

Supplier Wage and Benefit Parity Compliance Verification (Supplier WBP Audit)

Final Report

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BACKGROUND AND EXECUTIVE SUMMARY

In late 2019 and early 2020, the University of California implemented a new policy and collective bargaining provisions related to contracting with outside vendors and creating clearer paths to UC employment. These changes are outlined in Regents' policy 5402 and Article 5 of the University's collective bargaining agreement with AFSCME. These provisions impact all the University's supplier contracts for "Covered Services" typically provided by AFSCME-represented employees in the Service and Patient Care Technical units. "Covered Services" is defined by Regents Policy 5402 as "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." The University's new policy and collective bargaining provisions require "Covered Services" suppliers to provide wages and benefits equal to those provided by the University and to provide a pathway to career UC employment to supplier employees who meet certain criteria.

Like all organizations, the COVID-19 pandemic slowed UC's efforts to implement these new, complex, and broad provisions. The pandemic impacted not only UC's internal operations, but also the external labor market – creating significant labor shortages and making it difficult for employers across the nation to fill positions.

While the University faced pandemic-related challenges to implementation, UC did put in place several practices during this period to support compliance with its new policies and collective bargaining provisions. UC now publishes updated Wage and Benefit Parity (WBP) rates annually for its suppliers, as well as an annual report (Article 5, Annual Report) of its covered services contracts. UC provides that report to the union along with supporting documentation. In addition, the University formed a systemwide, cross-functional improvement team that met weekly; appointed a responsible executive at each campus charged with Article 5 compliance; and is holding monthly meetings with those executives to coordinate and discuss Article 5 issues. These coordination efforts are in addition to monthly meetings with UC Office of the President (UCOP) leadership and monthly meetings with more than 150 UC employees who manage Article 5 operational issues. All these efforts are further supported with weekly meetings with a group of UCOP cross-functional experts engaged in Article 5 initiatives. This work is also accomplished with the key partnership of the previously established systemwide Procurement Policy and Legal Documents Team (PPLDT) Working Group, and the Systemwide Labor Relations Managers. Overall, the University estimates that about 20,000 hours of staff time were dedicated to work on audit-related tasks across multiple UC locations and departments.

Coming out of the pandemic, the University has increased its efforts: UC has created a workforce commitment office that will eventually have dedicated employees and resources to support workforce compliance obligations and commitments across the system; it is implementing new technology to ensure that UC suppliers can accurately track and verify their compliance with the University's qualified individual and wage and benefit parity obligations; it is updating the terms and conditions in the University's supplier contracts to ensure greater compliance with Article 5; it is updating and communicating additional wage and benefit guidance to UC locations; and it is creating an audit program that will provide further review of wage and benefit compliance.

This year, UC has also conducted an in-depth audit of its suppliers' compliance with new wage and benefit parity requirements, also known as the Wage and Benefit Parity (WBP) Compliance Verification Project. The scope of this audit is explained in detail below.

The purpose of performing the supplier audit was to identify areas for improvement and ensure remediation of wage and benefit parity discrepancies.

The University looks forward to using these audit results to achieve those goals. UC has made it clear to its suppliers that they are expected to respond to the audit and achieve compliance by either submitting proof that they have provided up-to-date wage and benefit parity or by proving remediation of the underlying wage and benefit discrepancy during the audit period. UC's suppliers understand that these principles are critical and that failure to comply with them will result in termination of their contracts with the University.

As of today, 100% of UC's suppliers who were asked to participate are responsive to the audit. A majority (78%) of suppliers have already complied with the wage and benefit parity policies, meaning they complied all along or have already completed their remediation plans and provided proof of remediation to the University. The remaining suppliers are actively working to analyze the data and to address validated non-compliance. They will have their fully compliant remediation plans completed by the end of May 2023.

UC remains committed to working with small and diverse businesses and, given that commitment, many of the suppliers audited fall into that category: 12 of 64 (19%) suppliers included in the WBP Compliance Verification Project are certified as a small business. One of the 12 is also certified as a veteran-owned business, and eight of the 12 are also certified as diverse businesses (minority-owned, woman-owned, or disadvantaged business enterprise). Overall, nine (75%) of the small businesses are fully compliant, meaning they provided wage and benefit parity at the start of the audit, or they have already completed and verified their remediation plan. Two small businesses have remediation plans in progress, and one small business, whose contract was terminated, has audit results still pending.

The WBP Compliance Verification Project started in November 2022 with a request to all UC suppliers with a contract value of over \$100,000 to provide verification from an independent auditor of their compliance with Regents' Policy 5402 and Article 5 of the University's collective bargaining agreements with AFSCME. If UC locations did not have contracts that fit that category, alternative contracts were added to the list. In total, 64 suppliers received an audit request. Suppliers from 17 UC locations participated in the project, including 10 campuses, five medical centers, the Lawrence Berkeley National Laboratory, and the UC Office of the President. The project also included two systemwide suppliers and the managed service provider (MSP) for UC Health. MSPs are organizations that manage temporary or contingent staff. Because this is the first audit of its kind that UC has performed, we expect that future audits may include an expanded or modified scope of contracts and suppliers to be included.

SUPPLIER-PERFORMED AUDIT

To support compliance with Regents' Policy 5402 and Article 5, the University performed an audit of its suppliers. As part of the WBP Compliance Verification Project, the University asked 64 "Covered Services" suppliers supporting 17 UC locations to provide verification of WBP compliance for the period of April 11, 2021, to September 30, 2022. The project team used the Article 5 2021 Annual Report to identify suppliers for the project since the 2022 Annual Report was not yet available at this time. Suppliers were selected using the following criteria:

- Suppliers currently active in October 2022 (had an open contract with UC)
- Suppliers who provided covered services valued at \$100,000 or more as per the 2021 Annual Report

In addition, the project team worked with procurement staff at individual UC locations to ensure that the audit included at least two suppliers from each location and two systemwide suppliers. Suppliers were given 90 days to complete the independent audits and return their verification forms.

The project team chose April 11, 2021, to September 30, 2022, as the period to verify compliance with the 2021 WBP rates (which were in effect April 11, 2021 to May 31, 2022) and the 2022 WBP rates (which were in effect June 1, 2022 to present). Because the project planning started in October 2022, the latest possible date to include in the project was September 30, 2022.

External auditors reviewed suppliers' "Covered Services" agreements to determine the following:

- Whether the supplier paid its employees, at a minimum, the equivalent of the WBP rates in the agreement for the time period specified in the agreement;
- If the agreement was amended to update the WBP rates, then the supplier employee's wage rates were also adjusted to reflect the new WBP rates;
- Whether the WBP rates listed in the agreement match the WBP rates UC issued for that location, job title, and time period;
- If the agreement was in effect for both the 2021 and 2022 WBP rate periods, then the agreement was amended to reflect the new WBP rates starting June 1, 2022; and
- Whether the actual rates paid to the suppliers' employees were equivalent to the WBP rates in effect for that period, regardless of whether the contract included the appropriate WBP rates.

The audit results received to date are as follows:

- Overall, 50 suppliers (78%) have fully complied or have completed and verified their remediation plans
- 39 suppliers (61%) fully compliant
- 15 (24%) cases where suppliers were non-compliant
- 2 (3%) cases where UC was non-compliant
- 6 (9%) cases where both suppliers and UC were non-compliant
- 2 (3%) cases where verification form not received

All 25 of the suppliers that were non-compliant have implemented, or are in the process of implementing, remediation plans:

- 17 of the non-compliant suppliers have a remediation plan in place (including suppliers where UC was non-compliant)
 - 10 of the suppliers with remediation plans in place have already completed the plans and provided evidence of the remediation.
- Eight are developing their remediation plans, to be completed by no later than May 31, 2023. This includes the 2 suppliers that have not completed their verification forms.

Each UC location also received the exception forms for their suppliers on or before March 24, 2023, along with the following guidelines for developing remediation plans:

- Confirm hours worked for each employee on the exception form via timesheets for the exception period;
- Calculate amount owed for each employee and discuss with the supplier how much they must pay (supplier non-compliance) and how much UC must pay (UC non-compliance);
- Collect redacted paystubs or payroll reports to validate that supplier paid each employee the agreed upon amount; and
- Terminate agreements with suppliers that refuse to address non-compliance.

SMALL/DIVERSE SUPPLIERS ANALYSIS¹

12 of 64 suppliers (19%) included in the WBP Compliance Verification Project are certified as a small business. 1 of the 12 is also certified as a veteran owned business, and 8 of the 12 are also certified as diverse businesses (minority owned, woman owned, disadvantaged business enterprise).²

The compliance status of the small businesses are as follows:

- Overall, 9 small business (75%) were fully compliant, or have completed and verified their remediation plan
- 7 small businesses (58%) were fully compliant.
- 5 small businesses (42%) were either non-compliant, had issues of UC non-compliance, or both.
 - 1 small business submitted a verification form listing the supplier as non-compliant.
 - 2 small businesses submitted verification forms listing both supplier and UC as non-compliant.
 - 1 small business submitted a verification form listing UC as non-compliant.
 - The other small business, whose contract was already terminated, has yet to submit their verification form.

CAMPUS COMPLIANCE ANALYSIS

Suppliers supporting UC campuses, the UC Office of the President, and Lawrence Berkeley National Laboratory comprised the bulk of the WBP Compliance Verification Project, with 49 out of 64 suppliers.

¹ Analysis does not include MSP staffing agencies.

² Certifications were verified through Supplier I/O.

Three suppliers held contracts with multiple UC locations. These suppliers were counted once at each location using them and were required to provide verifications for each separate location they served. The systemwide suppliers were also required to provide verification forms for each location in the AFSCME 2021 Annual Report with an annual covered services spend of more than \$100,000. These systemwide suppliers all provide “Covered Services.”

Supplier Analysis

Overall, 39 of campus suppliers (78%) were fully compliant or completed and verified their remediation plans by the date of this report. All suppliers have committed to complete remediation plans and provide proof of remediation by the end of May. In addition, 47 of the 49 suppliers (96%) returned verification forms. The two remaining suppliers started late on the audit because the project team had difficulty contacting them, either due to outdated contact information or because emails about the audit landed in email spam folders. Each of the remaining suppliers expect to complete their audits and identify any necessary remediation plans by May 16, 2023.

As may be expected, the larger campus suppliers (systemwide suppliers, suppliers with contracts at multiple locations) were better able to navigate, comply with, and support the administrative burden associated with the audit and contracting out process than the smaller suppliers. Any rate discrepancies for these suppliers were either very minor (less than \$1/hour for a limited period) or the result of UC updating WBP rates late.

The suppliers that struggled the most tended to be local suppliers with long-term relationships with the UC location in question. It was clear that these suppliers struggled with the administrative and contractual burdens associated with these compliance obligations.

The 23 instances of campus supplier noncompliance involved a total of 374 contract employees out of an estimated total population of 3,000 contract employees. The median wage and benefit discrepancy was \$1.96 per hour.

All non-compliant suppliers are required to remediate the underlying wage discrepancy or face contractual remedies. Each location with non-compliant suppliers were given the following instructions to develop remediation plans:

- Collect timesheets for affected employees to confirm hours worked;
- Confirm amount owed (hours worked * WBP discrepancy) using auditor exception forms;
- Confirm responsibility to pay (UC non-compliance or supplier non-compliance);
- Collect redacted paystubs or payroll reports to verify remediation. Paystubs or payroll reports must have the following information:
 - Name of affected employee
 - Number of hours worked
 - Amount in supplemental check
 - Check number
 - Date check was issued
- And, submit paystubs or payroll reports to project team to validate completion of remediation plan.

Campuses were instructed to complete the remediation plan as quickly as possible. Chief Procurement Officers/Supply Chain Directors sent a remediation non-compliance notice on April 3 to any supplier that did not respond to the remediation request. If any supplier does not follow through on remediation plans (which is not anticipated at this time), the Chief Procurement Officers/Supply Chain Directors will send that supplier a notice on April 23, 2023, that UC is terminating their contracts.

UC Campus Non-compliance

Auditors found instances of UC non-compliance with eight suppliers. The reason for non-compliance was split evenly between no WBP rates in the agreement and the WBP rates not matching the published WBP rates. In cases where the WBP rates did not match the published WBP rates, locations either updated the rates at a different date than the rate effective date (e.g., updated the WBP rates to the 2022 rates in October instead of June) or updated the rates after the fact but made them retroactive to the effective date.

In the two cases where the auditors found that UC had not included the WBP rates in the agreement, the UC location had put the bill rate instead. In the other two cases, the UC locations did not realize Article 5 and WBP rates applied to the contracted services. UC is remediating identified non-compliance based on the remediation principles outlined above.

For the issues identified in the audit, UC is actively working to improve its guidance and direction to campuses regarding WBP compliance. For example, wage and benefit parity rates were posted on April 3, 2023, the first business day in April, and additional guidance will be provided to campuses in April to support their implementation of the new rates. More information about UC's response to this audit is provided in the Recommendations section.

HEALTH SYSTEM COMPLIANCE ANALYSIS

A total of 15 UC Health suppliers were audited. Overall, 11 UC Health suppliers (73%) were fully compliant or completed and verified remediation plans.

- All 15 suppliers acknowledged receipts of the request to complete verification forms (100%)
- Nine of the 15 suppliers (60%) submitted verification forms and were fully compliant
- The UC Health Managed Service Provider accounted for three instances of the non-compliant suppliers. (See the Managed Service Provider Analysis section for details of their subcontractors' compliance.)
- One supplier had their contract terminated in 2021 and was marked non-compliant.
- Two suppliers were non-compliant. The suppliers have remediated the issues, and the audit remediations have been verified. These suppliers are now fully compliant.

UC Health Non-compliance

For the one supplier audit instance (non-managed service provider) where the supplier's auditor found instances of supplier non-compliance, it was remediated, all employees received retroactive payments, and they are now made whole. The WBP rates are now being followed in accordance with the UC policy.

MANAGED SERVICE PROVIDER ANALYSIS

Overview

Like most hospitals across the state, UC uses temporary and contingent labor when necessary to ensure health care operations. These services are needed to meet critical patient care needs and are due to the continued labor shortage. All five UC Health locations manage contingent labor through a Managed Services Provider (MSP). An MSP is a contingent workforce management provider that oversees the recruiting, management, and payment of temporary workers. The MSP is an intermediary between UC Health and the contingent employees and handles tasks such as sourcing and recruiting candidates, administering payroll and benefits, and providing analytics and reporting.

Because contingent labor is a large part of UC's "Covered Services" outsourced labor, and because of the unique nature in which UC contracts for contingent labor, the MSP audit response was analyzed separately from other "Covered Services" contracted labor.

Managed Service Provider Audit Results

While the MSP met the deadline for submitting audit results, the UC Health locations identified data issues—specifically overtime calculation errors and missing benefit information—in the independent audit results. The UC Health locations and MSP have resolved many of these reporting errors and are working closely to incorporate further corrections from the sub-suppliers.

For the entire audit period, UC Health locations utilized 2,265 workers in Covered Services positions, of which 1,500 workers (66%) were compliant with WBP. UC Health suppliers have all remediated or committed to the remediation principles outlined above. If agencies do not remediate as required, then the contracts will be terminated.

UC Health identified two primary issues with the submitted audit:

- Error in the auditor's overtime compliance calculation: Auditors calculated compliance at the hourly rate level instead of the shift level. Private employers in the healthcare industry whose employees adopt alternative workweek schedules, in accordance with California procedures, are exempt from paying overtime for regularly scheduled 10- or 12-hour shifts. In those situations, overtime is only paid when the regularly scheduled shift time is exceeded or if the worker exceeds 40 hours in the workweek. Agencies, as private employers not in the healthcare industry, are not exempt from the basic overtime rules and must pay overtime after eight hours, unless they follow California procedures and their employees elect alternative workweek schedules of up to 10 hours per day. Here, the agencies have represented that they are required to pay overtime after eight hours in the day.
- Reported and audited compensation too low to be deemed accurate: Many agencies were unclear on the UCOP guidance regarding benefit calculations and either did not include benefits and/or did not include travel stipends.

UC Health has taken immediate steps to remedy these issues:

- Error in the auditor’s overtime compliance calculation: UC Health has analyzed the audited data at the individual, agency, and shift-level detail. UC Health then calculated compliance against WBP rates. The UC Health finance department reviewed and validated the analysis. The MSP has submitted this data to their independent auditor to re-certify the results.
- Reported and audited compensation too low to be deemed accurate: the MSP and UC Health have met with the largest agencies, and continue to meet with agencies, with WBP variances. These agencies have stated that they incorrectly reported benefits, and they have either submitted updates or are in the process of submitting updates.
- Agencies that did not respond to the initial audit request have been terminated.
- Agencies that do not correct their reported compensation will be terminated, and remediation steps will be activated.

UC RECOMMENDATIONS

Overall, the project team found that compliance issues had three root causes:

- Gaps in knowledge: Given Article 5’s new, complex, and unique supplier requirements, UC suppliers did not fully understand what was expected of them. The gaps ranged from uncertainty regarding what services qualified as “Covered Services” to what roles the suppliers and the UC locations play in ensuring compliance.
- Compliance processes: All UC locations had processes in place to justify contracting for covered services. These processes did not always consider how to ensure that WBP requirements were followed.
- Retroactive application for WBP rates: In an attempt to correct WBP compliance issues, multiple locations amended covered services agreements to include WBP rates that were retroactive to the effective dates. However, the amended agreements did not specify how suppliers were to redress the employees who had been paid at the wrong WBP rate.

The project team recommends the following actions to address these root causes:

- Process review: It would be beneficial for the systemwide teams at the Office of the President (Labor Relations, Procurement, UC Health Supply Chain Management) to schedule a process review with each location where the auditor found UC non-compliance. The process review would serve to identify areas where compliance can be improved through changes in processes.
- End user education: While local procurement and labor relations teams are aware of WBP compliance requirements, it is not clear that end users purchasing the covered services understand how to comply with WBP requirements. Training that targets end users will address this knowledge gap.
- Supplier education: Suppliers are key stakeholders in WBP compliance, and additional training for them will address the knowledge gap between what suppliers think is their responsibility and what UC expects from them.

In addition, the project team recommends collaborating with other ongoing compliance efforts, such as the internal covered services audit and follow-up to the 2022 Annual Report, to address knowledge gaps and confirm that locations and suppliers have addressed the compliance issues. The project team also recommends leveraging current initiatives – such as the monthly systemwide meetings, regular Responsible Executive meetings, and updated WBP guidance – to improve WBP compliance.

Appendix 1 – Project Participants

Project Team

Name	Role	Department
Cheryl Lloyd	Executive Sponsor	Systemwide HR
Paul Williams	Executive Sponsor	Systemwide Procurement
Scott Wilkerson	Executive Sponsor	UC Health Procurement
Melissa Matella	Executive Sponsor	Systemwide HR
Linda Kimsey	Project Manager/Owner	Systemwide Procurement
Judy Kogut O'Connell	UC Health Liaison	UC Health Procurement
Mark Sampson	UC Health Liaison	UC Health Procurement
Andy Willis	MSP Sourcing Manager	UC Health Procurement
Alan Garcia	Data Analyst	UC Health Procurement
Renea Davis-Leathers	Communications	Systemwide Procurement
Monique Carter	Project Coordinator	Systemwide Procurement

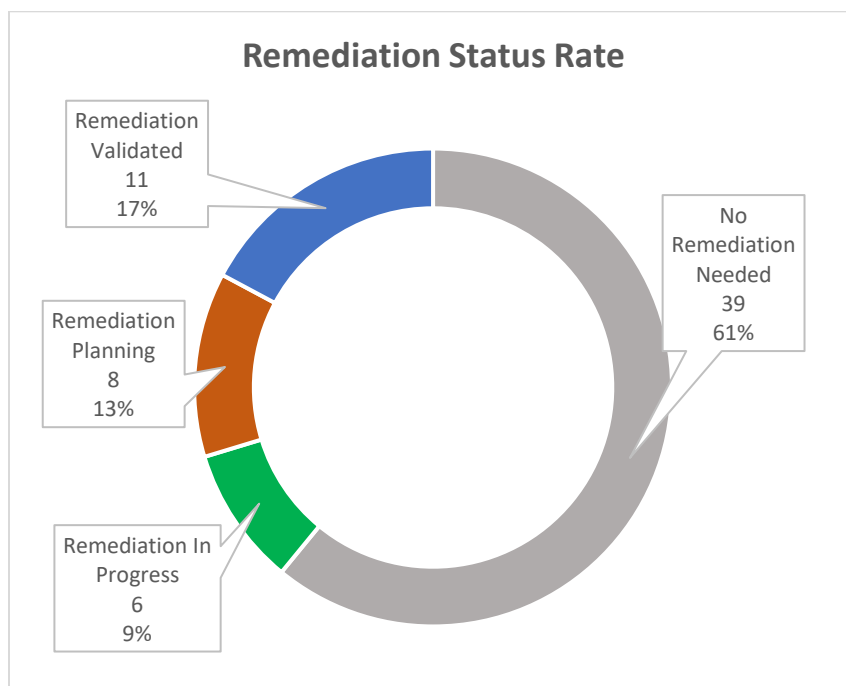
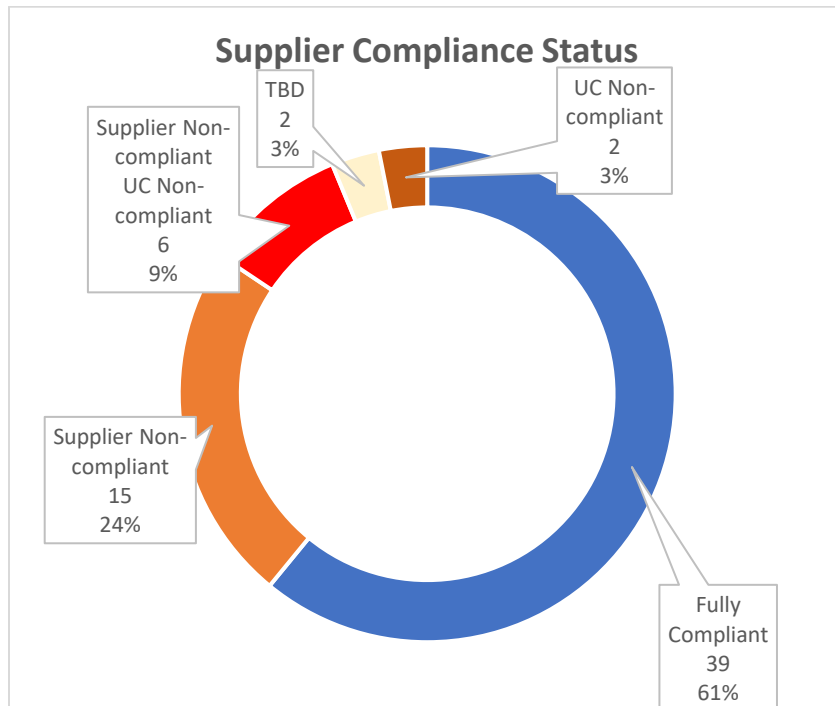
Advisory Group

Name	Role	Department
Andy Huntington	Legal Counsel	UC Legal
Letitia Silas	Labor Relations	Office of Labor Relations
Peter Nguyen	Labor Relations	Office of Labor Relations
Liliana Cortez	Labor Relations	Office of Labor Relations
Michael Bedard	State Government Liaison	State Governmental Relations
Jennifer Damico	HR Compliance	Systemwide HR
Audrey Waller	HR Compliance	Systemwide HR

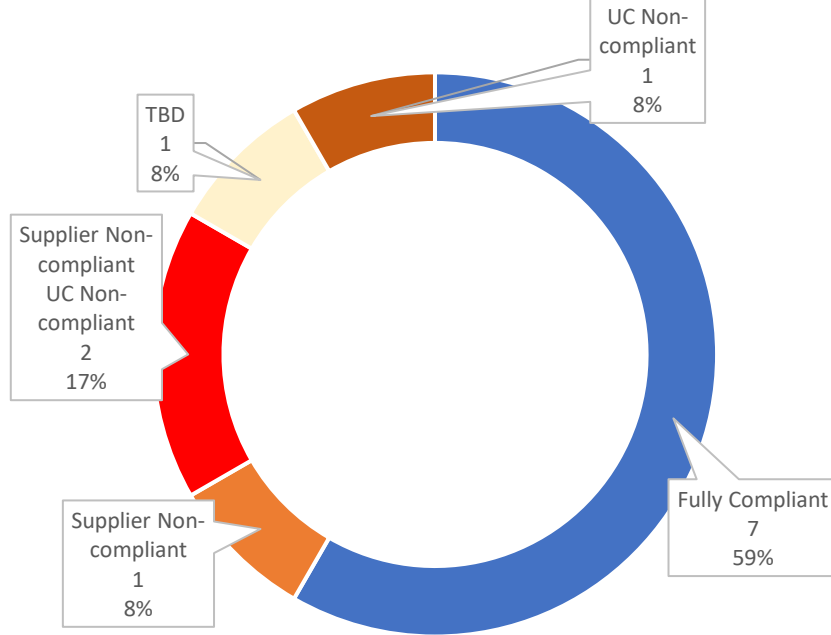
UC Locations

Name	Role	Location
Responsible Executives – Vice Chancellors	Consultant/Remediation	Campus, Medical Center, Office of the President, LBNL
Procurement/Supply Chain Teams	Supplier Liaison	Campus, Medical Center, Office of the President, LBNL
ELR (Labor Relations) Managers	Consultant	Campus, Medical Center, Office of the President, LBNL
Departmental End Users	Supplier Liaison/Remediation	Campus, Medical Center, Office of the President, LBNL

Appendix 2 – Project Analysis



Compliance Status by Small/Diverse Supplier



Remediation Status by Small/Diverse Supplier

