Implementation Guidelines Overview

This is a new recording of the original webinar presented on March 23, 2020. Question & Answer sections have been removed to make it easier to follow along. Q&A content can be found in the FAQ on the Contracting for Covered Services Resources webpage.
Implementation Guidelines Overview

Regents Policy 5402
Generally Prohibiting Contracting for Services
&
AFSCME Collective Bargaining Agreement
Article 5
Purpose of this Webinar

• To create common and foundational understanding of Policy 5402 & Article 5
• Intended as high-level review, not specific implementation instructions
• Campuses will implement requirements in individual ways
• Specific situational questions should be addressed to your campus functional leaders
Functions Represented / Presenters

UC Systemwide:
• Rachael Nava (Bill Cooper standing-in for Rachael)

Labor Relations / Human Resources:
• Peter Chester – Executive Director, Labor Relations
• Ian Smith – Manager, Labor Relations

Procurement:
• William (Bill) Cooper – Associate Vice President & Chief Procurement Officer
• Laurie Wolkow – Chief of Staff & Executive Director, Program Management Office
• Linda Kimsey – Policy Communications & Training Analyst

Real Estate:
• Jacob Lavin – Associate Director, Real Estate

UC Legal: Andy Huntington contributed valuable legal advice throughout this process
Webinar Agenda

• Principles & Approach
• Key Components
  • Limiting Contracting for Covered Services
  • In-sourcing Current Contracts for Covered Services
  • Converting Supplier Employees to UC Career Positions
  • Contracting for Covered Services
  • Applying Wage and Benefit Parity
• Real Estate
• Reporting/Enforcement
• Questions
• Resources
A Strong In-house Workforce

Regents Policy 5402 and AFSCME Article 5:

• Limit outsourcing
• Ensure fair wages and benefits
• Meet or exceed standards set by California state policies
Implementation Principles

• Act cross-functionally
• Actively collaborate, communicate, and coordinate
• Make decisions in keeping with intent
• Demonstrate progress
Article 5 / Regents Policy / Guidelines

• Article 5 takes precedence over Regents Policy 5402
• Limiting Contracting for Covered Services
• In-sourcing Current Contracts for Covered Services
• Converting Supplier Employees to UC Career Positions
• Contracting for Covered Services
• Applying wage & benefit parity
• Reporting
What Are Covered Services?

• American Federation of State, County & Municipal Employees = AFSCME
• If work performed by classification in SX or EX unit, it’s a covered service
• Work performed by UC employees with AFSCME titles in categories: *

<table>
<thead>
<tr>
<th>Cleaning, custodial, janitorial or housekeeping services</th>
<th>Security services</th>
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<tbody>
<tr>
<td>Food services</td>
<td>Billing and Coding services</td>
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<td>Laundry services</td>
<td>Sterile processing</td>
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<td>Grounds keeping services</td>
<td>Hospital or nursing assistant services</td>
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<td>Building maintenance (but not skilled crafts)</td>
<td>Medical imaging or other medical technician services</td>
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<td>Transportation and parking services</td>
<td>*Additional titles also qualify</td>
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What is Expected to be In-sourced?

• In-source as much of Covered Services work as possible
• Working from list of contracts already generated for in-sourcing (12 months or longer) – list already provided to AFSCME
• Get started now and go fast – UC leadership has expectations
• Suppliers’ employees can convert to UC career positions when contract is in-sourced
When Do We Convert Suppliers’ Employees?

• Employees of Covered Service suppliers (aka contract workers) can request conversion to a UC career position
• Must meet qualification requirements
  • 1000 hours in 12-month period
  • Worked more than 35% over 36 months = ~2200 hours
• UC position doesn’t have to be the same as the contracted service
When Can We Contract for Covered Services?

• Only allowed in limited circumstances
• When required by law
• Under Federal contract or grant requirements
• Court decisions or orders

• Must have strong justification
• Saving money isn’t justification for contracting for Covered Services
When Can We Contract for Covered Services?

Six Carve Outs:

- Emergency services
- Not enough qualified UC employees to do the work
- Lease-related services or public-private partnerships
When Can We Contract for Covered Services?

Six Carve Outs:

- Temporary / occasional services or urgent timeframe
- Supplier provides equipment, materials, facilities or other services that UC location cannot provide
- Services performed by registry personnel in clinical operations to address short-term staffing needs
Requests for Proposals (RFPs)

- Justify why contracting out covered services is required
  - Cite carve out that applies + additional considerations
- Include description of services to be performed
  - Job duties
  - Related AFSCME titles
  - Expected wage and benefit parity rates
- Notify AFSCME if more than $100,000
What are New Contract Requirements?

Article 5 applies to all contracts for Covered Services
  • Contracts under $100,000 too
  
  • Must include:
    • Updated T&Cs with article for Contracting for Covered Services
    • Wage and benefit parity appendix
  
  • Notify AFSCME if more than $100,000
How Do We Handle Existing Contracts?

Contracts that terminate **before** January 31, 2021:

- Allow contract to **expire**
- New contract must meet new Contracting Out requirements
  - Notify AFSCME if new contract is more than $100,000
How Do We Handle Existing Contracts?

Contracts that terminate after January 31, 2021:

- Amend contract to include new Contracting Out requirements
  - Use Amendment with Contracting for Covered Services article
  - Use Wage and Benefit Parity Appendix
  - Amendment must be completed by January 31, 2021
  - Notify AFSCME if contract is more than $100,000
AFSCME Notification

AFSCME notice required prior to entering into, extending or renewing a contract valued at over $100,000.

Notice must include:
• Contract duration
• Scope of work
• Wage/benefit parity information
• Dollar value of contract
• Work locations, if known
• Cite carve out, with justification
• Notify both local AFSCME office & Executive Director

For RFPs:
• UC will provide RFP copy at time of issuance.

For Contracts:
• If feasible, UC will provide contract information at least 30 days prior to entering, extending or renewing contract.
Important Notes for COVID-19

The COVID-19 pandemic is not expected to change our overall implementation objectives or timelines.

• However, ‘shelter-in-place’ orders may impact timelines for in-sourcing as locations are closed and can’t onboard personnel
• COVID-19 pandemic fits the definition of an ‘Emergency’
• Carve Out #1 will apply

We are working with AFSCME at the systemwide level to proactively address this situation.
Important Notes for COVID-19

For these emergency situations, work with local Labor Relations, Procurement and Legal teams to:

• Include all required information for the AFSCME notice:
  • Cite all additional carve outs that apply (Art 5.C)
  • Why can’t in-source this work
  • Duration
  • AFSCME title equivalents
  • Wage & benefit parity rates
  • Work location
• Notify AFSCME ASAP (recognizing that 30-day notice may not be met)
• Send questions to contractingout@ucop.edu
Wage and Benefit Parity – what is it?

• Wage rates for AFSCME titles at each UC location
  • Step 1 of the salary range for the entry level title
• UC Benefits for medical, dental, vision, life & disability insurance, and retirement that UC employee with same duties would receive
• Calculated by Office of the President
• Updated annually
• Wage rates are specific to locations
Wage and Benefit Parity – how is it calculated?

• UCOP Systemwide HR calculates:
  • Composite dollar amount for health and welfare benefits
  • Percentage of wage rate for pension benefits
  • Calculated annually

• Wage Rate + Pension Rate (Pension % x Wage Rate) + Health & Welfare Composite Amount = Wage and Benefits Parity

NOTE: Paid leave (vacation, sick leave and holidays) is included in the calculation of annual wages (wage rate x 2088 hours)
Ask your local HR/LR staff to help determine parity rates for Covered Services work in contracts or RFPs

- When in doubt, local Compensation offices and Labor Relations teams should work together to match classifications with contracted work
- Include Wage and Benefit Parity Appendix in contracts for Covered Services
What About Prevailing Wage?

In-sourcing requirement applies:

Must in-source Covered Services work whenever possible

Compare Prevailing Wage to Wage & Benefit Parity rate. Use whichever is highest.
What About Fair Wage/Fair Work?

Fair Wage/Fair Work (FW/FW) still applies:

• Defines floor for wage rates (minimum of $15/hour)
• Applies to any contract for covered services where the services are performed at a UC location
• Suppliers must provide annual verification for all contracts where FW/FW applies
Real Estate – New & Existing Leases

Article 5 obligations may apply to **NEW leases** and Public Private Partnerships (P3s)

Existing leases are exempt
Real Estate – Case-Specific Guidance

Applying policy to real estate transactions will be case-specific:

• Implementation Committee will help provide interpretations and advice
• Further guidelines may be considered after experience with specific cases
Real Estate – Operational Control

Carve out: Covered services incidental to lease of real property, including property that UC has leased to / from a third-party or through a P3, except if UC has operational control.

Operational control = responsibility in lease to provide the covered services
- If UC has operational control, it cannot contract out unless another carve out applies
- If UC does NOT have operational control (and assuming Article 5 applies), third-party or P3 partner must provide wage-benefit parity for covered services.
Real Estate – When Article 5 Does Not Apply

Article 5 does not apply in these circumstances:

**Example 1**
Third-party building owner provides services to UC, other tenants, and general public as part of owner’s operations.

**Example 2**
UC-owned off-campus building with lease to tenant not supporting UC mission and campus life:
- As building owner, UC provides covered services subject to Article 5
- Tenant NOT obligated to comply with Article 5
Reporting & Enforcement

AFSCME Notification

• Required for RFPs or contracts (new or amended) for $100,000+
• Annual report of all contracts for Covered Services – due Feb 15

Audits

• Suppliers must verify compliance with Article 5 upon UC request
• Suppliers must use independent audit firms or independent internal audit teams to perform verification
• Internal verification is at supplier’s expense
Where Can I Get Help?

Your local:
Labor Relations
or
Procurement
depending your location

Also, check out these online resources:
https://www.ucop.edu(procurement-services/policies-forms/contracting-covered-services/contracting-for-covered-services-resources.html)
For Really Sticky Questions...

Contracting Out Implementation Guidance Committee

Email: contractingout@ucop.edu

Members:
• William Cooper – UC Procurement
• Dougie Graham – UC Health
• Jacob Lavin – Real Estate Services
• Peter Chester – Office of Labor Relations
• Andy Huntington – UC Legal
• Margia Corner – UC Legal

Support Staff:
• Laurie Wolkow – UC Procurement
• Linda Kimsey – UC Procurement
• Ian Smith – Office of Labor Relations
Appendix

Online Resources
• Slide #40

Labor Relations / Legal Resources
• Slide #41

Implementation Guidelines Full Carve Out Language
• Slides #42-44
Online resources include:

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The University of California is committed to maintaining a strong in-house workforce and supporting living wages and benefits for employees. To reinforce this commitment, the UC Board of Regents approved Regents Policy 5402, which generally prohibits contracting for services and ensures equitable treatment for any allowable contract workers.

In addition, the new AFSCME collective bargaining agreement ratified on January 31, 2020 contains language that reinforces, and in some cases goes beyond, the Regents Policy. Article 5 of the AFSCME collective bargaining agreement takes precedence over the Regents Policy, and the resources here reflect that.

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<td>UC Regents webpage</td>
</tr>
<tr>
<td>UC Implementation Guidelines</td>
<td>2.15.20</td>
<td>PDF</td>
</tr>
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<td>Article 5 - Collective Bargaining Agreement</td>
<td>1.31.20</td>
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Resources – Legal / Labor Relations

Work with your local Labor Relations or Procurement officers
  • To meet all requirements for Article 5

Full Implementation Guidelines carve out language on following slides:
  • Carve outs #1-#2 (slide 41)
  • Carve out #3-#4 (slide 42)
  • Carve out #4-#5 (slide 43)
1) The services are needed to address an actual emergency. An emergency may include, but is not limited to, the need to prevent the stoppage of University operations or to ensure continuous operations at the University medical centers.

2) The employees capable of providing the required services are not available at the University location in sufficient quantity or do not possess the necessary level of expertise, or the services cannot be performed satisfactorily by University employees, or the services are of a specialized or technical nature and the expertise, knowledge, ability and/or equipment required is not available internally. This provision shall be interpreted narrowly and shall not be relied upon to avoid reasonable efforts to hire and train sufficient numbers of University employees.
3) The services are **incidental to a contract for the purchase or lease of real or personal property.** This includes services that are to be provided on property that the University has leased to or from a third party or through public private partnerships. This does not include arrangements where the University maintains operational control.

4) The **services are of such an urgent, temporary, or occasional nature** that the delay resulting from their performance by University employees hired under the University’s regular or ordinary hiring process, or the inefficiencies or difficulties in utilizing University employees, would frustrate the University’s goals giving rise to the need for the services. This provision shall be interpreted narrowly and shall not be relied upon to justify the ongoing use of temporary workers.
5) The contractor will provide equipment, materials, facilities, or support services that could not be provided feasibly in the location where the services are to be performed. Services at remote facilities, which are those not within a 10-mile radius of a University campus, medical center, or Laboratory, may fall within this exception.

6) The services are performed by registry personnel in its clinical operations to address short-term staffing needs, including circumstances where the University’s reasonable recruitment efforts to hire are unable to satisfy ongoing staffing needs.