

The Regents of the University of California

**GOVERNANCE COMMITTEE**

November 13, 2019

The Governance Committee met on the above date at the UCSF–Mission Bay Conference Center, San Francisco.

Members present: Regents Anguiano, Elliott, Estolano, Kieffer, Lansing, Leib, Napolitano, Pérez, Sherman, and Zettel

In attendance: Regents Butler, Cohen, Park, Reilly, Simmons, Sures, Um, and Weddle, Regents-designate Muwwakkil and Stegura, Faculty Representatives Bhavnani and Gauvain, Secretary and Chief of Staff Shaw, General Counsel Robinson, Provost Brown, Executive Vice President and Chief Operating Officer Nava, Interim Executive Vice President and Chief Financial Officer Jenny, Vice President Nation, Acting Vice President Lloyd, Chancellors Christ, Hawgood, and Wilcox, and Recording Secretary Johns

The meeting convened at 4:15 p.m. with Committee Chair Pérez presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meetings of September 19, 2019 were approved.

2. **CONSENT AGENDA: CHANGE IN DATES AND LOCATION OF THE JULY 2020 REGENTS MEETING**

The Chair of the Board recommended that the dates of the July 2020 Regents meeting be changed from July 14-16 to July 28-30, 2020 and that the location be changed from the Los Angeles campus to UCSF – Mission Bay, San Francisco.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Committee Chair Pérez briefly introduced the item.

Upon motion duly made and seconded, the Committee approved the Chair of the Board's recommendation and voted to present it to the Board.

3. **APPROVAL OF REGENTS POLICY GENERALLY PROHIBITING CONTRACTING FOR SERVICES**

The President of the University recommended that the Regents Policy Generally Prohibiting Contracting for Services, as shown in Attachment 1, be adopted.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

President Napolitano began the discussion by stating that, as the third-largest employer in California, UC should strive to be an employer of choice, supporting all employees, including those who provide custodial services, groundskeeping, maintenance, transportation, food services, security, and other like services. Statements made earlier that day during the public comment period made it clear why the issue of contracting out was of importance and interest to the Board and to UC workers. She remarked that the University should align its practices as closely as possible with State standards for contracting for outside labor, and, when possible, exceed those standards. The proposed policy did precisely this. She thanked Regents Pérez, Leib, and Estolano for their work on developing the policy, which significantly limits the use of outside service contracts to specific, identified circumstances in alignment with State standards and California Government Code. The policy ensures that the University prioritizes the use of its own employees to perform these functions whenever possible. When outside contractors are to be used, the policy protects the labor conditions of those workers by ensuring that they receive wages and benefits equivalent to what UC provides to its own employees. The policy provides contracted workers who have performed services for the University on a long-term and continuous basis the opportunity to become University employees.

President Napolitano highlighted a few important features of the proposed policy. The policy calls for in-sourcing all work that has been provided on a long-term, continuous basis by contracted workers. If an individual has worked at UC as the employee of a contractor for one or more years, that individual will have the opportunity to convert to UC employment. Implementation guidelines on the numbers, proportions, and categories of jobs to be in-sourced would be issued by January 31, 2020. The policy limits displacement and confirms that no employee can be displaced by a temporary worker, but if such displacement is unavoidable, the employee must be offered a comparable position at the same UC location and the policy ensures that the new work location is no more than ten miles from the previous work location. The policy aligns UC policy with State law and policy. The limited circumstances under which contracting out would be permitted fully align with California Government Code and State policies on contracting, while also recognizing that UC's clinical operations need to use registry personnel to address short-term staffing needs. The policy provides for contractor wage and benefits parity, requiring that service contracts exceeding \$100,000 and 90 days' duration provide employees working at UC locations wages and benefits equivalent to those provided to UC employees performing the same work; this exceeds the State standards. The policy changes the enforcement mechanism so that disputes will be decided by a neutral, binding, third-party hearing officer. Any exceptions to the policy must be approved by the President, with the concurrence of the Chair of the Board. The Board retains the authority to amend or reject any exception within a specified time frame.

Committee Chair Pérez thanked Regents Leib and Estolano for their work on determining how to align UC policy with the expectations of the Regents, the standards for State

agencies, and best practices at other higher education institutions around the country. The policy would hold the University to a high standard.

Regent Lansing thanked those who had worked on the development of this policy. Not only would the University be doing the right thing, but she hoped that implementation of this policy might help UC to reach a settlement with the American Federation of State, County and Municipal Employees (AFSCME).

Regent Leib thanked Regent Butler and all others involved in the work on this policy. The document expressed what the Regents believe. The policy would create additional administrative tasks for the campuses, but this was the right action to take.

Regent Zettel asked about an enforcement provision in the policy according to which employee organizations may request to review a proposed contract for covered services within ten days of the notice. She asked if this would be challenging for hospitals wanting to hire emergency personnel. Deputy General Counsel Allison Woodall responded that, currently, under collective bargaining agreements, unions receive a notice when there is a Request for Proposals. The proposed enforcement mechanism applied to the notice of intent to contract. A union can file a dispute. When a contract is in place, such as a contract for health care registry workers, the University can use this labor. The enforcement mechanism would allow a union to dispute a contract but it would not prevent a medical center from engaging workers.

Regent Anguiano stated that the Regents need to clearly articulate their values and principles. This document was a substantial improvement compared to the last iteration.

Regent Estolano expressed concern that this policy might make it more difficult for UC to achieve its Disadvantaged Business Enterprise (DBE) contracting goals. This policy was being adopted with an aggressive timeline and might need small revisions in the future. She asked that UC track its performance in DBE contracting and that the Regents receive a report in a year. If there was a significant drop in volume, number, and value of DBE contracts, UC should determine if this was due to the new policy and how.

Committee Chair Pérez asked that the University be thoughtful about meeting its DBE goals in other areas as well, not just in the context of this policy. There were many areas where the University could improve its contractor mix.

Regent Park observed that the policy was similar to AFSCME's proposal, with a few exceptions. She recalled that the Office of the President had estimated the cost of implementing such a proposal and asked if the Regents could assume that the costs associated with the implementation of this policy would be the same. Chief Policy Advisor Jenny Kao responded that the Office of the President had carried out a cost estimate. She distinguished "cost" and "total spend." Total spend was the amount the University would be spending in any case for some of these services. The Office of the President believed that the added cost would be approximately \$108 million annually. This was mainly the

contractor's added cost of providing parity, equivalent wages and benefits as stated in the policy, and these would likely be passed on to the University.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

4. **ESTABLISHMENT OF A NEW SENIOR MANAGEMENT GROUP POSITION OF CHIEF STRATEGY OFFICER, UCLA HEALTH, AND THE MARKET REFERENCE ZONE FOR THE POSITION, LOS ANGELES CAMPUS**

The President of the University recommended that the Governance Committee approve:

- A. Establishment of a new Senior Management Group position of Chief Strategy Officer, UCLA Health, Los Angeles campus. This will be a Level Two position in the Senior Management Group.
- B. Establishment of a Market Reference Zone for this position as follows: 25th percentile – \$545,700, 50th percentile – \$636,300, 60th percentile – \$667,100, 75th percentile – \$713,300, and 90th percentile – \$783,400.
- C. The position includes eligibility to participate in the Short Term Incentive (STI) component of the Clinical Enterprise Management Recognition Plan (CEMRP), with a target award of 15 percent and a maximum potential award of 25 percent of base salary, subject to all applicable plan requirements and Administrative Oversight Committee approval. Participation is reviewed and approved prior to the start of each CEMRP Plan Year.
- D. This action will be effective upon approval.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Acting Vice President Lloyd explained that the Health Services Committee had approved this Senior Management Group (SMG) position at its October meeting. The action was now being presented to the Governance Committee in accordance with the charters of both committees. For SMG positions within UC Health that are fully funded with non-State funds, following approval by the Health Services Committee and the Governance Committee, no further action by the Regents is required. This position would continue to report to the President of UCLA Health and the Chief Executive Officer of the UCLA Hospital System. The current incumbent would remain in the position and would need to be appointed as an SMG member, which would be within the approval authority of the President of the University.

Committee Chair Pérez raised the issue of how many SMG positions the University needed and asked why another SMG position was needed at UCLA Health. Chancellor Block responded that this was an extremely important position for the UCLA Health system,

which must remain agile. The campus felt that this must be a high-level position. The incumbent was an outstanding employee with an excellent performance record. UCLA Health believed that this was the appropriate level for this position. Ms. Lloyd added that this position performs services both for UCLA Health and UC Health systemwide.

Regent Elliott requested clarification regarding to what extent this was a systemwide position and how much a UCLA position. Ms. Lloyd responded that, in the past, the UC system provided a certain amount of funding for this position. The last time this was approved, President Napolitano asked that UCLA assume this position on behalf of the system. Regent Elliott asked if the position would provide work for UCLA only or for the system as well. Ms. Lloyd responded that this was primarily a UCLA position, but would assist UC Health systemwide on Medi-Cal matters.

Committee Chair Pérez observed that, once this SMG position was approved, it would no longer be within the Regents' purview, but within the President's authority. There were not many instances in UC Health operations where the full Board or the Governance Committee would have some decision-making authority. The Committee would be approving a position for which the incumbent was already known. This would be a new SMG position that would continue after the retirement or departure of the current incumbent. Given that this individual already worked for UC and there was no need for a search and recruitment, he asked what deficiency this action was supposed to correct. Executive Vice President and Chief Operating Officer Nava responded that the scope of this role as envisioned by UC Health was broader than the current role of this incumbent. The SMG position would be focused on the strategic growth of UCLA Health with some responsibilities to support UC Health's interaction with the Medi-Cal program. The position was primarily a strategic role for UCLA.

Regent Elliott asked if the Regents should anticipate that other medical centers would need a position like this one in the near future, or if this position was specific to UCLA in a way that differentiated UCLA from the other medical centers. Ms. Lloyd responded that UCSF had a similar position. This position was specific to UCLA and had been expanded, and therefore was moved into an SMG classification.

Regent Zettel emphasized the complexity of the UCLA Health system. In order to meet Affordable Care Act requirements and maintain financial stability, health systems have to be nimble and establish strategic partnerships in their communities. This was an important position for ensuring that UC medical centers are able to remain financially viable, expand services, and better serve the community.

Chancellor Hawgood remarked that UCSF had an SMG position similar to this one, a chief strategy officer, and that this was a critically important position. In the past, all the UC medical centers were academic health centers, effectively single hospitals whose strategy dealt with referring physicians; they had now moved to being academic health systems with multiple relationships, such as joint ventures and limited liability companies. Many mergers and acquisitions were taking place. The chief strategy officer position was critical

for the financial health of a health system and for the maintenance of its relationships. He expressed his support for this position at UCLA.

Regent Sherman recalled that the percentile levels of the Market Reference Zone for the UCSF position were slightly higher.

Regent Cohen stated that there had been little justification for this action in terms of added value and questioned why the same individual should receive a higher salary. Regent Zettel responded that the added value would be service to California communities, ensuring that specialist care is available to communities that are located far from UC medical centers.

Regent Cohen stated that a more convincing argument for this position could be made if there had been no such position in existence and the University had unsuccessfully tried to recruit an individual with this skill set at a lower level.

Regent Elliott recalled that the chief strategy officer position at UCSF, approved by the Governance Committee in July 2019, had been presented as a unique circumstance. He expressed frustration at the fact that a similar position was being presented a few months later.

Committee Chair Pérez stated that the Regents needed to have the right set of expectations and the proper context to evaluate the facts. The state of practice might currently require that a chief strategy officer position be at this level. The Regents needed to understand this and know whether more positions like this one would be brought to them for approval in the near future.

Regent Lansing recalled that this item had not been controversial when it was discussed and approved by the Health Services Committee. The role had been expanded and it was determined that it was needed for UCLA Health. She urged the Committee to approve this item.

Regent Kieffer stated that he was confident that this position was needed at UCLA but that he shared Regent Elliott's concerns.

Regent Park stated that, when the UCSF position had been presented to the Committee, there had been different answers about whether the position was unique and whether other medical centers would establish similar positions. She quoted from the July 2019 open session minutes of the Governance Committee: "Regent Elliott asked if the Regents should expect that other campuses would want to establish similar positions in the near future. Director Rebekah Fernandez responded that this would be considered on a case-by-case basis. If another campus or medical center wished to propose such a position, it could do so... Regent Elliott asked if the Office of the President expected other medical centers to propose positions like this one, which would pay a higher salary. Ms. Fernandez responded that the University did not expect this at this time." UCSF Health Chief Executive Officer Mark Laret had remarked that "This kind of role should not be a surprise to the Regents because it reflected a change in how UC Health does business..."

Regent Park asked about the magnitude of the UCLA Health enterprise in terms of billions of dollars. Chancellor Block responded that UCLA had an \$8 billion budget, and UCLA Health made up about \$4 billion of that amount.

Regent Park recalled that the Health Services Committee had paused over the same concerns when the UCSF position was proposed, but had approved the position. While this action could be negatively perceived, she expressed support for the position.

Regent Sures observed that UCLA Health would be pursuing many opportunities for affiliations. A chief strategy officer was essential for negotiating these opportunities. This was a necessary position, given the size of UCLA Health.

Chancellor Block noted that UCLA was eager to retain this individual, who was highly qualified. Chancellor Hawgood added that this individual was without question one of the most knowledgeable and competent people in California in understanding the relationship between State Medicaid and the federal drawdown of provider fees. He had negotiated waivers that had brought in significant additional funds. As an employee, he would be highly desirable to other health systems in the state.

President Napolitano stated that the Board could expect future action items for positions like this one at the other medical centers.

Regent Leib concurred with the view that this was an important position and reminded the Committee that the position would be funded with health system revenues and would not use State funds.

Regent Lansing recalled that the Health Services Committee had unanimously voted to approve this position. UCLA Health was a \$4 billion enterprise today, and, as it grew larger, with more affiliations and partnerships, it would need this position. She expressed approval for promoting individuals from within the organization.

Regent Sherman expressed support for positions like this one, which were desirable, because the Regents wished for UC Health to thrive and expand as a business.

Regent Estolano underscored that it was important to make a distinction between UC Health-supported positions and positions supported by taxpayer money. She did not feel absolutely certain about approving a new position at this level of compensation.

Upon motion duly made and seconded, the Committee approved the President's recommendation, with Regents Elliott and Estolano abstaining.

The meeting adjourned at 5:05 p.m.

Attest:

Secretary and Chief of Staff



## Regents Policy Generally Prohibiting Contracting for Services

### POLICY SUMMARY / GUIDING VALUES AND PRINCIPLES

There shall be a general prohibition on contracting out for services and functions that can be performed by University staff. Under exigent and limited circumstances when an outside contract is a solution of last resort, the following shall apply:

- ⇒ **UC MUST VALUE AND PROTECT ITS EMPLOYEES** The University shall prioritize the use of its employees to perform functions and services whenever possible and the use of outside contractors will not cause or facilitate the displacement of university employees.
- ⇒ **EQUAL PAY FOR EQUAL WORK** The labor conditions of contract workers shall be protected by ensuring they receive wages and benefits equivalent to what the University provides to its employees, and providing those who have performed services to the University on a long-term and continuous basis the opportunity to become University employees.
- ⇒ **UC MUST BE A MODEL EMPLOYER** Requirements governing state agencies and departments under California Government Code Section 19130 shall serve as minimum standards and, whenever reasonable, shall be exceeded.

Since its founding, the University's public mission has always been to unlock the doors of economic opportunity, uplift the human condition, and serve as an antidote to poverty. This begins from within.

UC's employment and contracting practices for all individuals working on its campuses, medical centers, and laboratories must model what it demands of other employers. In particular, this means the University must remain vigilant in ensuring its use of contract workers does not contribute to the rise of poverty-level jobs, thereby exacerbating growing economic inequality and reliance on taxpayer-funded "safety-net" services. 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.

As a public trust and one of the largest employers in California, the University is committed to protecting and valuing the lives of those it serves, educates, and employs.

## **POLICY TEXT**

Consistent with the values and principles outlined above, this policy establishes standards for contracts for services for 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; and medical imaging or other medical technician services. These shall be referred to as “covered services” for purposes of this policy.

The University will utilize its employees to perform covered services that have been customarily performed by University employees to the greatest extent possible before resorting to the use of private contractors to provide such services. Contracting for covered services only is permissible under the limited circumstances described in this policy or under other circumstances where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders.

### **A. In-sourcing Contracted Workers**

The University is committed to using University employees to perform covered services, and to providing employment opportunities to workers who have been providing covered services to the University. No later than February 15, 2020, the University shall identify covered services that have been provided on a continuous basis for 12 months or more through service contracts and shall, to the fullest extent possible, in-source that work to be provided by University employees. Individuals employed by service contractors who have provided those services to the University on a continuous basis for 12 months or more may request to be converted to University employment. Requests should be submitted to the location’s Employee/Labor Relations Manager. The University shall establish implementation guidelines by no later than January 31, 2020.

### **B. General Prohibition on Contracting Out**

Under this policy, contracting for covered services only is permitted where contracting out is required by law, Federal requirement, contract or grant requirement, or court decisions or orders, or under the following limited, exigent circumstances that comply with the State’s requirements in Government Code section 19130:

1. The services are needed to address an emergency. An emergency may include, but is not limited to, the need to prevent the stoppage of University operations or to ensure the continuous operations of 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.

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.
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.
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. All services at remote facilities, which are those not within a 10-mile radius of a University campus, medical center, or Laboratory, fall within this exception.
6. The services are performed by registry personnel in clinical operations to address short-term staffing needs, including circumstances where the University's reasonable recruitment efforts to hire employees are unable to satisfy ongoing staffing needs.

### **C. Employment Standards**

#### **1. Wage and Benefits Parity**

Contracts for covered services exceeding \$100,000 and 90 days' duration shall include provisions requiring the contractor to provide its employees working at University locations wages and benefits that are equivalent to the University wages and benefits provided to University employees performing the same work. "Benefits" includes health, dental, vision, and retirement as well as vacation, sick leave, and holiday pay. The Office of the President shall establish annually the wage and benefit costs for these workers and contractors. The University may, in its sole discretion, terminate its agreement with a contractor that fails to comply with these provisions or provide the contractor with an opportunity to remedy its noncompliance.

#### **2. No Displacement of University Employees**

Contracts for covered services shall not displace University employees. Where displacement is unavoidable, the University shall make available another position for which the employee is qualified. The position will be in the same bargaining unit and at the same campus, medical center, or Laboratory from which the employee was displaced and shall not result in either a reduction in pay and benefits or a change of work location that is greater than ten (10) miles.

“Displacement” means demotion, layoff or involuntary reduction in time due to entering into a contract for services.

### 3. Equal Employment Opportunity

Contracts for covered services shall not adversely affect the University’s equal employment opportunity efforts.

#### **D. Notice to Employee Organizations**

The University will provide advance notice to affected employee organizations prior to entering into, extending, or renewing a contract for covered services over \$100,000.

- Where a Request for Proposal will be issued, the University will provide a copy of the RFP at the time of issuance.
- Where no RFP will be issued, the University will provide notice of at least 30 calendar days prior to entering into, extending or renewing the contract.

The notice also shall provide information about the provisions of this policy that justify the contract.

During the notice period, upon the employee organization’s request, the University will provide relevant non-privileged information that is reasonably available pertaining to the contract and the employee organization may present alternatives to mitigate or avoid the need for the contract while still satisfying the University’s needs to provide services. The University must consider those alternatives and adopt them when feasible provided that the employee organization provides those alternatives within 14 days of the notice.

The University shall produce an annual report of all contracts for covered services, regardless of amount or duration, and shall provide the report to affected employee organizations and the Regents.

#### **E. Enforcement**

Upon receiving the notice described in section D. above, an employee organization may request review of a proposed contract for covered services within ten (10) days of the notice to determine whether the contract complies with the provisions of section B. of this policy. The University shall appoint a neutral hearing officer to conduct the review from a panel mutually agreed upon by the University and the employee organization.

The hearing officer shall review the matter and determine whether there is good cause for a hearing. If so, the hearing officer shall schedule the disputed contract for a hearing for the

purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract under the provisions of section B, above.

The reasons for the hearing officer's decision regarding whether the contract complies with the provisions of section B., above, shall be in writing and shared with the parties. The hearing should be completed and the decision issued within sixty (60) days of the employee organization's request for review, or as soon as is practicable, whichever occurs first. The hearing officer's decision shall be final.

If an employee organization's collective bargaining agreement prescribes a different enforcement mechanism for disputes over contracts for services, then that procedure will take precedence.

### **COMPLIANCE/DELEGATION**

The University shall implement the requirements of this policy by adopting guidelines, administrative policies, and procedures.

The President, in concurrence with the Board Chair, must approve any exceptions to this policy. The President shall report any approved exceptions to the Governance Committee within ten (10) business days of granting the exception. The full Board shall retain the authority to amend or reject any exceptions granted within sixty (60) days of receiving a report of exceptions approved by the President.