SB 820, Regents Policy 5402, and Article 5 of the Collective Bargaining Agreement

Procurement Services Department Buyer Training Session
Wednesday, September 29, 2021

UCI Division of Finance and Administration | With U • For U
Procurement Training

Robust training guides are available on the Procurement website and can be accessed from the footer of each web page.
In addition to our guides and micro-learnings, you can request a one-on-one session conducted via Zoom for a more personalized learning experience.

Please contact Shauna Niswonger at shauna.n@uci.edu.
Today’s Agenda

- Welcome
- Overview
- Resources
- Q & A
You are not authorized to sign on behalf of the University or to bind the University in any manner.

It is a violation of federal and state law and UC policy to procure a service or commodity without acquiring the necessary approvals and documents in advance.

If you do, you may be held personally responsible for the cost of the products or services purchased.

Remember

As an employee of a public university, it is your responsibility to comply with all procurement laws, rules, regulations, executive orders, policies and procedures concerning the purchase of goods and services:

- UCOP BUS-43
- UCI 707-10
- California Public Contract Code
SB 820, Regents Policy 5402 and AFSCME Article 5 Overview
UCI Enterprise Workforce Relations (EWR) Team

Leslie Kleiman
Senior Director,
Enterprise Workforce Relations

Jeff Hughes
Workforce Relations Consultant, Enterprise Workforce Relations

Erin Eckelmann-Ray
Workforce Relations Consultant, Enterprise Workforce Relations
Background

Regents Policy 5402
• Adopted November 14, 2019

AFSCME SX/EX CBAs
• Ratified January 31/February 7, 2020
• Prohibits contracting out for services that can be performed by University staff
  • Contracting out should be used sparingly and treated as an option of last resort to address temporary needs, not as a means to replace employees with lower-wage contractors
• Wage and Benefit parity

Source
The “Covered Services” are

- Cleaning, custodial, janitorial or housekeeping services
- Food services
- Laundry services
- Groundskeeping
- Building maintenance
- Transportation and parking services
- Security services
- Billing and coding services
- Sterile processing
- Hospital or nursing assistant services
- Medical imaging or other medical technician services

**Not included:**
- Skilled trades
- Professional Services
The Only Exceptions ("Carve Outs") Allowed

1) Emergency needing continuous University operations
2) Expert knowledge not available with current University employees nor is the equipment required available internally
3) Lease of real or personal property
4) Urgent, temporary, or occasional
5) Remote facilities not within a 10-mile radius of University property
6) Clinical staffing needs

Not to be relied upon as an excuse to avoid insourcing the work

Just because we have not had our employees perform that work at UCI does not mean the work is not a covered service

Not having a current infrastructure to support the service does not mean we aren’t obligated to create the infrastructure (e.g., laundry services, shuttle bus services)

Always consult with Procurement, EWR, and possibly OGC **BEFORE** contracting out
UCI must provide AFSCME with notice before entering into, extending, or renewing a contract for covered services valued at over $100,000

EWR will work with you to provide notice.

The notice must contain:
• Duration of the contract
• Scope of work
• Wage and benefit parity information
• Dollar value of the contract
• Location of the work to be performed
• The justification (carve out) on which we are relying in contracting out the work
UCI must also ensure Wage and Benefit Parity if continuing to outsource covered services

- For all existing services that are outsourced, an amendment has to be executed to ensure the supplier complies with this requirement.

- A contractor is required to provide its employees performing covered services at University locations (including leased properties) with wages and benefits of equivalent value to those provided to bargaining unit employees performing the same or similar work – or the University is obligated to terminate our agreement with a contractor that fails to comply or fails to remedy its noncompliance within a reasonable timeframe.
Hiring Qualified Individuals

- UCI is required to offer employment opportunity to the employees of the contractors previously performing covered services (qualified individuals or “QIs”) at the same location or at a location within 10-miles of the campus/medical center/lab where they performed the work for the contractor, using a streamlined hiring process.

A QI must have worked for the contractor performing work at a University location for 1000 hours over a rolling 12-month period or 35% time over a rolling 36-month period.
What does this mean for your department?

• Utilize in-house employees to perform the covered services **BEFORE** resorting to contracting a supplier

• Reach out to Enterprise Workforce Relations (EWR) or Procurement Services **BEFORE** requesting any contracted services

• Anticipate paying significantly higher amounts for these covered services if services continue to be outsourced

• Make sure an addendum is in place for wage and benefit parity with service provider
Examples of Covered Services that are Obscure

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor Plant Maintenance</td>
<td>Still under review and unclear with no direct job classification and specific wage rate</td>
</tr>
<tr>
<td>Window Cleaning</td>
<td>Low level window cleaning to be performed by in-house staff, anything requiring specialized equipment to be considered as a non-covered service</td>
</tr>
<tr>
<td>Full-Service Catering</td>
<td>Drop-off catering, with no additional service provided is considered a non-covered service. Any catering that involves additional service by caterers is a covered service. Can only be contracted out if it meets one of the carve outs, and wage and benefit parity will apply.</td>
</tr>
<tr>
<td>Pest Control</td>
<td>Still under review across the system. Certain types of services may be considered a covered service, but no clear direction at this time</td>
</tr>
<tr>
<td>Laundry Services</td>
<td>Carve out #2 applies, however wage and benefit parity must be incorporated</td>
</tr>
</tbody>
</table>

Note: If contracted out, each service MUST still meet the wage & benefit parity requirement.
**Best Practice: Insorce the Work!**

- Utilize in-house employees to perform the services *BEFORE* contracting with an outside supplier

<table>
<thead>
<tr>
<th>For these covered services:</th>
<th>Contact:</th>
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</thead>
<tbody>
<tr>
<td>• Cleaning, custodial, janitorial, or housekeeping services</td>
<td>Facilities Management</td>
</tr>
<tr>
<td>• Groundskeeping</td>
<td><strong><a href="mailto:fm-servicedesk@uci.edu">fm-servicedesk@uci.edu</a></strong></td>
</tr>
<tr>
<td>• Building maintenance</td>
<td></td>
</tr>
<tr>
<td>• Food services</td>
<td>Dining Services</td>
</tr>
<tr>
<td>• Food services</td>
<td><strong><a href="mailto:food@uci.edu">food@uci.edu</a></strong></td>
</tr>
<tr>
<td>• Transportation and parking services</td>
<td>Transportation &amp; Distribution Services</td>
</tr>
<tr>
<td>• Transportation and parking services</td>
<td><strong><a href="mailto:eventprk@pts.uci.edu">eventprk@pts.uci.edu</a></strong></td>
</tr>
<tr>
<td>• Laundry services</td>
<td>Procurement Services</td>
</tr>
<tr>
<td>• Security services</td>
<td><strong><a href="mailto:procurement@uci.edu">procurement@uci.edu</a></strong></td>
</tr>
<tr>
<td>• Laundry services</td>
<td>Enterprise Workforce Relations</td>
</tr>
<tr>
<td>• Security services</td>
<td><strong><a href="mailto:jeffrey.hughes@uci.edu">jeffrey.hughes@uci.edu</a></strong></td>
</tr>
<tr>
<td>• Security services</td>
<td><strong><a href="mailto:erin.eckelmanray@uci.edu">erin.eckelmanray@uci.edu</a></strong></td>
</tr>
<tr>
<td>• UCI Health Covered Services</td>
<td>Jackie Yi <strong><a href="mailto:jacklyy@hs.uci.edu">jacklyy@hs.uci.edu</a></strong></td>
</tr>
<tr>
<td>• UCI Health Covered Services</td>
<td>Susanna Rustad <strong><a href="mailto:srustad@hs.uci.edu">srustad@hs.uci.edu</a></strong></td>
</tr>
</tbody>
</table>
Contract Review for Covered Services

UCI Procurement Services

UCI is committed to bringing in-house all covered services as defined by [Reports Policy 5402- Reports Policy Generally Prohibiting Contracting for Services]. As such, contracts that include covered services will only be allowed sparingly and will require demonstration that all other options to create career UCI positions have been exhausted.

Contract Review for Covered Services

- New Request
- Extension/Renewal of Existing Service - PO/Agreement #

Dates of Service: ______________________

Requesting Department: ______________________
Department Contact Name: ______________________
Email: ______________________

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Agricultural</th>
<th>Janitorial</th>
<th>Food Services</th>
<th>Laundry Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grounds-keeping</td>
<td></td>
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<tr>
<td>Security Services</td>
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<tr>
<td>Hospital Assistant Services</td>
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Explain the scope of work: Provide detailed description of services and why the service is necessary. (Be as specific as possible). If UCI employees perform this kind of work, please identify the job titles.
## Covered Service Contract Justification

<table>
<thead>
<tr>
<th>Limited/Exigent Circumstances: Identify carve-out that may apply under Policy 5492</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services which are customarily performed by bargaining unit employees may be contracted out in the following circumstances. Please indicate which of the following apply.</td>
</tr>
</tbody>
</table>

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 fail 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.
## Contract Review for Covered Services

**Explanation of qualifying Circumstances**

Please explain in detail why this work cannot be done with UC staff

<table>
<thead>
<tr>
<th>Document your effort to in-source service, including identifying if alternatives were considered before contracting (please attach additional document below as needed)</th>
</tr>
</thead>
</table>

Please attach any additional documentation that you believe would assist in the understand of your need.
SB 820
SB 820 Compliance

• SB 820 is part of the Education Code, Article 3 Revenue Bonds, sections 92493 et. seq., which deals with the process for the University’s capital outlay approval.

• Commencing with the 2021–22 fiscal year, and for each fiscal year thereafter, SB 820 requires the Department of Finance to approve new and ongoing capital expenditures or capital outlay projects only after the University of California demonstrates ongoing and continuous compliance with SB 820 requirements.
Certification Process

The University of California shall submit, on or before September 1, a report detailing the scope of capital projects (with) certifications attached to the report signed by the President of the University of California, or their duly authorized designee, indicating that, at each facility, building, or other property that will benefit from state funding for a capital expenditure or capital outlay project, both of the following occur:

- (1) All (future) work will be performed exclusively by University of California employees. (and)
- (2) Either of the following (retrospective confirmations or plans for remedy):
  - (A) All work [traditionally performed by persons with University of California Service Unit (SX) job classifications] has been performed exclusively by University of California employees at all times since the University of California received state funding for a capital expenditure or capital outlay project after January 1, 2017. (or)
  - (B) The University of California shall: provide a written report detailing any noncompliance specifying how many contract workers performed work at each site, for what periods of time, and what the University of California has done to remedy the noncompliance and, on or before February 1 of each calendar year, shall certify to the satisfaction of the chairpersons of the budget committee of each house of the Legislature that it has maintained subsequent compliance.
(2) “Capital expenditures” means any of the following:

- (A) The costs to design, construct, or equip academic facilities to address seismic and life safety needs, enrollment growth, or modernization of out-of-date facilities, and renewal or expansion of infrastructure to serve academic programs.
- (B) The debt service amount associated with refunding, defeasing, or retiring State Public Works Board lease revenue bonds.
- (C) The costs to design, construct, or equip energy conservation projects.
- (D) The costs of deferred maintenance of academic facilities and related infrastructure.

The receipt of other state funding (e.g., research grants, etc.) would not prompt any specific actions.

Note: At this time, there are **NO exceptions** to meeting SB 820 requirements.
Recap

• What the policy means
• Effective date
• Importance of compliance
• Certification and reporting
• Annual wage and benefit parity adjustment
• Tracking contractor hours
• Continual review
Resources

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Susanna Rustad, srustad@hs.uci.edu

UCI Regents Policy 5402
Article 5 of the Bargaining Unit
SB820
CA Code, Education Code EDC92493
UC Contracting for Services Guidelines

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Survey

Provide feedback on this event
