Ann Marie Musto Jacob Godfrey</p>	<p>August 15, 2023*</p>

Provision of Notice for Contracting Decisions				
	<p>1.d.1 To ensure the campus complies with the notice requirement, we recommend that Employee & Labor Relations in collaboration with Procurement Services</p> <ul style="list-style-type: none"> Report all contracts with a total value of more than \$100,000, no matter if it is a multiyear contract and how much spend per/year. If needed, seek guidance of the interpretation on the contract value with UCOP. Confirm that the process to evaluate contracts includes steps to report missed notices to AFSCME. 	<p>Human resources in collaboration with Procurement Services will</p> <ul style="list-style-type: none"> Report all contracts with a total value of more than \$100,000, no matter if it is a multiyear contract or how much spend per/year. If needed, we will seek guidance of the interpretation on the contract value with UCOP. Confirm that the process to evaluate contracts includes steps D to report missed notices to AFSCME. 	<p>Ann Marie Musto Jacob Godfrey</p>	<p>September 30, 2023</p>
Preparation of Annual Report to AFSCME				
	<p>1.g.2 Procurement Services should implement a procedure to enhance the data integrity of the reported information to AFSCME. This includes</p> <ul style="list-style-type: none"> Ensuring that going forward, they select the correct information in the drop-down menu and review consistency with support documents before submitting the report. Developing a mechanism to communicate errors and omissions to AFSCME. 	<p>Procurement Services will implement a procedure to enhance the data integrity of the reported information to AFSCME. This includes</p> <ul style="list-style-type: none"> Ensuring that going forward, they select the correct information in the drop-down menu and review consistency with support documents before submitting the report. Developing a mechanism to communicate errors and omissions to AFSCME. 	<p>Jacob Godfrey</p>	<p>August 31, 2023</p>

Source: Local recommendations and systemwide recommendations from report *Systemwide Contracting Out Audit*.

*: 3 months after implementation of systemwide recommendation.

** : Human Resources informed us before the release of this report that recommendation 1.b.4 has been implemented with the systemwide vendor Agile One.